

September 29 & 30, 2010

Inaugural Two-Day Event!

Fair Hearing

Workshop Included: Maintaining Control of Hearings

participating organizations

Canada Agricultural Review Tribunal
Canada Pension Plan/Old Age Security Review Tribunals
Canadian International Trade Tribunal
Consent and Capacity Board
Global Resolutions Inc.
Health Professions Appeal and Review Board
Information and Privacy Commissioner/Ontario
Licence Appeal Tribunal
Ministry of Finance
Ontario Energy Board
Weirfoulds LLP

who should attend

Chairs, Vice-Chairs, Adjudicators, Members & Counsel of: Administrative Tribunals, Commissions, Boards & Agencies, Disciplinary Tribunals; City Councillors & Adjudicative Committee Members; Arbitrators

course highlights

- The fairness doctrine and its role in the conduct of hearings
- Establishing cultural sensitivity for a multicultural society
- Issues to consider at a pre-hearing
- Setting out sufficient legal grounds
- Key components of a hearing
- Ethical issues in the conduct of a hearing involving unrepresented litigants
- Dealing with opinion and hearsay evidence
- Dealing with jurisdictional issues
- Handling difficult and unruly witnesses and counsel
- The Judicial Review Procedure Act

Course Leader

Lynda Tanaka,
Licence Appeal
Tribunal



Harold J. Arkin,
Ministry of
Finance



Philippe Rabot,
Canada Pension
Plan/Old Age
Security Review
Tribunals



Jeff Cowan,
Weirfoulds LLP



Paul B.
Sommerville,
Ontario Energy
Board



Dr. Don
Buckingham,
Canada Agri-
cultural Review
Tribunal



Joaquin
Zuckerberg,
Consent and
Capacity Board



Frederick H.
Webber,
Global
Resolutions Inc.



as well as:

Ellen Fry,
Canadian
International
Trade Tribunal

Jacob de Jong,
Health Profes-
sions Appeal
and Review
Board

Diane Smith,
Information
And Privacy
Commissioner/
Ontario

FACULTY

COURSE LEADER

LYNDA TANAKA

Lynda Tanaka is Chair of the **Licence Appeal Tribunal**, an independent quasi-judicial administrative tribunal.

CO-LECTURERS

HAROLD J. ARKIN

As a Mediator with the **Financial Services Commission of Ontario**, Harold Arkin is responsible for Accident Benefit Motor Vehicle Mediation for the Ontario Government.

PHILIPPE RABOT

From 2005 to 2010, Philippe Rabot was Commissioner of the **Canada Pension Plan/Old Age Security Act Review Tribunals**, heading an administrative tribunals with over 300 members across Canada whose primary area of jurisdiction pertains to deciding eligibility for CPP disability pensions.

JEFF COWAN

Jeff Cowan of **Weirfoulds LLP** acts as counsel before administrative tribunals and trial and appellate courts in many aspects of public law.

PAUL B. SOMMERVILLE

Paul B. Sommerville, a lawyer, was appointed as a full-time member of the **Ontario Energy Board** in 2001.

ELLEN FRY

Ellen Fry was appointed Member of the **Canadian International Trade Tribunal** in 2001.

JACOB DE JONG

Jacob de Jong is a Member of the **Health Professions Appeal and Review Board**, an adjudicative body with a review and appeal mandate.

DR. DON BUCKINGHAM

Before assuming the position of Chair of the **Canada Agricultural Review Tribunal** in 2009, Don Buckingham acted as a private law-

yer, government lawyer, law professor, author and consultant.

JOAQUIN ZUCKERBERG

Joaquin Zuckerberg is legal counsel at the **Consent and Capacity Board**. He is currently adjunct professor at the Faculty of Law of the University of Toronto where he teaches mental health law.

FREDERICK H. WEBBER

Fred Webber has practised law for over 37 years. He was senior in-house counsel at Nortel Networks Limited and General Electric Canada, and counsel for a number of high-tech companies.

DIANE SMITH

Diane Smith has been an adjudicator with the **Information and Privacy Commissioner/Ontario** since 2006. Previous to that, she spent over nine years as a member of the Immigration and Refugee Board.

COURSE PROGRAM

LEGAL FRAMEWORK GOVERNING ADMINISTRATIVE HEARINGS

Administrative law is growing more complex, becoming one of the most difficult areas of law to master. This introductory session will examine the legal framework that governs administrative hearings and provide an overview of some of the fundamentals of administrative law as they apply to running a fair hearing.

- The legal framework that governs administrative hearings: the duty of procedural fairness in relation to hearings
- The fairness doctrine and its role in the conduct of hearings
- The right to be heard and its impact in the tribunal context
- Rules of evidence
- Addressing fairness challenges

THE NEED FOR IMPARTIALITY AND CULTURAL SENSITIVITY

Those running a hearing have a responsibility to look at the way they conduct themselves, while acting independently and impartially. This requires that decision makers conduct hearings with an open mind and without being influenced by external forces. They must not only avoid bias, but also avoid creating a perception of bias. This session will examine these key concepts.

- Best practices for maintaining impartiality
- Avoiding perceived as well as actual bias: what constitutes a reasonable apprehension of bias
- The risks of ex parte communications
- Establishing cultural sensitivity for a multicultural society
- Case law addressing impartiality: what is considered bias
- Permissible scope of influence of other board members on the decision maker

SUPPLEMENTARY COURSE MATERIAL

Federated Press is now providing delegates with access to an innovative new database containing at least 15 interactive multimedia presentations by leading experts and approximately 15 hours of lectures on the topics covered by this course, including all slides and speakers' papers. See the list of presentations on page 4.

Delegates will also receive a trial subscription to the Tax Channel, a much broader resource representing hundreds of hours of interactive multimedia lectures on leading edge government/regulatory topics as delivered at our many recent government/regulatory conferences and courses.



PRE-HEARING CONFERENCES

The purpose of a pre-hearing conference is to provide the parties with an opportunity, prior to the hearing, to discuss the preparations for, and the conduct of, the upcoming hearing. A pre-hearing conference can reduce the length of, and simplify, the main hearing by helping the parties to prepare properly for the hearing. This session examines the procedures to be followed for scheduling and conducting pre-hearing conferences.

- Issues to consider at a pre-hearing
- Setting an effective timetable
- Defining and narrowing the issues in dispute
- Agreeing to certain facts of the case
- Disclosing potential evidence and witness lists
- Dealing with preliminary motions at pre-hearings

ENSURING ADEQUACY OF REASONS IN YOUR DECISIONS

Where a duty to give reasons exists, case law requires that they be adequate. Reasons should contain sufficiently detailed factual and legal grounds, and be sufficiently complete and clear. The required degree of detail will depend on a number of factors, such as the complexity of the issues, the amount of evidence and the extent of controversy on certain issues. This session will examine best practices in ensuring adequacy of reasons in your decisions

- Elements and structure of a good decision
- Including a statement of the questions of fact material to the decision
- Speaking to issues of credibility
- Setting out sufficient legal grounds
- Providing reasons that are clear

CONDUCTING THE HEARING

In order to effectively deal with their heavy caseload of oftentimes complex disputes, adjudicators must rely upon proven best practices for conducting a fair hearing. This session will examine the key issues to keep in mind while a hearing is proceeding.

- Dealing with preliminary motions and other preliminary matters
- Setting the stage in introductory remarks
- Ensuring that all interested parties have a right to be heard fairly and within a reasonable period of time
- Safeguarding privacy rights in the conduct of a hearing
- The handling of witnesses and evidence: dealing with issues of disclosure
- Solicitor-client privilege in hearings

DEALING WITH UNREPRESENTED LITIGANTS

Increasingly, adjudicators are having to deal with unrepresented parties, resulting in special challenges and ethical issues in the conducting of a fair hearing absent the appearance of bias. This session will provide best practices in dealing with unrepresented litigants.

- Legal and ethical obligations an adjudicator has to an unrepresented litigant
- Ethical issues in the conduct of a hearing involving unrepresented litigants
- Level of assistance that can be given to unrepresented parties
- Assessing the competence of non-lawyer agents who wish to appear at the hearing
- Respecting experienced counsel without appearing biased

THE RULES OF EVIDENCE FOR ADMINISTRATIVE HEARINGS

The rules of evidence for administrative tribunals are based on the principles of natural justice but are not as homogenous as those applying to courts of law, as each tribunal has a great deal of independence under its particular Act and Regulations to adapt the contents of these rules to the context in which it operates. This session will provide an overview of the rules of evidence for administrative hearings.

- Managing documents and other objects in evidence
- Admissibility issues and the competency of witnesses
- Use of expert witnesses
- Dealing with opinion and hearsay evidence
- Types of privilege and how they affect the admissibility of evidence

HANDLING PRELIMINARY MOTIONS

At the commencement of a hearing, any party before a tribunal may make preliminary objections, which are usually comprised of arguments to have the hearing dismissed for reasons that do not go to the merits of the dispute. This session will examine the proper process for handling these types of motions.

- Submission requirements for preliminary motions
- Addressing constitutional questions
- Objection to the tribunal's jurisdiction
- Motions for adjournment, to recuse or disqualify, or on linguistic grounds
- Oral vs. written rulings on preliminary motions

LATEST DEVELOPMENTS IN JUDICIAL REVIEW OF TRIBUNAL DECISIONS

A judicial review, the process by which a Supreme Court judge reviews a decision that has been made by an administrative decision maker, is a complex legal process. The courts recognize that tribunals have specialized knowledge and experience in their particular subject areas and, because of that, the courts will not easily interfere with a tribunal's decision. This session will examine the situations where parties can apply for a judicial review and the process involved.

- The Judicial Review Procedure Act
- Time limits for applying for a judicial review
- Who can apply for judicial review
- How judicial reviews differ from retrials or rehearings
- Drafting and arguing judicial review applications

WORKSHOP

MAINTAINING CONTROL OF HEARINGS

One of the most difficult jobs of the adjudicator is to maintain control of complex and at times unwieldily hearing, while ensuring the doctrine of fairness is upheld throughout. This must be carefully achieved or else risk having their decision not withstand an appeal or judicial review. This session will explore best practices for successfully managing and maintaining control of a hearing.

- Effectively setting the ground rules early on in the process
- Ensuring that everyone has an opportunity to present evidence
- Managing the schedule and completing the hearing fairly and within the allotted time
- Maintaining control of witnesses, counsel and observers
- Maintaining order while keeping up the appearance of fairness

MULTIMEDIA PRESENTATIONS

Your registration includes an interactive multimedia database comprising the following presentations from recent Federated Press courses and conferences. They are presented in their entirety with complete audio or video and accompanying slides. You may also purchase the multimedia proceedings of the course which will be available on CD-ROM 60 days after the course.

Introduction to the Decision

Writing Process

James Ogilvy,
Canadian International Trade Tribunal
Time: 30 Slides: 20

Judicial Review and You

Dennis Lane,
Superior Court of Justice
Time: 43

Writing Effective Issue Statements

John Higgins,
*Office of the Information and Privacy
Commissioner of Ontario*
Time: 41 Slides: 12

Fact Finding Best Practices

Dennis Lane,
Superior Court of Justice
Time: 50

Organizing the Discussion of the Evidence: Analyzing and Weighing the Evidence

Steven Faughnan,
*Office of the Information and Privacy
Commissioner of Ontario*
Time: 39 Slides: 23

Applying Law to Factual Findings

John Higgins,
*Office of the Information and Privacy
Commissioner of Ontario*
Time: 50 Slides: 21

The Decision Writing Process: Practical Tips for Writing Documents

James Ogilvy,
Canadian International Trade Tribunal
Time: 58 Slides: 22

Writing Effective Closing Statements

John Higgins,
*Office of the Information and Privacy
Commissioner of Ontario*
Time: 46 Slides: 10

Writing Effective Conclusions

James A. Ogilvy,
Canadian International Trade Tribunal
Time: 31

Judicial Review and Reasons

Brian A. Crane, Q.C.,
Gowling Lafleur Henderson LLP
Time: 50 Slides: 2

Writing Style

Athanasios D. Hadjis,
Canadian Human Rights Tribunal
Time: 42 Slides: 29

Formulating reasons for decisions

John Higgins,
*Office of the Information and Privacy
Commissioner of Ontario (IPC)*
Time: 47 Slides: 12

Setting the Tone for the Decision

Paul B. Sommerville,
Ontario Energy Board
Time: 37 Slides: 13

Impact of Policy and Precedent in Decision Writing

John Higgins,
*Office of the Information and Privacy
Commissioner of Ontario*
Time: 50 Slides: 12

Providing Reasons for Decisions

Richard Makuch,
*Office of the Commissioner of
Review Tribunals*
Time: 45

Registration: To reserve your place, call Federated Press toll-free at 1-800-363-0722. In Toronto, call (416) 665-6868 or fax to (416) 665-7733. Then mail your payment along with the registration form. Places are limited. Your reservation will be confirmed before the course.

Location: Metropolitan Hotel, 108 Chestnut Street, Toronto, Ontario, M5G 1R3

Conditions: Registration covers attendance for one person, the supplementary course material as described in this document, lunch on both days, morning coffee on both days and refreshments during all breaks. The proceedings of the course will be captured on audio or video. Multimedia proceedings with all slides and handouts can be purchased separately on a CD-ROM which will also include the course material.

Time: This course is a two-day event. Registration begins at 8:00 a.m. The morning sessions start promptly at 9:00. The second day ends at 4:00 p.m.

Cancellation: Please note that non-attendance at the course does not entitle the registrant to a refund. In the event that a registrant becomes unable to attend following the deadline for cancellation, a substitute attendee may be delegated. Please notify Federated Press of any changes as soon as possible. Federated Press assumes no liability for changes in program content or speakers. A full refund of the attendance fee will be provided upon cancellation in writing received prior to September 16, 2010. No refunds will be issued after this date. Please note that a 15% service charge will be held in case of a cancellation.

Discounts: Federated Press has special team discounts. Groups of 3 or more from the same organization receive 15%. For larger groups please call.

Payment must be received prior to September 22, 2010

Phone: 1-800-363-0722 Toronto: (416) 665-6868 Fax: (416) 665-7733

TO REGISTER FOR FAIR HEARING

Name _____
Title _____ Department _____
Approving Manager Name _____
Approving Manager Title _____
Organization _____
Address _____
City _____ Province _____ Postal Code _____
Telephone _____ Fax _____ e-mail _____
Please bill my credit card: AMEX VISA Mastercard
_____ Expiration date: ____/____/____
Signature: _____
Payment enclosed: Please invoice. PO Number: _____

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