



Council of Canadian Administrative Tribunals

21st Annual Conference

***Administrative Justice
in the
Modern Canadian Mosaic***

Ottawa Congress Centre, Ottawa, Ontario, Canada

June 19 - 21, 2005

CCAT's 21st Annual Conference

Administrative Justice in the Modern Canadian Mosaic

Ottawa, June 2005

Welcome to CCAT's 21st Annual Conference on
"Administrative Justice in the Modern Canadian Mosaic."

Our country's demographics are changing rapidly and this reality affects all our institutions including our administrative tribunals. The diversity of people seeking and (to a lesser extent) delivering administrative justice presents us all with challenges and opportunities to grow, adapt, and improve in our work.

This year's program offers a range of topics addressing our theme as well as perennial favourites such as decision writing, administrative law updates, and the latest in technology, system design, and alternate dispute resolution.

Over two and a half days, more than 60 speakers will engage you in administrative law issues during some 20 workshops and three plenary sessions. These sessions are designed to promote learning and striving for excellence in our work. The collegial setting of this conference will also allow time for networking and reflection.

As Co-chairs, we would like to thank the volunteer members of our program planning committee who drew on their own experience as decision-makers, administrators, legal counsel, and consultants to develop the program for this year's conference.

The members are: Marie-Josée Beauchesne, Marcie Bourassa, Murray Chitra, Krista Daley, John Frecker, Linda Gehrke, Michèle Juteau, Odette Laverdière, Andre L'Hirondelle, Heather MacNaughton, Walter Pylypchuk, and Gary Yee.

Our speakers, who are generously volunteering their time, come from diverse groups such as: government, business, academia, and of course tribunals. They represent all regions of the country from sea to sea to sea.

Thank you for joining us this year and enjoy the conference.

The Conference Co-Chairs

Jean-Guy Fleury

Chairperson,
Immigration and Refugee Board,
Ottawa, Ontario

Heather MacFadyen

Director of Human Rights,
Yukon Human Rights Tribunal,
Whitehorse, Yukon

Sunday, June 19, 2005

9:30 REGISTRATION OPENS

Congress Hall Level - North Lobby

11:00 – 12:45 Fathers' Day Special Brunch

Colonel By Salon (Families invited)

12:45 – 1:45 Opening Remarks by Conference Co-Chairs

Followed by:

**The Modern Canadian Mosaic:
Changing Demographics**

Congress Hall
Salon E
(Bilingual)

Immigration is becoming a major source of population growth. It follows from this trend that we observe an increasing number and proportion of immigrants, visible minorities, Allophones and non-Christian population. Also a high proportion of recent immigrants have post-secondary credentials. The new cohorts take more time than the earlier immigrants to catch up with the average earnings of Canadians than the older ones.

Speaker: Réjean Lachapelle, Director, Demolinguistics Studies Division, Statistics Canada

1:45 – 3:00 Opening Plenary: Reconciliation and

**Renewal: Incorporating Aboriginal
Perspectives into Administrative Justice**

Congress Hall
Salon E
(Bilingual)

The distinctive cultures and histories of Canada's Aboriginal peoples have fostered unique perspectives and approaches to decision-making that are sometimes at odds with those employed by the Canadian legal system. Professor Borrows will address the challenges and opportunities created by this diversity as well as the reality of Aboriginal peoples' unique historical relationship with the Canadian state. He will discuss how understanding and incorporating Aboriginal perspectives can help administrative bodies improve decision-making for Aboriginals and non-Aboriginals alike. Professor Coyle will respond.

Moderator: Heather MacFadgen, Director of Human Rights, Yukon Human Rights Commission

Speaker: Professor John Borrows, Professor of Law, Chair of Aboriginal Justice and Governance, University of Victoria

Respondent: Professor Michael Coyle, Faculty of Law, University of Western Ontario

3:00 – 3:30 Refreshments and Networking

North Lobby
& Capital Hall

**3:30 – 5:00 Concurrent Sessions –
Tribunal Sector Roundtables**

A. Workers' Compensation

Capital Hall 1
(Bilingual)

This roundtable will enable members, staff and chairs of workers' compensation tribunals to share information with each other and discuss current issues and trends affecting their tribunals such as: appointment process, agency review, legislation and judicial review, followed by discussion.

Moderator: Linda Gehrke, Vice-Chair, Workplace Safety and Insurance Appeals Tribunals (WSIAT)

Speakers: Carole Prest, Counsel to the Chair, WSIAT;

Jill Callan, Chair of Workers' Compensation Appeal Tribunal, BC and Susan Polsky Shamash, Sr. Vice Chair, WCAT, BC; Louanne Labelle, Appeal Commissioner, Workers' Compensation Appeals Tribunal, NS, and Paul LeBreton, Chairperson, Appeals Tribunal, Workplace Health, Safety and Compensation Commission, NB

Congress Hall
Salon E
(Bilingual)

B. Human Rights

This roundtable will provide members of human rights tribunals and others with an interest in human rights an opportunity to discuss current issues and trends. Themes for discussion will include drug and alcohol testing; jurisdictional overlaps and multiplicity of forums for human rights issues; structural models for resolving human rights complaints. Brief presentations on each theme will be followed by an opportunity for all participants to engage in discussion.

Moderator: Charlach Mackintosh, Chief Commissioner, Alberta Human Rights and Citizenship Commission

Speakers: Audrey Dean, Senior Legal Counsel, Alberta Human Rights Panel; Professor Alope Chatterjee, Faculty of Law, University of New Brunswick; Richard Tardif, Senior Counsel, Human Rights Tribunal, Canada and Professor Thomas Kuttner, Faculty of Law, University of New Brunswick, Professor William Black, University of British Columbia, Law; and Heather MacNaughton, Chair, BC Human Rights Tribunal

Capital Hall 2
(Bilingual)

C. Labour Relations

This roundtable will enable members, staff and chairs of labour relations tribunals to share information with each other and discuss current issues and trends affecting their tribunals such as: appointment process, agency review, legislation and judicial review, followed by discussion.

Moderator: Yvon Tarte, Chairperson, Public Service Labour Relations Board, Ottawa

Capital Hall 3
(English)

**D. Regulation of Energy, Environment and
Resources**

Industry regulators will discuss issues of common concern and current trends, focusing on the regulation of activities that have a disproportionate impact on Aboriginal/First Nations communities. Topics for discussion will include the regulation of pipelines, forestry, mining and other activities.

Moderator: Knox Henry, Vice-chair, Environmental Review Tribunal Ontario and Todd Burlingame, Chair, Mackenzie Valley Land and Water Board, Yellowknife

Capital Hall 4
(English)

E. Regulation of the Professions

Regulators of the Professions (health, education, engineering, legal/paralegal, securities and financial) will discuss issues of common concern. Topics for discussion will include: New frontiers – regulation of paralegals; The fishbowl effect - regulation in an increasingly transparent environment; Structure - does the unitary model of investigation, prosecution and adjudication still work? Is professional regulation quasi-criminal or administrative?

Moderator: Naomi Bussin, Law Society of Upper Canada

5:00 – 6:30

President's Reception

Terrace

Monday, June 20, 2005

8:00 – 9:00
Congress Hall
North Lobby

Registration / Breakfast

9:00 – 10:30

Plenary

Congress Hall
Salon E
(Bilingual)

Diversity: Have Adjudicators and Regulators Adapted to New Realities?

The transformation of Canadian society presents new realities for its administrative tribunals. In Canada's cultural mosaic, the values of equality and openness that guide administrative tribunals and their members take on their full meaning. We are called on daily to resolve issues that pit equality for citizens before the law against flexibility to respond to differences. Our speakers will discuss the phenomenon of cultural diversity, the principle of accommodation, and the reality of administrative tribunals.

Moderator: Jacques Forgues, Président, Tribunal administratif du Québec

Speakers: Julius Grey, Lawyer, Montreal; Professor Joanne St. Lewis, University of Ottawa; and Suzie Duchaine Timothée, régisseuse, Régie du logement, Québec

10:30 – 11:00
North Lobby
& Capital Hall
Foyer

Refreshments and Networking

11:00 – 12:30

Concurrent Workshops (4)

Congress Hall
Salon E
(Bilingual)

F. Diversity in Appointments

An important part of meeting the ongoing challenges of diversity is to have a diverse composition in the membership of the tribunal or board. This panel will discuss how to achieve this goal, for example, how to integrate or add diversity criteria (e.g. "cultural competence") into the selection process, and how to outreach to increase the diversity of the pool of applicants. The panelists will address the issues from both the perspective of the tribunal and the perspective of the government.

Moderator: Gary Yee, Special Advisor to the Deputy Chairperson, Immigration Appeal Division (IRB)

Speakers: Senator Percy Downe, former Director of Appointments, Prime Minister's Office, Jean-Guy Fleury, Chairperson, Immigration and Refugee Board, and Marion Boyd, Part-time member, Ontario's Criminal Injuries Compensation Board, and former Attorney General of Ontario

Capital Hall 1
(Bilingual)

G. Tribunal Records - Open or Shut?

Do notes of tribunal members, draft decisions, legal opinions of tribunal counsel, tape recordings of proceedings and information from a hearing in-camera have to be disclosed in response to an access to information request? What is left of adjudicative privilege? What should tribunals do to protect personal information in drafting their decisions, in publishing their decisions and in maintaining a public record of their proceedings?

Capital Hall 2
(Bilingual)

Moderator: Colin McNairn, Chair of the Financial Services Tribunal, Ontario

Speakers: Denis Kratchanov, Director and General Counsel, Information and Privacy Law Section, Justice Canada; David Goodis, Senior Adjudicator, Office of the Information & Privacy Commissioner for Ontario

H. Administrative Law Update: What the Courts Have Been Up To While You Were Working.

Two prominent administrative law experts will discuss what's new with the law since you were at last year's conference.

Moderator: Krista Daley, General Counsel, Immigration and Refugee Board, Canada

Speakers: David Phillip Jones, Lawyer, de Villar Jones, Edmonton and Louis Masson, Lawyer, Joli-Coeur, Lacasse Geoffrion, Jetté, St-Pierre, Quebec City

Capital Hall 3
(English)

I. Literacy and Access to Justice: Literacy - The Invisible and Silent Barrier

This session will describe in detail the complexities of literacy and how this can impact on access to administrative tribunals. Solutions will be offered that not only increase fairness but also may save resources and time.

Speakers: Richard Nolan, Clarke and Nolan, Ottawa and Diane Drinkwater Wood, Consultants, Ottawa

12:30 – 2:00

Lunch

Colonel By
Salon

Marie-Paule-Scott Commemorative Scholarship Presentation and Annual General Meeting of CCAT Members (Starting at 1:30)

2:00 – 3:30

Concurrent Workshops (4)

Capital Hall 1
(Bilingual)

J. Assessing Credibility: Credit Model of Analysis Workshop (Part 1)

This is a two-part, 3 1/2 hour workshop that will deal with an analysis of credibility assessment in the context of a criminal trial, with wider implication for fact-finders generally. The speakers will describe how stereotypical bias and thinking errors impact decision-making. The audience will participate in a 'fact-finding/credibility' exercise and the results will be assessed in group discussions.

Moderator: Walter Pylypchuk, Counsel, Workers' Compensation Appeal Tribunal, BC

Speakers: The Honourable Lloyd P. Deshaye and the Honourable Ross Green, Provincial Court of Saskatchewan

Capital Hall 2
(Bilingual)

K. Dealing with the Media

The Chairperson of the Régie du logement du Québec and a consultant who specializes in developing proactive communications strategies will provide practical pointers

on how to position your tribunal effectively when dealing with the media.

Moderator: Carl Dombek, Licence Appeal Tribunal, Ontario

Speakers: France Desjardins, Présidente, Régie du logement, Montréal; Jim Stanton, President, Jim Stanton & Associates, Communications Consultants, Vancouver

Capital Hall 3
(English)

L. British Columbia's New *Administrative Tribunals Act*

BC has taken a significant step forward in its broad-based, systemic administrative justice reform initiative with the recent (2004) enactment of its new *Administrative Tribunals Act*. Have the BC reforms to the Administrative Justice sector gone far enough? Are there gaps? Lessons learned from West of the Rockies.

Moderator: Heather MacNaughton, Chair, BC Human Rights Tribunal

Speakers: Dianne Flood, Executive Director, Administrative Justice Office, Ministry of Attorney General, BC; T. Murray Rankin, Lawyer, Arvay Finlay Barristers, Vancouver, and Ronald Ellis, Arbitrator, Toronto

Congress Hall
Salon E
(Bilingual)

M. ADR System Design, Re-design and Evaluation

ADR processes are being increasingly used by tribunals and agencies to resolve a wide variety of disputes that previously were decided through litigation, resulting in considerable savings in terms of costs and time spent in managing disputes and increased satisfaction among the parties with resolution outcomes. This workshop will address the principles behind ADR system design, the importance of re-design when issues arise, and key elements to be considered in doing an evaluation of an ADR process. Panelists will relate their own experiences and lessons learned along the way.

Moderator: Marcie Bourassa, Deputy Chairperson, Immigration and Refugee Board

Speakers: Peter Seguin, Director, Dispute Research Services, Canadian Food Inspection Agency; Leslie Macleod, Leslie Macleod and Associates; and Bill Rafoss, Director Mediation, Saskatchewan Human Rights Commission

3:30 – 3:45
North Lobby
& Capital Hall

Refreshments and Networking

3:45 – 5:00

Concurrent Workshops (Continued)

Capital Hall 1
(Bilingual)

Assessing Credibility: Credit Model of Analysis Workshop (Part 2)

(See above for description)

Capital Hall 2
(Bilingual)

O. The Four Essential Steps to Negotiating a Memorandum of Understanding (MOU)

In recent years, government departments and administrative agencies have struggled with developing a memorandum of understanding. Three panel members, each having

experience in the area of MOU development, will discuss some of the issues that must be considered when a MOU is to be developed.

Moderator: Brian Goodman, Member, Refugee Protection Division, Immigration and Refugee Board, Toronto.

Speakers: Paul LeBreton, Chairperson, Appeals Tribunal, Workplace Health, Safety and Compensation Commission, NB.; William Tillemann, former Chair of the Alberta Environmental Appeals Board, and James Mitchell, former Assistant Secretary to the Cabinet (Machinery of Government) and currently, consultant with the Sussex Group, Ottawa

Capital Hall 3
(English)

P. Incorporating Existing Aboriginal Rights and Aboriginal Treaty Rights into Our Work as Administrative Law Decision-makers

Because of changing demographics and developing government-to-government relationships, tribunals in the future will need to be informed of Aboriginal rights just as they have had to keep pace with the transformations brought by the Charter. Learn when tribunals must adjudicate on these issues and understand how modern treaties will alter the decision-making landscape for administrative tribunals.

Moderator: Andre L'Hirondelle, Chair Métis Settlements Appeal Tribunal, Alberta.

Speakers: James (Sakej) Henderson, Professor and Research Director, Native Law Centre of Canada, College of Law, University of Saskatchewan; Dave Joe, Lawyer, Vancouver; Dianne G. Corbiere, Chair of the Indigenous Bar Association in Canada

Congress Hall
Salon E
(Bilingual)

Q. Case Management and Document Management in the Computer Age

Four presenters who have been involved in different capacities with successful implementation of computer-based case management and document management systems for tribunals provide practical advice on the possibilities and limitations, advantages and disadvantages of these systems. Presenters will share their experience on how to go about designing and implementing new case management systems, on what to do and what to avoid when defining needs and selecting appropriate software ("off the shelf" vs. customized), and on how best to train tribunal staff and members in use of the systems.

Speakers: Ayumi Bailly, Director Corporate Policy Branch, Management Board of Cabinet, Government of Ontario, Toronto; David Bestvater, Director of Case Management & Systems, Workers' Safety Insurance Appeals Tribunal, Toronto; Naomi Hamilton, Director, Project Delivery, OA Solutions, Victoria; Danielle Renaud, Pilote de systèmes, Commission des lésions professionnelles, Québec

6:30

Reception and Banquet

Colonel By Salon

Speaker: Pierre Delage (former adjudicator and CCAT Board Member) will speak about his post-tribunal career insights and wine tasting.

Tuesday, June 21, 2005

8:00 – 9:00

Registration / Breakfast

9:00 – 10:30

Concurrent Workshops (3)

Congress Hall
Salon E
(Bilingual)

R. Responding to Diversity –Within Tribunals and Within the Community

The rapidly changing composition of the Canadian society creates special challenges for administrative tribunals, particularly tribunals that adjudicate claims affecting individual rights and obligations. The workshop addresses ways in which tribunals can meet the special needs of an increasingly diverse claimant population, and what can be done to make tribunals more accessible to claimants from diverse linguistic and cultural backgrounds. The workshop will also examine what tribunals are doing to address the training needs of members drawn from diverse educational and cultural backgrounds.

Moderator: John Frecker, President, Legistec Inc.

Speakers: May Morpaw, Appeals Director, Human Resources and Skills Development Canada and Philippe Rabot, Commissioner, Review Tribunals, CPP and OAS

Capital Hall 2
(French)

S. Alphabétisation et accès à la justice

Beaucoup de Canadiens sont perdus dans le monde parfois hermétique de la justice administrative. Trop souvent, le faible niveau d'alphabétisation d'un nombre élevé de citoyens constitue un obstacle à la justice. L'atelier vise à sensibiliser les tribunaux et leurs membres sur cette problématique de plus en plus importante. On y présente aussi des pistes de solutions afin de mieux servir les justiciables et, ainsi, favoriser l'accès à la justice.

Animatrices: Michèle Juteau, commissaire, Commission des lésions professionnelles, Québec; Odette Laverdière, vice-présidente, Tribunal administratif du Québec

Conférencier: Emmanuel Didier, avocat, ancien membre de la Commission de l'immigration et du statut de réfugié

Capital Hall 1
(Bilingual)

T. Decisions and Diversity

The purpose of this workshop is to examine decision writing in the context of our modern diverse society. How does diversity affect the way in which administrative tribunal decision-makers communicate their decisions and reasons? Professor Ed Berry of the University of Victoria, author of "Writing Reasons: A Handbook for Judges" will provide an introductory overview. The panelists will introduce issues for discussion with workshop participants and offer practical suggestions. Topics will include how differences in wording, style, tone, format and organization affect the accessibility and persuasiveness of our reasons and decisions.

Speakers: Professor Ed Berry, University of Victoria

Panelists: Tracey O'Donnell, Counsel to the Union of Ontario Indians; Chisanga Puta-Chekwe, Chair of Ontario Social Benefits Tribunal; and Gary Yee, Special Advisor to the Deputy Chairperson – Immigration Appeal Division, Immigration and Refugee Board

10:30 – 11:00

Refreshments and Networking

North Lobby

11:00 – 12:30

Congress Hall E
(Bilingual)

Final Plenary Diversity and Access to Justice

Self-represented litigants are a reality for many administrative tribunals and increasingly, for the courts. The Honourable Anne L. Mactavish will speak about the challenges in dealing with a self-represented litigant and give some guidance about what you can and can't do. John D. O'Leary will speak about literacy and access to justice and will participate in the official launch of CCAT's publication, *Literacy and Access to Administrative Justice in Canada: A Guide for the Promotion of Plain Language*.

Moderator: Murray Chitra, Chair, Ontario Civilian Commission on Police Services

Speakers: The Honourable Anne L. Mactavish, Federal Court of Canada and John D. O'Leary, President, Frontier College, Toronto

Followed by:

CCAT Medal Presentation (Short Video)

Moderator: Robert Owen, Vice-chair, Ontario Municipal Board and Chair of CCAT's Public Outreach Committee

Closing Remarks: CCAT's Plans for Future Conferences

12:30

Conference concludes

Your feedback is important.
Don't forget to complete conference
evaluation forms online at CCAT's Web site
for plenary sessions and workshops you
attended:

<http://www.ccat-ctac.org>

For ongoing information about CCAT,
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