This timely one-day update will give you the latest information and valuable insights into important new law and practice developments, including:

• The impact of the SCC’s *Fullowka* decision on the scope of public authorities’ potential liability
• How the *Telezone* group of cases will affect Federal Court jurisdiction and when judicial review is required
• The availability of damages for violation of *Charter* rights post-*Ward* – and the fourfold test for determining what’s “appropriate and just”
• The Crown’s recourse to defamation actions as a means of protecting the administration of justice
• The current extent of Crown privilege and the challenges involved in obtaining or resisting disclosure of information in the Crown’s possession
• Electronic evidence, e-discovery and the Crown
• What the *Carrier Sekani* decision means for the extent of the government’s responsibility to consult aboriginal communities
• The *Kuwaiti Airlines* case, state immunity and suing foreign governments in Canada
• Recent law in relation to liability arising from procurement and tendering
• The current state of costs in Crown litigation (including but not limited to advance costs)

**Plus! Optional Pre-Conference Workshop - The Legal Framework of Crown Litigation: Navigating Through the Procedural Maze**

**Chairs**

Joseph K. Cheng, Counsel, Department of Justice Canada
Andrew Lokan, Paliare Roland Rosenberg Rothstein LLP
Malliha Wilson, Assistant Deputy Attorney General, Legal Services Division
Ministry of the Attorney General (Ontario)
What past attendees said:

“I always enjoy the mix of plaintiff/defence counsel... it makes for lively discussion and good representation of different perspectives”

“An excellent continuing education day for government solicitors generally. Relevant to [a] broad range of counsel work”

“Excellent overall update”

“The materials are excellent and will be useful”

The Crown continues to find itself a steady target of litigation, while new law in such areas as constitutional damages potentially increases its vulnerability. Both plaintiffs’ and Crown counsel need to meet the challenges posed by this shifting legal landscape – challenges that encompass the nature and scope of liability, the procedures and best practices involved in suing or defending the Federal or provincial governments, and the far-reaching consequences for government planners, private parties and the public interest.

As a government lawyer, private practitioner or in-house litigation counsel, you need the insights and tools which an expert faculty will place before you in this seventh annual program from Osgoode Professional Development. Featuring stellar expertise from senior Federal and provincial government lawyers, the private bar and academia, this program will guide you through the latest developments – and help you over the gravest pitfalls – in civil litigation involving public authorities. It has established a reputation as an outstanding guide to the relevant substantive law, procedural rules and winning strategies and tactics for suing or defending the government. Don’t miss this opportunity to hear the experts and to pose your most pressing questions to them!

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Joseph K. Cheng, Counsel, Department of Justice Canada
Andrew Lokan, Paliare Roland Rosenberg Rothstein LLP
Malliha Wilson, Assistant Deputy Attorney General, Legal Services Division Ministry of the Attorney General (Ontario)

Andrew Brodkin, Goodmans LLP
Robert E. Charney, Constitutional Law Branch Ministry of the Attorney General (Ontario)
Nathalie Des Rosiers, General Counsel Canadian Civil Liberties Association
R. Douglas Elliott, Roy Elliott O’Connor LLP
Mahmud Jamal, Osler LLP
Prof. Lewis N. Klar, Q.C., Faculty of Law University of Alberta
Sarah T. Kraicer, Crown Law Office — Civil Ministry of the Attorney General (Ontario)
Kevin McGuinness, LLB, LLM, SJD Barrister & Solicitor and Chairman Purchasing Consultants International
Nicholas McHaffie, Stikeman Elliott LLP (Ottawa)

Leslie M. McIntosh, General Counsel
Crown Law Office — Civil, Ministry of the Attorney General (Ontario)
Megan B. McPhee, Kim Orr Barristers P.C.
Michael H. Morris, General Counsel, Public Law Department of Justice Canada
Shaun O’Brien, Cavalluzzo Hayes Shilton McIntyre & Cornish LLP
Julian Porter, Q.C.
Malcolm N. Ruby, Gowling Lafleur Henderson LLP
Brendan Van Niejenhuis, Stockwoods LLP Barristers
Dale Yurka, General Counsel, Department of Justice Canada

Chairs

Faculty
The Telezone Group of Cases and the Limits of Federal Court Jurisdiction: The Final Chapter?
Nicholas McHaffie, Stikeman Elliott LLP (Ottawa)
Joseph K. Cheng, Counsel, Department of Justice Canada
Andrew Brodkin, Goodmans LLP
Michael H. Morris, General Counsel, Public Law Department of Justice Canada (Moderator)

With the Supreme Court of Canada poised to rule on the pivotal Telezone series of cases, counsel may expect greater certainty on the correct scope of Federal Court jurisdiction and the ability to bring civil actions arising from Crown decisions or actions. This panel will update you and explore the implications of the rulings in the context of the evolving law. The panel will also explore how the rulings will affect future proceedings and the scope of any still-unanswered questions.

Update on the Availability of Charter Damages and the Implications for Class Actions Against the Crown
R. Douglas Elliott, Roy Elliott O’Connor
Robert E. Charney, Constitutional Law Branch, Ministry of the Attorney General (Ontario)

• City of Vancouver v. Ward [2010 SCC 27] and after
• The “appropriate and just” standard: are there effective limits on the Courts’ discretion to award damages?
• How the Crown can show that other remedies would suffice
• When might damages “thwart effective governance”?
• Double recovery problems
• What the decision will likely mean for class actions and Crown accountability generally
• Impact on suits for malicious prosecution, G20-type situations

Luncheon (with Speakers): Social Media, Defamation, and the Crown: “Officer Bubbles” and Beyond
Mahmud Jamal, Osler LLP (Moderator)
Julian Porter, Q.C.
Nathalie Des Rosiers, General Counsel Canadian Civil Liberties Association

A police officer brings suit in defamation after a G20 videotape “goes viral” on the Web and gives rise to an explosion of parody and satire. But the issues raised are no joke: the Crown’s ability to use defamation against citizens, its legitimate interest in upholding the administration of justice, and the transformation of defamation’s traditional character as a merely personal action.

Evidentiary Problems and Solutions in Crown Litigation
Andrew Lokan, Paliare Roland Rosenberg Rothstein LLP
Sarah T. Kraicer, Crown Law Office – Civil, Ministry of the Attorney General (Ontario)

It’s a truism that cases are won or lost on the evidence. This panel provides a rare opportunity to explore evidentiary issues such as the following in the context of Crown litigation:
• Navigating the disclosure minefield
• Electronic evidence, e-discovery and the Crown
• Security certificates, immigration and national security cases
• The extent of Crown privilege; sections 38-39 of the Federal Evidence Act, cabinet secrecy, and the case-by-case approach at the provincial level
• Do’s and don’ts for obtaining and granting appropriate disclosure
  - knowing whom to ask and where to look
  - doing it right the first time to prevent embarrassment – and adverse cost awards – later

Note: There will be a 15 minute break during this session.

Update on the Crown’s Duty to Consult Aboriginal Communities: Impact and Implications of Carrier Sekani
Mallilla Wilson, Assistant Deputy Attorney General, Legal Services Division, Ministry of the Attorney General (Ontario)
Brendan Van Niejenhuis, Stockwoods LLP Barristers

• The impact on the judicial review process as it relates to First Nations
• Scope of the duty to consult (regional planning/project-specific approach/environmental assessments/energy consultation/sustainable practices in relations to species important to Aboriginal communities and their trapping/fishing treaty rights)

Fast and Focused: Updates in Three Important Areas
Kevin McGuinness, LLB, LLM, SJQ, Barrister & Solicitor and Chairman, Purchasing Consultants International
Shaun O’Brien, Cavalluzzo Hayes Shilton McIntyre & Cornish LLP
Malcolm N. Ruby, Gowling Lafleur Henderson LLP

• Current developments in costs in the context of Crown litigation (including judicial discretion to award advance costs in exceptional cases)
  - pleading not to have advance costs awarded against you
• State immunity and suing foreign governments: Unpacking the Kuwaiti Airlines case (S.C.C.)
• Recent developments in liability in relation to government procurement and tendering

Program Concludes
**Optional Pre-Conference Workshop**

**The Legal Framework of Crown Litigation: Navigating Through the Procedural Maze**

**Thursday, February 17, 2011: 2:00 p.m. - 5:00 p.m.**

Dale Yurka, General Counsel, Department of Justice Canada
Leslie M. McIntosh, General Counsel, Crown Law Office – Civil Ministry of the Attorney General (Ontario)
Megan B. McPhee, Kim Orr Barristers P.C.

Bringing or defending a legal claim against the government raises unique challenges. A practitioner unfamiliar with this procedural terrain faces an uphill struggle to manoeuvre effectively through it. This perennially highly-rated workshop will give you the procedural information you need concerning government liability – whether you’re acting for or against the Crown. Topics include:

- The statutory framework governing proceedings in Federal Court and provincial Superior Court
- Identifying the proper forum
- Limitation periods, identifying the parties, notice requirements
- How is the procedure affected when a claim is made against both the Crown and a private defendant?
- Intervenors and standing – the rules
- Applications for judicial review
- Essential procedural considerations in Federal Court
- Effective disclosure strategies
- The Freedom of Information and Protection of Information Act and government disclosure
- The scope of Crown privilege
- The time-frame for discovery
- Costs for and against the Crown

**Don’t miss this popular workshop! Register early.**

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**Registration**

Please complete all registrant information.

**Register me for:** Crown Liability  □ Course plus Workshop  □ Course only

I will attend:  □ On site  □ Via webcast (single viewer)

(Note: Workshop not available via webcast)

□ I am unable to attend. Please send me information about ordering program materials.

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Conference Only: $695 plus 13% HST for a total of $785.35. Conference plus Workshop: $895 plus 13% HST for a total of $1011.35. Workshop only: $300 plus 13% HST for a total of $339.

Fees include attendance, program materials, continental breakfast, lunch (conference only) and break refreshments. Group discounts are available for both on site and webcast participants. Visit www.osgoodepd.ca for details. Please inquire about financial assistance and CPD credits.

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Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less $50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

**Program Changes**

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University’s and Osgoode Hall Law School’s liability is limited to reimbursement of paid fees.

**Dates & Times**

Friday, February 18, 2011
9:00 a.m. - 4:45 p.m. EDT/EST

Optional Workshop: February 17, 2011
2:00 p.m. - 5:00 p.m.

Please arrive a half hour early for sign-in and material pick-up. Dress is business casual.

**Location**

Osgoode Professional Development
Downtown Toronto Conference Centre
1 Dundas St. W., 26th Floor
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