

Staff Issues Blast 2012

SOAR

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Thoughts on Regulation

- * All professions are conspiracies against the laity.
(George Bernard Shaw)
- * Incomprehensible jargon is the hallmark of a profession. (Kingman Brewster, Jr.)
- * Never be afraid to try something new; remember: amateurs built the ark, professionals built the Titanic.
(Unknown)

Self-Represented Litigants

- * Legal Aid clinic relationship
- * Mandatory pre-hearing conferences
- * Written resources in plain language
 - * FAQs
 - * Checklists
 - * Forms
- * Refer to the lawyer for other party
 - * Especially if has a “prosecutor” type role

Self-Represented Litigants

- * Assistance in filling out forms
 - * vs. assistance in preparing argument / content
- * Document conversations
- * Plain language scripts for chair
 - * Both at beginning
 - * During each phase of the hearing
- * ILC to explain process

Case Management vs. Adjudication

- * Pre-hearing conferences
 - * Planning the hearing OK
 - * Negotiating agreements and commitments OK
 - * Only tribunal members can give directions / orders
 - * Content of report (outcomes not discussion)
 - * Respecting confidentiality of the pre-hearing process

Case Management vs. Adjudication

- * Rules of Procedure
 - * Guides parties on how to do things
 - * E.g., bringing motions
 - * E.g., disclosure obligations
 - * E.g., taking evidence before a hearing
 - * E.g., vulnerable witnesses
 - * E.g., written and electronic proceedings (part or whole)
- * Enforcing rules
 - * Distinguishing between literal vs. purposeful approach
 - * Divisional Court Compendium example

Case Management vs. Adjudication

New ideas / developments that may affect staff

- * Time estimates / commitments by counsel
- * Tribunal review of documents and will-says in advance
- * Evidence in-chief by use of affidavits
- * Expert witnesses
 - * Joint report of agreements and disagreements
 - * Testifying at the same time
 - * Even for fact witnesses
- * Full mutual disclosure by parties

Parties with a Mental Health Illness

Principles

- * Duty to accommodate disability
 - * *Riad v. Health Professions Appeal and Review Board*, 2012 ONSC 2728
- * Ineffective representation amounts to a lack of fairness
 - * *Gligorevic v. McMaster*, 2012 ONCA 115

Parties with a Mental Health Illness

Strategies

- * Similar strategies for self-represented parties
 - * E.g., assistance with paperwork example
 - * E.g., use of a support person
- * Referral to community supports
- * Encourage legal, paralegal or friend / relative assistance
- * Tell tribunal of possible need for a “friend of the court”

Question

- * Where can I find resources on good practices in administrative justice?
 - * Is there such a thing as a best practice?
 - * www.canlii.org and www.lexisnexis.ca
 - * Scholarly literature
 - * Advisory boards (e.g., www.hprac.org)
 - * Regulatory and government websites (e.g., dentist audit report at: <http://health.gov.on.ca>)
 - * Law firm newsletters

Presenter Information

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