

# 19<sup>th</sup> LEGISLATIVE DRAFTING CONFERENCE

Charting Legislative Courses in a Complex World

# CIAJ

Canadian Institute  
for the Administration  
of Justice

Listening. Learning. Leading.

September 13-14, 2018 • Shaw Centre, Ottawa

## Overview

The 2018 bi-annual Legislative Drafting Conference will tackle one of the most pervasive challenges in modern legislation: complexity, beginning with its principal drivers in public policy. Why does our world generate legislative complexity? And how can legislation address this complexity intelligibly, coherently and effectively?

Conference sessions will also focus on examples of today's complexity challenges in international trading relationships, cannabis de-criminalization and the interaction of state law with indigenous legal traditions. Other sessions will focus on pragmatic drafting solutions to particular facets of these challenges, such as interjurisdictional coherence, resolving policy blockages, drafting for clients with limited policy-resources and achieving legislative coherence over time. The conference will include a wide range of speakers from Canada, the UK and beyond.

## Planning Committee

### Co-Chairs

Annette M. Boucher  
John Mark Keyes

### Members

Richard Denis  
Janet Erasmus  
Wendy Gordon  
Laura Hopkins  
Hoi Kong  
Jacqueline Kuehl  
Sandra Markman  
Eric Milligan  
Melanie Mortensen  
Peter J. Pagano  
Isabelle Parrot  
Mark Spakowski



## Keynote Speaker

### Robert Geyer

Department of Politics,  
Philosophy and Religion  
Lancaster University, UK

Accredited in  
provinces where  
CLE requirements  
for lawyers are  
mandatory.

## AGENDA | THURSDAY, SEPTEMBER 13, 2018

### 8:00 – 8:30 AM REGISTRATION AND CONTINENTAL BREAKFAST

### 8:30 – 8:45 AM WELCOME REMARKS AND INTRODUCTION

*Co-Chairs*

- Claudette Commanda, traditional knowledge holder (land acknowledgement and prayer)
- John Mark Keyes, Sessional Professor, Faculty of Law - Common Law Section, University of Ottawa
- Annette M. Boucher, Legislative Counsel and Assistant Clerk, Nova Scotia House of Assembly

### 8:45 – 9:30 AM KEYNOTE ADDRESS | The Drafters Dance: The Complexity of Drafting Legislation in the UK, EU and Canada

Professor Geyer will consider contemporary public policy, the factors that drive its increasing complexity and the challenges it poses for drafting intelligible, coherent and effective legislation. His address will provide a basis for the subsequent sessions that will consider examples of complex policy matters and how they are being addressed in legislation.

*Chair*

- John Mark Keyes, Sessional Professor, Faculty of Law - Common Law Section, University of Ottawa

*Speaker*

- Robert Geyer, Department of Politics, Philosophy and Religion, Lancaster University (UK)

### 9:30 – 10:45 AM COMPLEXITY CASE STUDY | Free Trade Divorce – Drafting (Br)exit Legislation

Withdrawal from international trade agreements, including Brexit, and the legislative drafting challenges withdrawals pose.

*Chair*

- Richard Denis, Interim Clerk of the Senate and Clerk of the Parliaments, and Chief Legislative Services Officer

*Speakers*

- Saira Salimi, Speaker's Counsel, House of Commons (UK)
- Ton Zuijdewijk, Professor of European Union Law, University of Ottawa (former General Counsel at the Trade Law Bureau, Global Affairs (Canada))

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### 10:45 – 11:15 AM BREAK

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### 11:15 – 12:30 PM COMPLEXITY CASE STUDY | Legalizing and Regulating Cannabis in Canada: Incremental or Radical Change?

Drafting challenges in reflecting evolving social norms and attitudes in legislation to legalize and regulate cannabis across federal, provincial and territorial jurisdictions.

*Chair*

- Wendy Gordon, Director, Legislation Services, House of Commons (Canada)

*Speakers*

- Diane Labelle, General Counsel, Health Canada Legal Services
- John Clare, Director of Policy, Cannabis Legalization and Regulation Branch, Health Canada
- Melissa McKinley, Director, Planning, Cannabis Secretariat, Government of Alberta
- Laurel Montrose, Counsel, Legal Services Branch, Department of Justice, Government of Yukon

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### 12:30– 2:00 PM LUNCH | The Implications of Complexity Thinking: Where Do We Go from Here?

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During this working lunch, Robert Geyer and his co-author and colleague Thomas Webb will briefly expand on some of the broader implications of complexity thinking on the legal and policy fields that were raised in the keynote address and follow this with an open discussion session.

*Chair*

- John Mark Keyes, Sessional Professor, Faculty of Law - Common Law Section, University of Ottawa

*Speakers*

- Robert Geyer, Department of Politics, Philosophy and Religion, Lancaster University (UK)
- Thomas Webb, Lecturer, Lancaster University Law School

**2:00 – 3:00 PM      Legislative Coherence Across Borders**

This session will examine the challenge of achieving legislative consistency in various contexts of national and international situations of shared or complementary jurisdictions, including the Uniform Law Conference of Canada's promotion of coherence and consistency in Canadian jurisdictions and the "backstop" approach, which has been used in a number of legislative contexts at Environment and Climate Change Canada.

*Chair*

- Mark Spakowski, Chief Legislative Counsel, Ontario

*Speakers*

- Elizabeth Strange, Director, Legislative Services, Attorney General of New Brunswick; Past President, Uniform Law Conference of Canada
- Vincent Fréchette, Legal Counsel, Legal Services, Environment and Climate Change Canada

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**3:00 – 3:30 PM      BREAK**

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**3:30 – 5:00 PM      WORKSHOP | Legislative Coherence Across Borders**

Practical problems relating to this topic.

**5:30 – 7:30 PM      RECEPTION | Supreme Court of Canada**

*Guest of Honour Address*

- The Right Honourable Richard Wagner, P.C., Chief Justice of Canada

## FRIDAY, SEPTEMBER 14, 2018

**8:00 – 8:30 AM      REGISTRATION AND CONTINENTAL BREAKFAST****8:30 – 10:00 AM      Maintaining Legislative Coherence Over Time**

Legislated law is not frozen – it adapts to change by being changed. Amendments over time may result in an Act that was originally coherent in content and readability become much less coherent. This conference session will be a practical presentation about past and new approaches to recovering coherence and techniques for maintaining coherence while delivering change.

In this session, we will: explore examples of practical experience with the technique we are discussing; share thoughts about what worked well with the technique and what worked less so; present ideas for legislative changes we think would improve the process.

*Chair*

- Janet Erasmus, Senior Legislative Counsel, Office of Legislative Counsel (BC)

*Speakers*

- Peter J. Pagano, Chief Legislative Counsel, Alberta
- Tamara Kuzyk, Legislative Counsel, Government of Ontario
- Joanne Klineberg, Senior Counsel, Criminal Law Policy Section, Department of Justice Canada
- Laura Hopkins, Legal Counsel (Ontario)

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**10:00 – 10:30 AM      BREAK**

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**10:30 – NOON      Overcoming Policy Blockages: Helping Drafting Instructors with their Instructions**

This session will focus on techniques for moving drafting files forward when they are stalled by incomplete, unclear or varying policy objectives. The panel will look at potential causes of blockages, effective approaches to resolve them and best practices to avoid these problems in the first place.

*Chair*

- Isabelle Parrot, Senior Counsel and Assistant Director, Headquarters Regulations Section, Public Law and Legislative Services Sector, Justice Canada

*Speakers*

- Neil Bouwer, Vice President, Policy and Innovation Services, Canada School of Public Service
- Philippe Giguère, Manager - legislative policy, Environment and Climate Change Canada
- Aleksander Hynnä, Legislative Counsel, Legislation Section, Public Law and Legislative Services Sector, Justice Canada

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**NOON – 1:00 PM      LUNCH**

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**1:00 – 2:30 PM**    **Drafting for Clients who Need Help** (private members, small jurisdictions, new instructing officers)

Drafters, no matter in how big or small a jurisdiction they are working, are often called upon to do more than simply transform well-advanced policy into workable draft legislation. This can be for a variety of reasons, including that the instructor is inexperienced or has only a general idea of what the proposed law should achieve, or is working alone, without the resources (time, human, financial) required. But even if resources abound, and there is a subject matter expert (SME) and a SME lawyer in the drafting process, legislative counsel are often asked for help that amounts to more than just drafting. This session will explore the theoretical, practical and ethical limits to the types of help drafters can and should provide.

*Chair*

- Sandra Markman, Chief Legislative Counsel, Yukon

*Speakers*

- Gavin Sellar, Parliamentary Counsel, Scottish Government
- Alexandra Schorah, Legislative Counsel, Office of the Law Clerk and Parliamentary Counsel, House of Commons (Canada)

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**2:30 – 3:00 PM**    **BREAK**

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**3:00 – 4:30 PM**    **Intersection of Indigenous Legal Traditions and Legislation**

Reconciliation of state legislation with indigenous legal traditions, including legislation that incorporates indigenous legal traditions. An overview of recent federal legislation: the new anchor points for the dialogue with Indigenous peoples, traditions and legal orders.

*Chair*

- Melanie Mortensen, Legislative Counsel, Office of Legislative Counsel (BC)

*Speakers*

- Maxime Lamothe, Legislative Counsel, Legislation Section, Public Law and Legislative Services Sector, Justice Canada
- Hadley Friedland, Assistant Professor, Faculty of Law, University of Alberta

**4:30 – 4:45 PM**    **CLOSING REMARKS**

*Co-Chairs*

- John Mark Keyes, Sessional Professor, Faculty of Law - Common Law Section, University of Ottawa
- Annette M. Boucher, Legislative Counsel and Assistant Clerk, Nova Scotia House of Assembly

With the support of:



## Contact us

Please contact us for more information about our organization, the benefits of membership and how you can assist us with our mission.

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# REGISTRATION FORM

## LEGISLATIVE DRAFTING CONFERENCE | September 13-14, 2018

Shaw Centre, 55 Colonel By Drive, Ottawa, ON

Please complete the online form: <https://ciaj-icaj.ca/en/training-programs/2018-legislative-drafting/>

Or: complete the form below and return it with your payment.

### Registration Fee *(Breakfast, coffee breaks, luncheon and conference material included)*

☐ **CIAJ Member** (\$695) ☐ **Non Member** (\$845) **Young Lawyer\***: ☐ Member (\$395) ☐ Non Member (\$495) ☐ **Student\*** (\$75)  
☐ *I wish to subscribe to CIAJ's electronic newsletter*

### Become a Member

Through participation of its members, CIAJ fosters excellence and leadership in the administration of justice and helps preserve a strong and independent judiciary. Individual members active in their profession receive a preferred rate on all training programs in addition to other benefits.

☐ **Individual** (\$150) ☐ **Young Lawyer\*** 5 years or less (\$100) ☐ **Retired Person** (\$75) ☐ **Student\*** Full-time (\$10)

### Improve the justice system *(Tax receipt issued for charitable donation—Reg. # 10686 1529 RR 000)*

☐ I wish to make a donation to an amount of: \$ \_\_\_\_\_

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Title \_\_\_\_\_ Name of organization \_\_\_\_\_

Address \_\_\_\_\_

Postal code \_\_\_\_\_ Tel (Bus) \_\_\_\_\_

Email \_\_\_\_\_ Assistant's email \_\_\_\_\_

Preferred language ☐ English ☐ French / Fully bilingual ☐ Yes ☐ No (Simultaneous translation during plenary sessions)

I will attend the reception at Supreme Court (Sept., 13, 2018, 5:30-7:30 pm) ☐ Yes ☐ No / Guest(s) ☐ Yes ☐ No

Guest(s) name(s) \_\_\_\_\_

Dietary Restrictions ☐ No ☐ Yes Which \_\_\_\_\_

### Payment ☐ Cheque ☐ Visa ☐ Mastercard ☐ Amex

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**Accommodation:** A block of rooms has been reserved at Les Suites Hotel (130 Besserer Street, Ottawa, Ontario K1N 9M9) at a rate of \$189/night, single/double occupancy. Reservations at 1-800-267-1989 (US & Canada) or 1-613-232-2000, (International) or [click here to reserve online](#) (**Password: 168290**). Participants are required to make their own reservations before Friday, August 10<sup>th</sup>, 2018 in order to take advantage of this preferred rate. Reservations received after that date will only be confirmed on a space and rate availability basis.

### Cancellation Fee *(At any time, a participant may be replaced by another person without charge)*

30 days or more before the event: Administration fees of \$40 / 7 days or more before the event: 50% of registration fees / Less than 7 days before the event: No refund

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