

THE LAW OF BORDERS

CIAJ

Canadian Institute
for the Administration
of Justice

47th ANNUAL CONFERENCE | For all members of the legal community

Listening. Learning. Leading.

OCTOBER 25-27, 2023 | ONLINE & IN PERSON | OTTAWA MARRIOTT HOTEL



HONORARY CHAIR: The Honourable Justice Mahmud Jamal, Supreme Court of Canada

KEYNOTE SPEAKER: Her Excellency Yuliya Kovaliv, Ambassador of Ukraine, Canada

CIAJ's 47th Annual Conference will explore current issues related to the law of borders. It will open the door to discussion and challenge the definition of what a "border" is, including the very notion of national borders, taking into account indigenous perspectives.

For many people, moving across borders implies facing vulnerability and precarity. How can we provide better protection to migrants and refugees, extending our vision beyond individuals to include families? In a world experiencing the effects of climate change, is our legal definition of a refugee still accurate? Furthermore, economic frontiers are becoming increasingly blurred. In such a context, it is also important to address work issues from the perspective of the adequacy of protections available to migrant workers, the implications of working remotely across territories, and the challenges of studying abroad, and to join forces in creating a more just and inclusive world.

Who should attend?

This multidisciplinary program is open to all members of the legal community, including the judiciary, tribunal community, practitioners, law professors and students, and to everyone interested in issues related to borders and mobility.

Registration: <https://ciaj-icaj.ca/en/upcoming-programs/2023-annual-conference/>

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- *This program is offered by an accredited provider of professional content and is accredited in provinces where CLE requirements for lawyers are mandatory.*
 - *Participation in this conference is approved under Section 41 (1) of the Judges Act.*

PLANNING COMMITTEE



Credit: Supreme Court of Canada Collection

HONORARY CHAIR

The Honourable Justice Mahmud Jamal
Supreme Court of Canada

Justice Jamal was born in Kenya, raised in England, and completed high school in Edmonton, Alberta. He received a Bachelor of Arts degree from the University of Toronto, Bachelor of Laws and Bachelor of Civil Law degrees from the Faculty of Law of McGill University, and a Master of Laws from Yale Law School, which he attended on a Fulbright Scholarship. He served as a law clerk to Justice Melvin L. Rothman of the Quebec Court of Appeal and Justice Charles D. Gonthier of the Supreme Court of Canada.

Justice Mahmud Jamal was appointed to the Supreme Court of Canada on July 1, 2021.

[Full biography](#)

CO-CHAIRS

The Honourable Justice P. Colleen Suche | Court of King's Bench of Manitoba; President, CIAJ

The Honourable Justice Julie Dutil | Court of Appeal of Quebec; First Vice-President, CIAJ

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Naivi Chikoc Barreda | Assistant Professor, Faculty of Law – Civil Law Section, University of Ottawa

The Honourable Justice Peter H. Edelmann | Supreme Court of British Columbia

The Honourable Justice James W. O'Reilly | Federal Court; Past-President, CIAJ

Mélanie Raymond | Administrative Judge, Tribunal administratif du travail

Alicia Seifert | Coordinating Member, Immigration and Refugee Board of Canada

The Honourable Justice Jeanne E. Watchuk | Supreme Court of British Columbia

Christine O'Doherty | Lawyer; Executive Director, CIAJ

Nathan Afilalo | Lawyer, CIAJ

8:00 – 9:00 am REGISTRATION AND BREAKFAST

9:00 – 9:30 am LAND ACKNOWLEDGEMENT, WELCOME REMARKS AND INTRODUCTION

- Master of Ceremony* • Athanasios Hadjis, Vice-Chair, Canadian Human Rights Tribunal
Honorary Chair • The Honourable Justice Mahmud Jamal, Supreme Court of Canada
CIAJ President • The Honourable Justice P. Colleen Suche, Court of King's Bench of Manitoba; President, CIAJ

9:30 – 10:15 am KEYNOTE SPEAKER

- Her Excellency Yuliya Kovaliv, Ambassador of Ukraine, Canada

10:15 – 10:30 am BREAK

10:30 am – Noon PANEL 1 | [The Paradox of Borders: An Overview of the Conference](#)

What is the relevance of borders today? Is the creation of a border a fixed act of demarcation, or are borders drawn in a continual process of “bordering”? This panel will explore what a border is, as well as examine current pressing political realities involving borders in Canada and abroad. The discussion will encompass issues of climate refugees and frontier disputes, as well as their domestic and international impacts. The role of Canada in the global treaty regime will also be considered as the panel examines the connection between domestic and international law. The panel will set the tone of the conference by probing the idea at its heart: the reality and significance of borders.

- Chair* • The Honourable Justice James W. O'Reilly, Federal Court; Past-President, CIAJ
Speakers • Ferry de Kerckhove, former Canadian Ambassador; Professor, Centre for International Policy Studies, Faculty of Social Sciences, University of Ottawa
• Audrey Macklin, Professor & Rebecca Cook Chair in Human Rights Law, Faculty of Law, University of Toronto
• Delphine Nakache, Full Professor, Faculty of Law – French Common Law, University of Ottawa
• Doug Saunders, Journalist, Author & Columnist, *The Globe and Mail*

12:00 – 1:00 pm LUNCH

1:00 – 2:30 pm PANEL 2 | [Migrants and Workers](#)

Migrant workers in Canada often face difficult realities: precarious immigration status, inadequate access to healthcare, inability to access workers' compensation, and difficulty in protecting their employment rights. The panel will discuss the legal framework governing migrant work and the pressing legal issues migrant workers face. The discussion will include employment structures and permit systems, such as temporary agencies or the Canadian migrant worker permit streams, as well as how these regimes contribute to the difficulties migrant workers face. The panel will also look at the potential of the migrant worker system and how it could better address the unique problems that face migrant workers, including the role of the *Charter* in legal protections of migrant workers, as well as recommendations for policy changes.

- Chair* • The Honourable Justice P. Colleen Suche, Court of King's Bench of Manitoba; President, CIAJ
Speakers • Amanda Aziz, Staff Lawyer, Migrant Workers Centre
• Eugénie Depatie-Pelletier, Doctor in law, Adjunct Professor, Department of Geography, Université Laval; Executive director, Association for the Rights of Household and Farm Workers
• Constance MacIntosh, Professor, Faculty of Law, Dalhousie University

2:30 – 2:45 pm BREAK

2:45 – 4:00 pm PANEL 3 | [Borders, Barriers, and Legal Pluralism](#)

This panel will explore how the various legal traditions co-exist within Canada, as well as the impact of their overlap. Common Law rules and procedures impact how refugees are able to navigate their legal rights in relation to detention, border closures, and emergency protocols. Immigration law impacts the definition of citizenship and belonging for many groups in Canada, particularly for Indigenous communities living on the US-Canada border. The panel will address the interaction between the Canadian Common Law, the Québec Civil Law, and Indigenous legal orders, as well as other issues linked to legal pluralism within the Canadian legal landscape.

Chair • Sarah Rowe, J.D. Candidate, Faculty of Law – Common Law Section, University of Ottawa

Speakers • Efrat Arbel, Associate Professor, Peter A. Allard School of Law, University of British Columbia
• Ryan Stuart Beaton, lawyer, Juristes Power Law
• Asha Kaushal, Associate Professor, Peter A. Allard School of Law, University of British Columbia

4:00 – 4:30 pm CIAJ MEMBERS ANNUAL GENERAL MEETING

5:00 – 7:30 pm COCKTAIL

8:00 – 9:00 am **REGISTRATION | Insightful Breakfast with IRB**

Moderator

- Stephen Bindman, Visiting Professor, Faculty of Law – Common Law Section, University of Ottawa

Speakers

- Gary Dukeshire, Senior Counsel, Legal Services, Immigration and Refugee Board of Canada
- Angus Grant, Assistant Deputy Chairperson, Refugee Appeal Division, Immigration and Refugee Board of Canada

9:00 – 10:30 am **PANEL 4 | Extradition**

The Supreme Court of Canada has stated that the Canadian extradition process aims to comply with international obligations to the country's extradition partners and protect the rights of the person being extradited. The system of international comity is becoming increasingly important in present times with borders becoming more fluid. However, in the recent report by the Standing Committee on Justice and Human Rights following the *Diab* case, the process was critiqued for an imbalance that results in potential injustices to the individual persons sought. The speakers will address the strengths of the present system and possible avenues for reform, with a particular focus on the role of foreign law in the extradition process. Through an international perspective, the panel will also discuss how foreign extradition regimes compare to Canada.

Chair

- The Honourable Justice Jeanne E. Watchuk, Supreme Court of British Columbia

Speakers

- Robert J. Currie, K.C., Professor of Law, Distinguished Research Professor, Schulich School of Law, Law & Technology Institute, Dalhousie University
- Demetra Fr. Sorvatzioti, Associate Professor, Department of Law, School of Law, University of Nicosia, Cyprus
- Donald Bayne, Partner, Bayne Sellar Ertel Macrae, Ottawa
- Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Justice Headquarters, Justice Canada

10:30 – 10:45 am **BREAK**

10:45 am – 12:15 pm **PANEL 5 | Criminal Law Issues and Immigration**

A person's status can subject them to different regimes and different government bodies whose purposes may be conflicting. This panel will explore the policy issues around criminality and its intersection with immigration and refugee law. Public safety is an important animating objective of both the criminal law and the enforcement provisions of immigration law. Key points of intersection between these two areas of law include inadmissibility, immigration detention, and removal. The panel will explore these intersections in discussing the cases of *Mason v. MCI*, 2021 FCA 156 (currently pending before the Supreme Court of Canada) and *Agbakoba v. AGBC*, 2022 BCCA 394, which highlight potential areas of tension in the criminal and immigration law's approaches to risk, public safety, national security, and international obligations.

Chair

- Robert J. Currie, K.C., Professor of Law, Distinguished Research Professor, Schulich School of Law, Law & Technology Institute, Dalhousie University

Speakers

- The Honourable Justice Peter H. Edemann, Supreme Court of British Columbia
- Anthony Navaneelan, Barrister and Solicitor, Refugee Law Office, Legal Aid Ontario
- Banafsheh Sokhansanj, Senior General Counsel, National Litigation Sector, Justice Canada

12:15 – 1:15 pm **LUNCH**

1:15 – 2:45 pm **PANEL 6 | Technology and Its Use in International Law**

Technology has had and will continue to have serious implications for domestic and international law. This panel will focus on digital law and regulation and its effects on vulnerable people inside and outside of Canada. It will examine topics such as digital evidence, internet regulation, overseas data collection, and cross-border telework. Telework raises complex issues concerning the law applicable to the employment contract and the competent jurisdiction in cross-border cases. Similarly, *Charter* application for cross-border investigations is made only more complicated with the introduction of new technology. The panel will explain these new and emerging digital tools and procedures and tackle the ethical issues inherent in our current technological age.

Chair

Speakers

- The Honourable Justice Peter M. Willcock, Court of Appeal for British Columbia
- Naivi Chikoc Barreda, Assistant Professor, Faculty of Law – Civil Law Section University of Ottawa
- Céline Castets-Renard, University Research Chair on Accountable Artificial Intelligence in a Global Context; Faculty member, Centre for Law, Technology and Society; Full Professor, Faculty of Law, Civil Law Section, University of Ottawa
- Gerald Chan, Partner, Stockwoods LLP, Toronto

2:45 – 4:15 pm **PANEL 7 | Refugee Protection**

This panel will focus on the individual within the complexity of the refugee system. The discussion will include examining the definitions of what a refugee is, the categories under which individuals can apply to obtain refugee status and how contemporary realities can push up against legal definitions, such as the case with climate refugees, which can preclude an individual from gaining refugee status. The discussion will also consider the length of refugee status, as well as external considerations that impact refugee systems, such as mass refugee influxes, inclusive of the complications regarding potential criminal behaviour or the perpetration of war crimes from people seeking status.

Chair

Speakers

- The Honourable J.C. Marc Richard, Chief Justice of New Brunswick
- Preeti Adhopia, Assistant Deputy Chairperson, Refugee Protection Division, Immigration and Refugee Board of Canada
- Aviva Basman, Manager & Lawyer, Refugee Law Office, Legal Aid Ontario; President, Canadian Association of Refugee Lawyers
- The Honourable Justice Lobat Sadrehashemi, Federal Court
- Azadeh Tamjeedi, Senior Legal Officer and Head of Protection Unit, United Nations High Commissioner for Refugees

8:00 – 9:00 am REGISTRATION AND BREAKFAST

9:00 – 10:30 am PANEL 8 | Indigenous Sovereignty and Borders

Indigenous people face unique border challenges. A community may be divided by jurisdictional, provincial, federal, and international boundaries, complicating the determination and exercise of rights, commercial activities, cultural practice, family cohesion and everyday living. This panel will examine the impact these challenges present to Indigenous self-governance. The discussion will consider the practical realities communities face as they negotiate overlapping borders, and changes required in federal law and policy to recognize the relational and land-based borders set by Indigenous people themselves.

Chair

- Adam O. Letourneau, K.C., Founder and Managing Partner, Letourneau LLP

Speakers

- Bonnie Cole, Legal Counsel, Mohawk Council of Akwesasne
- Wayne D. Garnons-Williams, Senior Lawyer and Principal Director, Garwill Law; Principal Director, Indigenous Sovereign Trade Consultancy; Chair, IITIO
- Michael Kanentakeron Mitchell, Former Grand Chief, Mohawk Council of Akwesasne

10:30 – 10:45 am BREAK

10:45 am – 12:15 pm PANEL 9 | Family Law

Problems of double jurisdiction, differing protection regimes and geographic realities can complicate family law cases. The panel will discuss family law in relation to immigration through a look at international law and international relationships, and how these intersecting legal worlds can cause gaps in legal systems that must be addressed. Further the panel will explore some of the instruments at play in international family law such as the *Hague Convention on the Civil Aspects of International Child Abduction* in addition to how definitions of family concepts such as couple, marriage, and union may impact the outcomes of family law cases. The panel will consider how legal actors must sometimes fill in the gaps in the law with their own definition of what constitutes a couple, a marriage or a civil union, drawing on both their own cultural references and those of the parties before them.

Chair

- The Honourable Justice Julie Dutil, Court of Appeal of Quebec; First Vice-President, CIAJ

Speakers

- Awatif Lakhdar, Partner, Lavery
- Mélanie Raymond, Administrative Judge, Tribunal administratif du travail
- Oren Weinberg, Partner, Boulby Weinberg LLP

12:15 – 1:15 pm LUNCH

1:15 – 2:00 pm PRESENTATION OF CIAJ PRIZES & AWARDS

- 2023 Christine Huglo Robertson Essay Recipient: Seth Gordon, BCL/JD candidate, Faculty of Law, McGill University
- 2023 Charles D. Gonthier Research Fellowship Recipient: Robert J. Currie, K.C., Professor of Law, Distinguished Research Professor, Schulich School of Law, Law & Technology Institute, Dalhousie University

2:00 – 3:00 pm FIRESIDE CHAT

Moderator

- Stephen Bindman, Visiting Professor, Faculty of Law – Common Law Section, University of Ottawa

Speakers

- Ghizal Haress, Visiting Scholar, Faculty of Law and Massey College, University of Toronto; Former Ombudsperson, Islamic Republic of Afghanistan

3:00 – 3:15 pm CLOSING REMARKS

- The Honourable Justice Julie Dutil, Court of Appeal of Quebec; First Vice-President, CIAJ

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CIAJ is a non-profit, independent organization that links individuals and institutions involved in the administration of justice across Canada. Its work is multidisciplinary and wide-ranging. Collaborating with governments, courts, tribunals, professional associations, law schools and law firms, CIAJ sponsors and conducts conferences and specialized seminars and prepares comprehensive papers and reports. Its services are offered in both official languages.

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