

LEGISLATIVE DRAFTING CONFERENCE



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September 8–9, 2022 | Online & In Person at Shaw Centre, 55 Colonel By Drive, Ottawa, ON

Overview

The 21st Legislative Drafting Conference fixes its gaze on the topic of change and the challenges it produces for legislative drafting. It looks at the changing environment in which legislative counsel work, the resulting changes to their roles and the way they perform them.

Change and its challenges are not new to legislative drafting. Although the COVID-19 pandemic is perhaps the most significant recent example of change affecting legislative drafting, the political, social, economic and technological environment for legislative drafting have produced changes affecting legislative drafting throughout its history.

The conference begins with this historical lens and then turns to examine the shifting role of legislative counsel resulting from current environmental factors, including client expectations, the political world and the policy issues that drive legislative agendas. These factors will be considered in terms of how they can be managed and their ethical implications. The conference will particularly address changing working conditions (working remotely and virtual meetings) and generational change (recruitment and training of legislative counsel).

One of the most significant continuing policy challenges for legislative drafting is reconciliation with Indigenous peoples. Legislation is the principal vehicle for recognizing and implementing the rights of Indigenous Peoples and their legal traditions. The conference will consider recently enacted legislation to implement the *UN Declaration on the Rights of Indigenous Peoples* and its implications for drafting legislation to respect these rights. Not since the enactment of the *Canadian Charter of Rights and Freedoms* in 1982 has there been such a significant change in the Canadian legal landscape affecting the preparation of legislation. One session will consider the implications of the UN Declaration generally and a second session will focus on its implications in the field of family law.

Finally, the conference will include a practical drafting workshop on preparing amending legislation or legislation based on existing legislation. The workshop will look at the scope for making drafting improvements and dealing with arguments against changing existing legislative texts.

IN PERSON & ONLINE

[REGISTRATION FORM](#)

Planning Committee

Chair

John Mark Keyes

Members

Pam Anderson

Elena Bosi

Nathalie Caron

Charlie Feldman

Mélanie Samson

Alexandra Schorah

Mark Spakowski

Lerissa Thaver

Scott Webber

Accredited in
provinces where
CLE requirements
for lawyers are
mandatory.

START TIME ACCORDING TO DIFFERENT TIME ZONES IN CANADA

PT: 8:00 am **MT:** 9:00 am **CT:** 10:00 am **ET:** 11:00 am **AT:** 12:00 pm **NT:** 12:30 pm

NOTE: The time zone used in the program is Eastern Time

DAY 1 | THURSDAY, SEPTEMBER 8, 2022 [ROOM 205/207]

10:00 – 11:00 am REGISTRATION

10:45 – 11:00 am LOG ON FOR ALL ONLINE PARTICIPANTS

11:00 – 11:15 am OPENING REMARKS

Chair

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

11:15 am – 12:15 pm PANEL ONE | [Change and Time: The Shifting Environments of Legislative Drafting](#)

The first panel will set the stage for discussing how changes affect legislative drafting. The panellists will provide a historical perspective on how changes in the drafting environment have affected the profession through time. Linkages will be made to contemporary issues explored further in the conference to provide a large perspective and appreciation for the various transformations that drafters have had to undertake in the past, and what may be further be expected from them in the future.

Chair

- Mark Spakowski, Chief Legislative Counsel, Ministry of the Attorney General, Ontario

Speakers

- Peter Pagano, QC, Legislative Drafting Consultant & Former Chief Legislative Counsel, Government of Alberta
- Sandra C. Markman, Deputy Chief Legislative Counsel, Legislation Section, Public Law and Legislative Services Sector, Department of Justice Canada
- Lerissa Thaver, Legislative Crown Counsel, Ministry of Justice and Attorney General, Saskatchewan
- Charlie Feldman, Parliamentary Counsel, Senate of Canada

12:15 – 12:30 pm HEALTH BREAK

12:30 – 2:00 pm PANEL TWO | [The Role of Drafters in a Changing Environment](#)

This session will focus on the shifting role of the drafter as a result of changing environmental factors including changes to client expectations, the political environment, and policy development. This session will examine the ethical considerations that arise out of these environmental changes, the potential advantages and disadvantages for legislative counsel and whether or not the impact of these changes can and should be minimized. This session will also provide an opportunity for participants to engage in a structured discussion of these changes and to share their own perspectives, experiences and insights with respect to the evolution of the drafter's role.

Co-chairs

- Elena Bosi, Assistant Deputy Attorney General, Legislative Services (Branch), Justice & Public Safety, New Brunswick
- Lerissa Thaver, Legislative Crown Counsel, Ministry of Justice and Attorney General, Saskatchewan

Speaker

- Daniel Lovric, Senior Executive Drafter, Australian Government, Office of Parliamentary Counsel

2:00 – 2:45 pm LUNCH

2:45 – 4:15 pm PANEL THREE | Making It Work... Remotely

The pandemic threw some drafting offices into remote work for the first time, while accelerating a transition that had already begun in others. This panel discussion will seek out the perspectives of colleagues from across the country on what has been gained and lost in the practice of legislative drafting and where we can go from here.

- Co-chairs*
- Pam Anderson, Senior Counsel, Headquarters Regulations Section, Public Law and Legislative Services Sector, Department of Justice Canada
 - Charlie Feldman, Parliamentary Counsel, Senate of Canada
- Speakers*
- Sheri Hogeboom, Legislative Counsel, Government of Yukon
 - Holly Nason, Director, Legislative Drafting, Justice & Public Safety, New Brunswick
 - Duff McLeod, Senior Counsel, Legislation Section, Public Law and Legislative Services Sector, Department of Justice Canada
 - Mark Spakowski, Chief Legislative Counsel, Ministry of the Attorney General, Ontario
 - Nathalie Caron, Deputy Law Clerk and Parliamentary Counsel, Office of the Law Clerk and Parliamentary Counsel, House of Commons

4:15 – 5:15 pm PANEL FOUR | Balancing Theory and Practice: Learning and Teaching the Art of Legislative Drafting

Learning and teaching the skills required by legislative drafters is an ongoing challenge that many jurisdictions grapple with. Drafters often ask:

Do we have to draft to learn how to draft? Do we need a theoretical basis? If it takes a village to raise a drafter, how is that accomplished if the village is tiny and the villagers are stretched? What is a corporate memory and do we need one? How do we support recent arrivals in the office if we're not in the same room?

This panel, which includes junior and experienced legislative counsel from large and small drafting offices, will consider these questions and more and offer some guiding principles.

- Chair*
- Élise Hurtubise-Loranger, Senior parliamentary counsel, Senate of Canada
- Speakers*
- Michael Audet, Senior Counsel, Legislation Section, Public Law and Legislative Services Sector, Department of Justice Canada
 - Jessica Pilon, Legislative Counsel, Transport Canada Regulations Section, Public Law and Legislative Services Sector, Department of Justice Canada
 - Melanie Mortensen, Legislative Counsel, Office of Legislative Counsel, Ministry of Attorney General and Housing, British Columbia
 - Jean-Félix Robitaille, Lawyer, Direction du soutien aux orientations, des affaires législatives et de la refonte, ministère de la Justice du Québec (SMAJ)

6:00 – 7:30 pm RECEPTION AT THE SUPREME COURT OF CANADA

- Speaker*
- The Honourable Nicholas Kasirer, Justice of the Supreme Court of Canada

8:30 – 9:30 am REGISTRATION AND CONTINENTAL BREAKFAST

9:30 – 10:45 am WORKSHOP | “Precedent vs. Progress” For In-Person Participants Only

This workshop explores the dilemma that legislative drafters often face between following established precedents on the one hand and taking opportunities as they arise to improve legislative text on the other. A variety of scenarios will allow participants to consider the respective roles of drafters and clients in grappling with these competing interests and the factors that may influence which side of the line is to be preferred in any given case.

- Instructors*
English and bilingual workshop
- John Mark Keyes, Sessional Professor, Faculty of Law – Common Law Section, University of Ottawa
 - Pam Anderson, Senior Counsel, Headquarters Regulations Section, Public Law and Legislative Services Sector, Department of Justice Canada
- Instructor*
French workshop
- Nathalie Caron, Deputy Law Clerk and Parliamentary Counsel, Office of the Law Clerk and Parliamentary Counsel, House of Commons

10:45 – 11 am LOG ON FOR ALL ONLINE PARTICIPANTS

11 am – 12:30 pm PANEL FIVE | The Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

This panel will consider the legislative impact of the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) in Canada. It will examine the federal United Nations Declaration on the Rights of Indigenous Peoples Act and the Declaration on the Rights of Indigenous Peoples Act passed in British-Columbia. Consideration will be particularly given to the development of implementation plans, processes for preparing draft legislation, training and support for drafters, and legislative language for implementing the Declaration.

- Chair*
- John Mark Keyes, Sessional Professor, Faculty of Law – Common Law Section, University of Ottawa
- Speakers*
- Jessica Wood, Associate Deputy Minister, DECAS - Declaration Act Secretariat, Government of British Columbia
 - Brenda Gunn, Academic and Research Director, National Centre for Truth and Reconciliation
 - Maxime Lamothe, Legislative Counsel, Legislation Section, Public Law and Legislative Services Sector, Department of Justice Canada

12:30 – 1:15 pm LUNCH

1:15 – 2:45 pm PANEL SIX | Broadening Legal Horizons: Drafting and Indigenous Legal Traditions

This panel will consider the recognition of Indigenous legal traditions to the pluralistic tapestry of Canadian law. Particular attention will be given to legislation concerning family law and Indigenous people, such as the *Act respecting First Nations, Inuit and Métis children, youth and families*. The act recognizes the inherent right of self-government and legislative authority in relation to child and family services of Indigenous people as well as their authority to create, draft, administer and enforce those laws. The panellists will further discuss challenges and the process of translating laws in Indigenous language to non-Indigenous languages as well as the challenges of moving between written and oral systems of law.

- Chair*
- Scott Webber, Legislative Counsel, Legal Services Branch, Ministry of Attorney General, British Columbia
- Speakers*
- Thomas Ahlfors, Chief Legislative Counsel & Director, Legislation Division, Government of Nunavut
 - Professor Ghislain Otis, PhD, Canada Research Chair on Legal Diversity and Indigenous Peoples, Faculty of Law – Civil Law Section, University of Ottawa
 - Sarah Morales, Associate Professor, Faculty of Law, University of Victoria

2:45 – 4:00 pm **PANEL SEVEN | Top Tips for Dealing With Clients**

- Chair*
- Isabelle Parrot, General Counsel and Director, Transport Canada Regulations Section, Public Law and Legislative Services Sector, Department of Justice Canada
- Speaker*
- Elena Bosi, Assistant Deputy Attorney General, Legislative Services (Branch), Justice & Public Safety, New Brunswick
 - Alexandra Schorah, Senior Legislative Counsel, Office of the Law Clerk and Parliamentary Counsel, House of Commons
 - Marc-André Roy, Senior Parliamentary Counsel, Senate of Canada
 - Christina Wasyliw, Deputy Legislative Counsel & General Counsel, Manitoba Justice

The final panel will offer participants the opportunity to reflect upon the day's discussions and apply some of what they have learnt in the context of dealing with clients. Participants will be presented with scenarios that they might find themselves in and consider how they might best deal with issues that can arise in the work of a drafter.

4:00 – 4:15 pm **CLOSING REMARKS**

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



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