



NATIONAL CONFERENCE

Who really writes the law?

September 11 & 12, 2008

**Crowne Plaza Hotel
101 Lyon Street
Ottawa**



CANADIAN INSTITUTE
FOR THE ADMINISTRATION
OF JUSTICE

The Canadian Institute for the Administration of Justice participates in the improvement and advancement of the administration of justice by serving the legal drafting community. Its legal drafting conferences are a source of continuing legal education for the legislative drafting community across Canada.

REGISTRATION FORM

Who really Writes the Law?

September 11 & 12, 2008
Crowne Plaza Ottawa Hotel

TO REGISTER,
please complete and return this form together with your cheque to:

Canadian Institute for the Administration of Justice
Faculty of Law, University of Montreal
PO Box 6128, Station "Centre Ville"
3101 chemin de la Tour, Rm. 3421
Montreal, Quebec, H3C 3J7
Tel.: (514) 343-6157 Fax : (514) 343-6296
e-mail : ciaj@ciaj-icaj.ca URL : <http://www.ciaj-icaj.ca>

Surname: _____ First Name: _____

Title to appear on name tag _____

Organization: _____

Address: _____

Postal Code: _____ E-Mail _____

Telephone: _____ Fax: _____

I am fluent in English _____ in French _____ both _____

(simultaneous translation is provided throughout the conference)

REGISTRATION FEE:

For CIAJ members \$ 595 For non members \$ 695

(Luncheons, reception and conference material provided)

Do you have any dietary restrictions?

Which? _____

Payment by

☐ Cheque ☐ MasterCard ☐ Visa ☐ AmEx ☐ Invoice

Account No. _____ Exp. Date _____

Signature _____

ACCOMMODATION: A block of rooms has been reserved at the Crowne Plaza Hotel, 101 Lyon Street, Ottawa, ON K1R 5T9 Tel. 1-800-227-6963 or (613) 237-3600 x. 6200 Fax (613) 688-6821, www.cpottawa.com at \$159.00 single or double occupancy (taxes not included). Participants are required to make their own hotel reservations before August 7, 2008 to take advantage of this rate.

CANCELLATION FEE: Requests for funds must be submitted in writing to CIAJ seven (7) days prior to the event. A handling fee of \$50.00 will be withheld on cancellations made in time. Except as noted, fees will not be reimbursed. Another participant may be designated as substitute.

The CIAJ also collaborates with key partners such as the Association of Parliamentary Counsel in Canada, the Association of Legislative Counsel in Canada and other related professional associations.

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☐ **Subscribing Membership** **\$160**

Subscribing members are entitled to receive, upon request, a copy of CIAJ conference papers free of charge.

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(The fees for both categories above may be recoverable as professional allowances from some institutions.)

☐ **Retired Person or Student** **\$50**

A membership card and a receipt will be issued to you upon receipt of payment.

☐ **Contributor** **\$165+**

As an alternative to annual membership dues, you may choose to become a contributor. You will be issued a tax receipt for charitable donation (Reg. #10686 1529 RR 0001).

Contributors, regular members, retired persons or students are entitled to receive copies of the newsletter.

☐ **Corporate Membership**

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(See CIAJ website under How Do I Join at www.ciaj-icaj.ca)

I wish to join CIAJ

☐ Yes ☐ No

(See Category checked above)

Payment included with registration fee

☐ Yes ☐ No (please invoice)

For more information about CIAJ, how you can serve CIAJ and member benefits, contact us in person or at <http://www.ciaj-icaj.ca>



This conference organized by the CIAJ Legislative Drafting Committee, chaired by Mr. John Mark Keyes, Chief Legislative Counsel of Canada, will focus on the intersecting roles of those involved in determining the wording of legislative texts (statutes and regulations). This group most obviously includes legislative drafters whose task is to turn drafting instructions into text. But it also includes those responsible for developing drafting instructions and their underlying policy, whether acting within government or parliamentary institutions as policy officials or legal advisers, or outside these institutions on behalf of interest groups. Draft texts are also often further processed by yet another constituency that includes translators, editors, jurilinguists and bijuralists. Finally, parliamentarians and subordinate legislative authorities are involved in writing, reviewing, amending and adopting draft texts that are presented to them.

The multiplicity of participants in law-making processes poses the question that forms the title of the conference: *who really writes the law?* What are the distinctive roles of these participants? Are there overlaps or conflicts? Are these roles evolving in response to changes in the political culture or environment for law-making? The conference speakers will consider these questions and more. Conference participants can expect to come away with a better understanding of the legislative landscape and, if not a definitive answer to the main question, at least a point of view.

Planning Committee

John Mark Keyes, Chair	Philippe Hallée
France Allard	Laura Hopkins
Mark Audcent	Judith Keating
Pierre Charbonneau	Barbara Kincaid
Richard Denis	Peter Pagano
Janet Erasmus	Donald Revell
Nicole Fernbach	Rob Walsh

THURSDAY, SEPTEMBER 11 BALLROOM A

8:30 REGISTRATION

9:00 WELCOME AND CONFERENCE OPENING

Conference Co-Chairs

Mark Audcent, Law Clerk and Parliamentary Counsel, Senate of Canada, Ottawa

Pierre Charbonneau, Legislative Drafter, Department of Justice of Quebec, Quebec City

9:15 KEYNOTE ADDRESS

Speaker

The Honourable Bernard Lord, Counsel, McCarthy Tétrault LLP, and Former Premier of New Brunswick, Montreal, Quebec

10:00 BREAK

A WRITING TOOLS EXHIBITORS' SHOWCASE in the Foyer, organized by Nicole Fernbach, President, Juricom, Montreal, Quebec (2 days)

10:30

THE DRAFTING TEAM

Moderator

Judith Keating, Q.C., Chief Legislative Counsel of New Brunswick, Fredericton, New Brunswick

Panelists

Jean-Charles Bélanger, General Counsel, Director, Legislation Section, Department of Justice Canada, Ottawa

Peter Pagano, Q.C., Chief Legislative Counsel of Alberta, Edmonton, Alberta

Nicola Marotz, A/Executive Director, Local Government Policy and Research Branch, Ministry of Community Services (British Columbia), Victoria, British Columbia

Clyde Spinney, Q.C., Assistant Deputy Attorney General, Legal Services (New Brunswick), Fredericton, New Brunswick

PART 1: ROLES AND RELATIONSHIPS

The panelists give their views — What is your role in the drafting team? What is your relationship with other members of the drafting team? How have these roles and relationships changed over time? How do you see them developing in the future?

PART 2: EXPECTATIONS AND CHALLENGES

A debate — What policy role do drafters have? What drafting role do policy advisors have? What challenges are faced by drafting teams today and how can we address or adapt to them?

12:15 LUNCH – PINNACLE ROOM

Luncheon Speaker

Joanne St. Lewis, Professor, Faculty of Law (Common Law Section), University of Ottawa, Ottawa

13:30

LEGISLATIVE DRAFTING AND THE INTERNATIONAL SCENE

Speaker

Nicole Fernbach, President, Juricom, Montreal, Quebec

Legal drafting is bubbling up all over the planet. Never before have there been so many seminars, conferences and university programs relating to this discipline. Nicole Fernbach will provide us with an overview of current trends and recent developments in legal drafting.

13:45

DRAFTING WORKSHOPS

Group Leaders for English Groups

Cornelia Schuh, Legislative Counsel,
Office of Legislative Counsel (Ontario),
Toronto, Ontario

Wendy Gordon, Senior Counsel,
Department of Justice Canada, Ottawa

Group Leaders for French Groups

Jean-Paul Chapdelaine, Senior Drafter,
Department of Justice Canada, Ottawa

Richard Tremblay, Senior Drafter,
Department of Justice of Quebec,
Quebec City, Quebec

Practicalities of drafting legislation - Experienced drafters will discuss recurrent drafting issues in English and French workshops and present their own solutions.

14:30 BREAK DURING WORKSHOPS

15:30

BEST PRACTICES FOR DEVELOPING DRAFTING TEAM EXPERTISE

Presenters

Alberta — Legislative Planners Network

Peter Pagano, Q.C., Chief Legislative
Counsel of Alberta, Edmonton, Alberta

British Columbia — Legislation and Legislative Process Course

Rod Fehr, Legislative Counsel, Ministry
of Attorney General (British Columbia),
Victoria, British Columbia

House of Commons — Information Sessions for Members of Parliament

Richard Denis, Deputy Law Clerk
and Parliamentary Counsel, House of
Commons, Ottawa

Office of Parliamentary Counsel — Publications and Presentations

Paul Lanspeary, First Assistant
Parliamentary Counsel, Office of
Parliamentary Counsel, Commonwealth
of Australia, Canberra

Demographics and the challenge of staff renewal mean that drafting teams will be operating with significantly less collective experience than in the past. At the same time, expectations about the quality of legislation and the time required to prepare it appear to be as high as ever and getting even higher. This session will present techniques used by Canadian parliamentary offices and Canadian and Australian drafting offices to develop the expertise of those participating in the legislative process.

17:00 CONFERENCE ADJOURNMENT

17:30 RECEPTION IN PARLIAMENT OF CANADA

FRIDAY, SEPTEMBER 12 BALLROOM A

9:00

THE DRAFTING DYNAMIC: DRAFTING INSTRUCTIONS AND THE DRAFTING PROCESS

Introduction

Laura Hopkins, Senior Counsel, Ministry of the
Attorney General (Ontario), Toronto, Ontario

Panelists

Janet Erasmus, Senior Legislative Counsel, Ministry
of Attorney General (British Columbia), Victoria,
British Columbia

Maxime Lamothe, Legislative Counsel, Department
of Justice Canada, Ottawa

Marie-Andrée Roy, Parliamentary Counsel
(Legislation), Office of the Law Clerk and
Parliamentary Counsel, House of Commons, Ottawa

Mark Spakowski, Legislative Drafter, Private
Practice, Ottawa

Are there “best practices” for giving drafting instructions? For responding to drafting instructions? Are the best practices different for different kinds of initiatives? Different at different stages in the drafting process? The panelists will offer practical suggestions for drafters and instructing officials alike about how to give drafting instructions and feedback at all stages of the drafting process.

10:15 BREAK

10:45

BUILDING ACCESSIBILITY FOR PEOPLE WITH DISABILITIES INTO OUR LEGISLATION: AVOIDING THE CREATION OF UNINTENDED BARRIERS

Introduction

Donald Revell, Legal Drafting Consultant, former
Chief Legislative Counsel of Ontario, Toronto,
Ontario

Speakers

David Lepofsky, Counsel, Office of Crown Law
- Criminal, Ministry of the Attorney General
(Ontario), Toronto, Ontario

Professor Randal Graham, Law School, University of
Western Ontario, London, Ontario

12:00 LUNCH – PINNACLE ROOM

13:15

BUILDING ACCESSIBILITY FOR PEOPLE WITH DISABILITIES INTO OUR LEGISLATION: AVOIDING THE CREATION OF UNINTENDED BARRIERS

Practical Exercises

Introduction

Donald Revell, Legal Drafting Consultant, former
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Ontario

Speakers

David Lepofsky, Counsel, Office of Crown Law
- Criminal, Ministry of the Attorney General
(Ontario), Toronto, Ontario

Professor Randal Graham, Law School, University of
Western Ontario, London, Ontario

14:30 BREAK

15:00

FROM DRAFTING INSTRUCTIONS TO JUDICIAL DECISIONS AND BACK AGAIN

Introduction

John Mark Keyes, Chief Legislative Counsel of
Canada, Department of Justice Canada, and Chair,
CIAJ Legal Drafting Committee, Ottawa

Speaker

Justice Richard Mosley, Federal Court of Canada,
Ottawa

This concluding session will deal with the interplay between courts and legislators when judicial decisions prompt the revision of legislation or the enactment of new legislation. Mr. Justice Mosley will provide his reflections on this topic as a former policy official (wonk) turned judge.

16:15 CONFERENCE ADJOURNMENT