



NATIONAL CONFERENCE

Nudging Regulations: Designing and Drafting Regulatory Instruments for the 21st Century

September 8 & 9, 2014
Ottawa Convention Centre
55 Colonel By Drive
Ottawa

CIAJ CANADIAN INSTITUTE
FOR THE ADMINISTRATION
OF JUSTICE

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REGISTRATION FORM

Nudging Regulations: Designing and Drafting Regulatory Instruments for the 21st Century (TBC)

September 8 & 9, 2014
Ottawa Convention Centre

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I am fluent in English _____ in French _____ both _____

(simultaneous translation is provided throughout the conference)

REGISTRATION FEE:

For CIAJ members **\$ 695** For non members **\$ 795**

(Luncheons, reception and conference material provided)

Do you have any dietary restrictions?

Which? _____

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ACCOMMODATION: A block of rooms has been reserved at the Westin Ottawa Hotel, 11 Colonel By Drive, Ottawa, ON K1N 9H4 Tel. 1-888-627-8528 or (613) 560-7000 Fax (613) 234-5396, www.westin.com/ottawa at \$189.00 single or double occupancy (taxes not included). Participants are required to make their own hotel reservations before August 7, 2014 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.

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This conference is organized by the CIAJ Legislative Drafting Committee chaired by John Mark Keyes, former Chief Legislative Counsel of Canada. The conference will address a variety of current issues relating to the use and making of regulatory instruments. It will begin by considering how the concept of “nudging” is changing the regulatory landscape by focusing on prompting behavioural changes rather than dictating conduct through legally binding rules. The conference will also look at many important and developing facets of regulatory instruments, including public engagement in regulatory development, drafting questions, incorporation by reference of standards, public access to legislation and parliamentary review of regulation-making. An update on recent case law relating to regulatory instruments will also be provided as well as an address by Mr. Justice Cromwell of the Supreme Court of Canada on Access to Law.

Planning Committee

John Mark Keyes (Chair)	Janet Erasmus, Q.C.	Barbara Kincaid	Peter Pagano, Q.C.
Mark Audcent	Philippe Hallée	Professor Hoi Kong	Kimberly A Poffenroth
Jean-François Couture	Laura Hopkins	Pamela Muir	Mark Spakowski
Richard Denis			

MONDAY, SEPTEMBER 8

8:15 REGISTRATION

8:45 WELCOME AND CONFERENCE OPENING

Conference Co-Chairs

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

Pamela Muir, Chief Legislative Counsel of Yukon, Whitehorse, YK

9:00 KEYNOTE ADDRESS

Introduction **John Mark Keyes**, Adjunct Professor, Faculty of Law, University of Ottawa (Common Law Section), former Chief Legislative Counsel of Canada, Ottawa, ON

Keynote Speaker **Alberto Alemanno**, Jean Monnet Chair of EU Law & Risk Regulation, HEC, Paris (France) and Global Professor of Law, NYU School of Law

9:30 NUDGING AND OTHER REGULATORY TECHNIQUES

Description

Moderator **John Mark Keyes**, Adjunct Professor, Faculty of Law, University of Ottawa (Common Law Section), former Chief Legislative Counsel of Canada, Ottawa, ON

Panelists **Alberto Alemanno**, Jean Monnet Chair of EU Law & Risk Regulation, HEC, Paris (France) and Global Professor of Law, NYU School of Law

WA Bogart, University Professor and Professor of Law, University of Windsor, Toronto, ON

10:30 NETWORKING BREAK

11:00 PUBLIC ENGAGEMENT IN REGULATORY DEVELOPMENT

Description

Moderator **Hoi Kong**, Hydro Québec Scholar in Sustainable

Development Law and Associate Professor, Law Faculty, McGill University, Montreal, QC

Panelists **Cynthia Farina**, William G. McRoberts Research Professor in Administration of the Law, and principal researcher in e-Rulemaking Initiative (CeRI), Cornell University Law School, Ithaca, NY (US)

France Houle, Professor, Faculty of Law, University of Montreal, Montreal, QC

12:00 LUNCH

13:30 REGULATORY CASELAW UPDATE

Introduction **Pamela Muir**, Chief Legislative Counsel of the Yukon, Whitehorse, YK

Presenter **John Mark Keyes**, Adjunct Professor, Faculty of Law, University of Ottawa (Common Law Section), former Chief Legislative Counsel of Canada, Ottawa, ON

14:30 NETWORKING BREAK

15:00 INCORPORATION BY REFERENCE AS A MODERN REGULATORY TECHNIQUE: BENEFITS AND BURDENS

In an increasingly complex and global world, standards have been developed at a provincial/territorial, national and international level to respond to economic, health and safety issues faced by society. These standards are often incorporated by reference into regulations. While the harmonization of laws and efficiencies may result, the increasing use of this technique has drafting implications and presents implementation challenges for governments. This session will examine the role of standards associations, how and why standards are developed and who is involved. Questions of accountability, accessibility, procedure, enforceability and risks related to this important tool of modern regulation will also be discussed.

Moderator **Mark Spakowski**, Chief Legislative Counsel of Ontario, Toronto, ON

Panelists **Michel Girard**, Vice President, Policy and Stakeholder Relations, Standards Council of Canada, Ottawa, ON

Patricia Pledge, Senior Counsel, Justice Canada, Ottawa, ON

Shannon DeLeskie, Counsel, Legal Services Branch, Ministry of Agriculture and Food and the Ministry of Rural Affairs (Ontario), Guelph, ON

17:00 END OF DAY 1

17:30 RECEPTION at the SUPREME COURT OF CANADA

TUESDAY, SEPTEMBER 9

8:45 DAY 2 INTRODUCTION and ANNOUNCEMENTS

Conference Co-Chairs **Richard Denis**, Deputy Law Clerk and Parliamentary Counsel of the House of Commons, Ottawa, ON

Pamela Muir, Chief Legislative Counsel of Yukon, Whitehorse, YK

9:00 WORKSHOPS

Interlocking exercises for bill-drafters and regulations-drafters in one single workshop

English Session

DRAFTING FOR A GOOD FIT BETWEEN STATUTES AND REGULATIONS

This workshop will look at how statutes and regulations can be drafted so that they fit together well in a way that is easy for readers to understand. Various approaches will be discussed, including the use of "sign posting" in both the statute and regulations and different ways in which regulation-making powers can be structured and arranged.

Moderator **Janet Erasmus**, Q.C., Senior Legislative Counsel, Ministry of Justice (British Columbia), Victoria, BC

Presenter **Laura Hopkins**, Legislative Counsel, Ministry of the Attorney General (Ontario), Toronto, ON

Ann McLean, Legislative Counsel, Ministry of Justice (British Columbia), Victoria, BC

French Session

ESSENTIAL ELEMENTS TO CONSIDER WHEN DRAFTING REGULATIONS

This workshop will examine key issues legislative counsel should consider when developing regulatory enabling legislation, in particular with regard to determining whether provisions should be in Acts or regulations, choosing regulation-making authorities, proactively identifying implementation provisions and determining the degree of specificity and placement of enabling provisions.

Moderator **Jean-François Couture**, Counsel, Secretariat for Legislation, Office of the Executive Council (Quebec), Quebec City, QC

Presenter **Lyne Martineau**, Counsel, Ministry of Justice, (Québec), Quebec City, QC

Bilingual Session

DEALING WITH AUTHORITY ISSUES

This session will explore the approaches taken in different jurisdictions to dealing with uncertain or insufficient authority to make regulations or bylaws. Panelists will facilitate discussion on the legal and ethical issues involved, including: how and when advice is given to clients; how proactive drafters are in suggesting creative solutions to uncertain authority; strategies drafters use for dealing with an instructing client that refuses to accept the advice given.

Moderator **Kimberly A Poffenroth**, Chief Legislative Counsel of New Brunswick, Fredericton, NB

Presenters **Eric P Boucher**, Solicitor, Legislative Services Branch, Office of the Attorney General of New Brunswick, Fredericton, NB

Jacinthe Bourdages, General Counsel and Director, Advisory Services and Legislative Revision Group, Justice Canada, Ottawa, ON

Valérie Bietlot, Legal Counsel, City of Ottawa, ON

10:15 NETWORKING BREAK

10:45 WORKSHOPS (REPEATED)

12:00 NETWORKING LUNCH PRESENTATION ON ACCESS TO LAW

Introduction **John Mark Keyes**, Adjunct Professor, Faculty of Law, University of Ottawa (Common Law Section), former Chief Legislative Counsel of Canada, Ottawa, ON

Guest Speaker **Justice Thomas Cromwell**, Supreme Court of Canada, Ottawa, ON

13:30 MEANINGFUL PUBLIC ACCESS TO LEGISLATION

Can a statute or regulation be understood by its intended audience? Is an up-to-date copy readily available to the public? As online access to legislation becomes the norm, public expectations and needs are changing. Fostering meaningful access to increasingly complex legislative schemes is a growing challenge for legislative drafters. A sophisticated interplay is emerging between classic drafting principles, the design of user interfaces and database management requirements. This session canvasses recent research and explores opportunities for improving meaningful access to legislation.

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

Panelists **Daniel Poulin**, President, Lexum, Montreal, QC

Julie Mathews, Executive Director, Community Legal Education Ontario (CLEO), Toronto, ON

Alison Bertlin, Deputy Parliamentary Counsel, Office of the Parliamentary Counsel, London, UK

15:00 NETWORKING BREAK

15:15 PARLIAMENTARY REVIEW OF REGULATION-MAKING

This session will deal with how parliamentary bodies oversee the delegation of legislative powers and the exercise of delegated legislative powers, particularly through committees.

Moderator **Mark Audcent**, former Law Clerk and Parliamentary Counsel, Senate of Canada, Ottawa, ON

Panelists **Stephen Argument**, Legal Adviser to the Senate Standing Committee on Regulations and Ordinances, Canberra, Australia

Peter Davis, Counsel for Domestic Legislation, House of Commons, UK Parliament, London, UK

Peter Bernhardt, General Counsel to the Standing Joint Committee for the Scrutiny of Regulations, Parliament of Canada, Ottawa, ON

17:00 CONFERENCE CLOSING

Conference Co-Chairs **Richard Denis**, Deputy Law Clerk and Parliamentary Counsel, House of Commons, Ottawa, ON

Pamela Muir, Chief Legislative Counsel of Yukon, Whitehorse, YK

Program subject to change