

The Notwithstanding Clause Education and Policy Summit

Policy and Public Affairs

Date: Monday, December 09, 2024 | 9:00 am to 4:30 pm

Location: OBA Conference Centre 20 Toronto Street, 2nd Floor, Toronto

Agenda: 8:30 am Registration
9:00 am Program Commences
4:30 pm Program Concludes



In person



Webcast



This program contains:
3h 40m of Substantive content

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Recent years have seen an increase in the use of and discussion around the notwithstanding clause in Ontario and other provinces. Join us to unravel the developing trends and where we go from here with this Education and Policy Summit.

Come to learn

- A deeper analysis of recent trends in the use of the notwithstanding clause from experts who are and have been on the front lines of this issue; and
- Experts in various legal fields will discuss principles from other areas of law that may be relevant or instructive on issues around the use of the notwithstanding clause.

Come to participate in policy development

- Participate in breakout sessions informed by the panels to help develop a creative policy approach around the use of the notwithstanding clause.

9:00 am Welcome and Opening Remarks
Kathryn Manning, DMG Advocates LLP, President of the Ontario Bar Association

9:05 am **The Origin Story**
Dr. Thomas S. Axworthy, Public Policy Chair at Massey College, University of Toronto, Senior Fellow at the Munk School, Senior Policy Advisor (1980-1981) and Principal Secretary (1981-1984) in the Office of the Prime Minister of Canada
David Schneiderman, University of Toronto Faculty of Law

- Why was the Notwithstanding Clause included?
- What uses were anticipated at the time?
- What was the discussion around safeguards?
 - The included sunset, section restrictions and manner-and-form requirement: were they meant to speak more broadly to the intended use – to characterize the clause?
 - What were the anticipated limits on use beyond the explicit limits?
- If you knew then what you know now, what other safeguards would have been included that were not discussed at the time?

9:30 am **Current Trends in the Use of the Notwithstanding Clause**
Michael Kealy, Moodie Mair Walker LLP, Chair of Policy and Public Affairs of the Ontario Bar Association
Josh Hunter, Constitutional Law Branch, Ontario Ministry of the Attorney General
Marion Sandilands, Conway Baxter Wilson LLP
Ljiljana Stanic, McCarthy Tétrault LLP

- Where is the notwithstanding clause being used?
- Why are we seeing an increase in the use of the notwithstanding clause?
- What do the current trends reveal about the use of the notwithstanding clause?

10:30 am Health Break

10:45 am **Unravelling the Pros and Cons for the Use of the Notwithstanding Clause**
Kathryn Manning, DMG Advocates LLP, President of the Ontario Bar Association
Michael Bryant, Member of Provincial Parliament (1999-2009) and Attorney General of Ontario (2003-07) Minister of Aboriginal Affairs (2007-8), Minister of Economic Development (2008-09), Government House Leader (2007-9)
Adam Dodek, University of Ottawa Faculty of Law, Chief of Staff to the Attorney General of Ontario (2005-06)
Noa Mendelsohn Aviv, Canadian Civil Liberties Association
Allan C. Hutchinson, Osgoode Hall Law School
Stéphane Sérafin, University of Ottawa Faculty of Law

- What are the pros and cons of including the notwithstanding clause in the Charter?
- What are the pros and cons of using the notwithstanding clause?

12:00 pm **Breakout Session #1 – Developing Guidelines for the Use of the Notwithstanding Clause**

- Discussion of use and safeguards.

1:00 pm Networking Lunch

1:45 pm **Borrowing Instructive Legal Principles from Other Areas of Law, Jurisdictions & Previous Proposals**
Mohsen Seddigh, Sotos LLP, Treasurer of the Ontario Bar Association
Sujit Choudhry, Hāki Chambers Global
Leonid Sirota, University of Reading School of Law
Rosalind Dixon, University of New South Wales, Faculty of Law
Ewa Krajewska, Henein Hutchison Robitaille LLP

- How can legal principles from other areas of law guide the notwithstanding clause?
- What other jurisdictions have a constitutional provision similar to the notwithstanding clause?
- What previous proposals are there to consider in scoping the use the notwithstanding clause?

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Questions? pd@oba.org

- 2:45 pm

Health Break
- 3:00 pm

Breakout Session #2 – Developing Guidelines for the Use of the Notwithstanding Clause

• Which of the safeguards identified in breakout session #1 can be grounded in legal principles or democratic best practices, or another basis?
- 4:00 pm

Debrief from Breakout Sessions
- 4:25 pm

Concluding Remarks
- 4:30 pm

Program Concludes

	CBA Member	CBA Student Member	Non-Member
Webcast	Complimentary	Complimentary	Complimentary