

# CONTRACT DRAFTING WITH KEN ADAMS

“Ken’s enthusiasm ‘brings life’ to what could otherwise be a dry topic.”

Caron Ferguson Eagan, Nova Scotia Barrister’s Society

**Program Director**  
Kenneth A. Adams  
*Author, A Manual of Style for Contract Drafting*

**Location** (In Person)

Osgoode Professional Development  
1 Dundas St. West, 26th Floor  
Toronto, ON

Develop and further refine your drafting skills. Choose to attend in-person, or online.

## IN-PERSON PROGRAMS

### Drafting Clearer Contracts (October 28, 2019)

*A Comprehensive and Disciplined Approach to Drafting Agreements*

Topics include:

- Efficient and less efficient contract usages
- Mastering how to lay out the body of the contract
- Using defined terms
- Different kinds of ambiguity and how to avoid them

### Advanced Workshop: The Categories of Contract Language (October 29, 2019 – AM)

*Take your contract drafting skills to the next level and drill down on the categories of contract language in this hands-on and interactive advanced workshop.*

## ONLINE WEBINARS

In **five** accessible online modules, topics include:

- Session 1: **The Front and Back of the Contract**  
November 14, 2019 (12 p.m. – 1 p.m. EST)
- Session 2: **The Body of the Contract – Categories of Contract Language**  
November 21, 2019 (12 p.m. – 1 p.m. EST)
- Session 3: **Ambiguity, Vagueness & Defined Terms in Contract Language**  
November 28, 2019 (12 p.m. – 1 p.m. EST)
- Session 4: **Selected Usages – Problematic Words and Phrases in Contracts**  
December 5, 2019 (12 p.m. – 1 p.m. EST)
- Session 5: **Drafting as Writing; Layout and Typography in Contracts**  
December 12, 2019 (12 p.m. – 1 p.m. EST)

Register today at:

[osgoodepd.ca/  
contractdrafting](https://osgoodepd.ca/contractdrafting)



*“Ken’s passion about the subject is very obvious and contagious. This is one of Osgoode’s best offerings.”*

**G. Cruz**, Counsel, CUMIS Group Limited.

## Program Director



### Kenneth A. Adams

is the leading authority on contract language.

According to *The Lawyers Weekly*, “In the world of contract drafting, Ken Adams is the guru.” Ken’s book, *A Manual of Style for Contract Drafting* is one of the ABA’s best-selling titles and has become an essential resource for contract drafters. He gives public and in-house seminars in the US, Canada and internationally. Ken also frequently acts as a consultant and expert witness.

From 2006 to 2012, Ken was a lecturer in law at the University of Pennsylvania Law School, where he taught the school’s first course on contract drafting. As part of its Legal Rebels project, in 2009 the ABA Journal named Ken one of 50 leading innovators in the legal profession. In 2014, the Legal Writing Institute awarded Ken the Golden Pen Award “to recognize his exemplary work in contract drafting.” The Golden Pen Award honors those who make significant contributions to advance the cause of better legal writing.

After graduating from the University of Pennsylvania Law School, Ken practiced corporate law at major law firms in the U.S. and Europe. His website and blog are [www.adamsdrafting.com](http://www.adamsdrafting.com)

*“I wish I had taken this course early on in my career.”*

**Laurie Crocker**, WalMart Canada Corp.

*“Great program. Hands-on. Great opportunity to think, do, participate, ask & ultimately improve skills. Very thought provoking, informative, insightful.”*

**Ann Walters**, Infrastructure Ontario

*“Thought provoking as always. Excellent course. Very practical and useful.”*

**Heather Babcock-Cormier**, The Regional Municipality of York

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[osgoodepd.ca/  
contractdrafting](http://osgoodepd.ca/contractdrafting)

# Contract Drafting with Ken Adams

Effective contracts are the cornerstone of most business relationships and transactions. Too often, an ill-equipped drafter's reliance on precedents results in contracts that fail to meet an organization's legal or business needs. And when they're called upon to be creative – maybe even draft something from scratch – many contract drafters are unable to produce concise content that works.

OsgoodePD's **exclusive** contract drafting programs, designed and delivered by **Ken Adams** – the leading authority in contract drafting – will provide legal professionals, contract managers and contract drafters, with a **comprehensive** and **disciplined** approach to contract drafting.

## Drafting Clearer Contracts:

*A Comprehensive and Disciplined Approach to Drafting Agreements*

The focus is not on what to include in a contract, but how to express it clearly and effectively. Ken Adams has developed a **thoughtful** and **rigorous** curriculum that will benefit all, whether junior or more experienced.

Whether you choose to attend in-person OR online, using common contract language and provisions, Ken will discuss the flaws in many standard contract provisions and recommend alternatives that are more **concise** and less prone to confusion.

Designed to meet your needs, you can choose to take one, several or all of the webinar sessions. Special series pricing provides the most **value**, and sessions are spread out to allow you to participate with minimal incursion on other commitments. Plus – if you miss the live session, you have access to the program on demand for up to 60 days after the program date.

**BONUS!** For those attending in-person, course materials include a copy of Ken Adam's book, *A Manual of Style for Contract Drafting* (4th edition), one of the ABA's best-sellers. It's the only book of its kind, and has become a valued resource to the legal profession.

## The Categories of Contract Language:

*A Half-day Intensive and Advanced Workshop*

In one morning, you will take a deep dive into what is generally regarded as the foundation of the Adams' approach to contract drafting – the categories of contract language.

You'll refine your ability to recognize the different kinds of meaning conveyed in contracts, and how to use verb structures to convey them clearly, concisely and consistently. This **learn-by-doing** training will include hands-on exercises and analysis of representative commercial contracts.

Take advantage of bundled pricing when registering for both programs!

## Who Should Attend

- In-house Counsel
- Business lawyers
- Government counsel
- Corporate solicitors
- Business professionals
- Contract Managers and Administrators
- Senior executives and Managers
- Law Clerks
- Paralegals
- Legal professionals who regularly interpret, draft or negotiate contracts

# Agenda

## In-Person Programs

October 28, 2019 • 9:00 a.m. – 4:30 p.m.

### DRAFTING CLEARER CONTRACTS *A Comprehensive and Disciplined Approach to Drafting Agreements*

#### The State of Contract Drafting

- Costs and causes of deficient drafting
- Goals for the course

#### The Front and Back of the Contract

- Title and introductory clause
- Function and layout of recitals
- Traditional recital of consideration
- Concluding clause
- Role of exhibits and schedules

#### Categories of Contract Language

- Different categories of contract language and their function
- How to distinguish between the categories
- Why does it matter?

#### Layout

- How to present sections, subsections, and enumerated clauses
- Adams' enumeration scheme
- Issues of typography

#### Using Defined Terms

- Two kinds of definitions
- Role of the definition section
- Using an index of defined terms

#### Ambiguity and Vagueness

- Different kinds of ambiguities & how to avoid them

#### Select Usages

- Problematic words and phrases
- Clearer alternatives

#### Drafting as Writing

In this session, Ken will review some general principles of good writing that apply to contract drafting. You will have the chance to re-draft sample provisions and engage in exercises that will reinforce critical concepts.

A thoughtful and rigorous curriculum that will benefit all, whether junior or more experienced.

October 29, 2019 • 9:00 a.m. – 12:30 p.m.

### THE CATEGORIES OF CONTRACT LANGUAGE *An interactive and advanced workshop*

#### Categories of Contract Language

Understanding and mastering the categories of contract language is an essential skill for anyone involved in drafting, interpreting or negotiating contracts. In this session, you will engage in interactive exercises that will involve identifying the best solutions for common contract language drafting problems.

- In-depth analysis on the different categories of contract language
- Understand clear and concise alternatives

#### Emerging Issues in Categories-of-Contract-Language

- Language of performance or obligation
- "Shall not ... unless" vs. "May ... only if"
- Addressing unreasonable withholding of consent
- Whether to express positively or negatively language of policy subject to a condition
- When does a condition not make sense?
- "May" vs. "Might"
- Language of concurrence

#### Analysis of Representative Commercial Contracts

Using real-life examples, you will analyze commercial contracts that contain problematic contract language provisions. You will have the chance to redraft these and discuss alternatives.

Topics include:

- Dangers of precedents
- How to effectively and efficiently identify problems with pre-existing contract language
- Best practices when redrafting

Attendees should either have attended Ken's Drafting Clearer Contracts course (either in person or online) or be familiar with the analysis of categories of contract language contained in Ken's groundbreaking book, *A Manual of Style for Contract Drafting*.

## Online Webinars

November 14, 2019 • 12:00 – 1:00 p.m. EST

### SESSION ONE: THE FRONT AND BACK OF THE CONTRACT

Often overlooked by contract drafters, the front and back of a contract sets the framework, structures and defines the contract.

With an emphasis on the practical – using sample contract excerpts as examples – this session will focus on what you should include and exclude in these critical sections of a contract. The title, introductory clause, recitals, lead-in, concluding clause, and signature blocks will be explored.

Other topics include:

- Confusing and redundant titles and terminology
- When and how to effectively use capital letters
- Appreciating the purpose and use of the front/back sections of a contract
- Implications of unclear terms and definitions
- The defined term – "The Agreement"
- When and how to use a table of contents, and index of defined terms

November 21, 2019 • 12:00 – 1:00 p.m. EST

## SESSION 2: THE BODY OF THE CONTRACT – CATEGORIES OF CONTRACT LANGUAGE

Awkward verb use makes contracts harder to read and can result in confusion. Confusion often leads to disputes. In this session, you'll learn how to eliminate this confusion by understanding categories of contract language. The body of the contract contains the provisions that the parties are agreeing to, and each clause or sentence can serve a number of purposes. Each purpose requires its own category of language, and each category raises its own issues of usage.

Mastering the categories is essential to control your drafting. This session will further demonstrate how any given contract provision falls within one of several categories of contract language, each with its own recommended verb use.

Specific topics include:

- Language of performance
- Language of obligation
- Language of discretion
- Language of prohibition
- Language of policy
- Expressing conditions
- Language of declaration
- The use of 'shall' and 'may' in restrictive relative clauses

November 28, 2019 • 12:00 – 1:00 p.m. EST

## SESSION 3: AMBIGUITY, VAGUENESS & DEFINED TERMS IN CONTRACT LANGUAGE

Drafting a clear and concise contract is the drafter's ultimate goal. Uncertainty, or lengthy, complicated and confusing terminology can result in misunderstandings and contracts that don't clearly express the intent of the parties.

In this session, Ken will address the efficient use of defined terms and explore the different forms of ambiguity along with how to avoid them when drafting. Specific topics include:

- Understanding the two kinds of definitions
- Role of the definition section
- Proper use of defined terms to ensure consistency and clarity
- How vagueness can be an essential drafting tool
- Ambiguity of the part vs. the whole
- Strategic use of modifiers, including 'that' and 'which'

December 5, 2019 • 12:00 – 1:00 p.m. EST

## SESSION 4: SELECTED USAGES – PROBLEMATIC WORDS AND PHRASES IN CONTRACTS

It's not what you say in a contract, but how to express it clearly and effectively. Many contracts are drafted using common words, phrases and provisions that are problematic and misinterpreted. During this session, Ken will take a deep dive and discuss these problematic words and phrases, the misconceptions surrounding them, and provide options that are more concise and less prone to confusion.

Specific contentious and hot button provisions, words and phrases addressed, include:

- Efforts provisions – what's the difference between 'best' vs. 'reasonable'?
- 'Indemnification' vs. 'hold harmless'
- 'Represents and warrants'
- 'Notwithstanding' vs. 'subject to'
- 'Including but not limited to'; 'including without limitation'
- Challenges with select phrases: 'time is of the essence'; 'material adverse change'; 'best efforts'
- Clarity in damages provisions

December 12, 2019 • 12:00 – 1:00 p.m. EST

## SESSION 5: DRAFTING AS WRITING – LAYOUT AND TYPOGRAPHY

Contract prose and layout may be limited and stylized, but clear and efficient drafting requires a decent grasp of general principles of good writing. Further, how a contract is formatted and arranged has a significant impact on its readability.

In this session Ken explores the principles of clear writing that apply to contract drafting, as well as issues relating to document design.

Specific concepts discussed:

- Drafting as writing: top tips
- What language to avoid: gender-specific language; lawyerisms; wordy phrases
- Grammar fundamentals: placement of subject, verb and object
- Subdividing contract text
- Redundancy and elaboration

The last portion of the session will demonstrate the cumulative effect of the approaches to contract language explored during the series. Extracts from sample contracts, both before and after being redrafted consistent with Ken's recommendations, will be explored.

Register today at:

[osgoodepd.ca/  
contractdrafting](https://osgoodepd.ca/contractdrafting)

# A Manual of Style for Contract Drafting

FOURTH EDITION

Kenneth A. Adams



## BONUS!

For those attending in-person, course materials include a copy of Ken Adam's book, *A Manual of Style for Contract Drafting* (4th edition).

This updated edition contains almost one hundred pages of new material addressing many topics, making it even more authoritative and essential. This manual's focus remains how to express contract terms in prose that is free of the archaisms, redundancies, ambiguities, and other problems that afflict traditional contract language.

With exceptional analysis and an unmatched level of practical detail, Mr. Adams highlights common sources of confusion and recommends clearer and more concise alternatives. This manual is organized to facilitate easy reference, and it illustrates its analysis with numerous examples. Consult it to save time in drafting and negotiation and to reduce the risk of dispute.

## Registration Details

### Fee per Delegate

#### IN-PERSON PROGRAMS

Drafting Clearer Contracts  
\$895 plus HST

Newly Licensed (2016 – 2019):  
\$447.50 plus HST

Advanced Workshop: The  
Categories of Contract Language  
\$395 plus HST

*Special bundle pricing for both in-person programs*  
\$1195 plus HST

#### ONLINE WEBINARS

Sessions 1 to 5  
\$199 plus HST per session

*Special bundle pricing for all five webinars*  
\$895 plus HST

Newly Licensed (2016 – 2019):  
\$447.50 plus HST

Fees include attendance, program materials, lunch and break refreshments. Group discounts are available. Visit [www.osgoodepd.ca/group-discounts](http://www.osgoodepd.ca/group-discounts) for details. Please inquire about financial assistance.

#### Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

#### Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.



OsgoodePD has been approved as an Accredited Provider of Professionalism Content by the LSO.

Eligible CPD Hours:



Drafting Clearer Contracts – LSO (ON): 5h 45m CPD (2h 15m Substantive; 3h 30m Professionalism)

Advanced Workshop – LSO (ON): 3h 15m CPD (2h 15m Substantive; 1h Professionalism)



Online Webinars – LSO (ON): 1h CPD each (1h Professionalism per session)

This program is approved for LawPRO Risk Management Credit.

OsgoodePD programs may be eligible for CPD/MCLE credits in other Canadian and US jurisdictions. To inquire about credit eligibility, please contact [cpd@osgoode.yorku.ca](mailto:cpd@osgoode.yorku.ca).



[osgoodepd.ca](http://osgoodepd.ca)

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