

The 3<sup>rd</sup> National Summit on

Creating and Enforcing

# MUNICIPAL BY-LAWS

A legal and practical guide

September 14 & 15, 2006 • St. Andrew's Club and Conference Centre, Toronto

## Conference Co-Chairs:

*George H. Rust-D'Eye*  
Partner  
WeirFoulds LLP

*Rosalie Evans*  
City Solicitor and General Manager of Corporate  
Services, City of Thunder Bay

## Don't miss the chance to hear from city solicitors from across Canada, including:

City of Edmonton	City of St. John's
City of Guelph	City of Thunder Bay
City of Mississauga	City of Toronto
City of Oshawa	Regional Municipality of York
City of Ottawa	Town of Markham
City of Saskatoon	

Get critical information from city solicitors and by-law enforcement officials before municipal elections get underway, on topics including:

- ✓ **Analyzing** the jurisdiction of a municipality to regulate the taxi industry: *United Taxi v. Calgary* and follow-up challenges
- ✓ **Balancing** increased municipal powers with increasing downloading of costs
- ✓ **New directions** for the future in environmental regulation by municipalities
- ✓ **Assessing** the current state of provincial ethics regulation for the local level with a particular focus on the *Municipal Conflict of Interest Act*, the *Municipal Act, 2001*, and Bill 53
- ✓ **Using** licensing by-laws to regulate adult entertainment – *151545 Ontario Ltd. v. Niagara Falls (City)*

Receive practical information you can put to use immediately in this critical pre conference seminar:

**Fundamentals of Municipal By-law Drafting**



This program has been accredited by the Municipal Law Specialty Committee of the Law Society of Upper Canada for 13 hours towards the professional development requirement for certification.



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# Do Your Municipal By-Laws Have Teeth Or Is Their Bark Worse Than Their Bite?

City solicitors know that the key to an effective by-law is in the drafting. A poorly drafted by-law may be unenforceable or may fail to withstand a legal challenge. Municipalities are taking on more and more responsibility, and their jurisdiction to regulate through the use of by-laws has never been greater. Now more than ever you need to be sure that the by-laws you draft are capable of achieving their objectives. That's why the *Canadian Institute* has brought together city solicitors from across the country, as well as police, by-law enforcement officials and prosecutors to provide you with tips and best practices for drafting, enforcing and defending by-laws with special focus on some of the most challenging areas, including:

- Using zoning by-laws to manage the issue of adult entertainment – *R. v. Konakov, Ajax Health Centre v. Ajax (Town)*
- Analyzing Edmonton's groundbreaking anti-bullying by-law and how it has played out in practice
- Meeting the burden of proof to defend a sign by-law against a *Charter* challenge based on freedom of expression — *Vann Niagara Ltd. v. The Corporation of the Town of Oakville*
- Balancing consumer protection and crime prevention with protection of privacy: analysis of *Cash Converters Canada Inv. v. Oshawa (City)*
- Banning the use of pesticides – the legal landscape following *Croplife v. Toronto*
- Meeting the challenges when municipalities are required to enforce and / or prosecute provincial legislation
- Co-ordination of enforcement between municipal by-law enforcement officers and police officers
- Common drafting errors which give rise to prosecutorial problems and how to remedy them.

Don't miss this opportunity to network with the experts and with your colleagues from across Canada. Mark your calendar and reserve your space today by calling 1-877-927-7936 or by faxing your registration to 1-877-927-1563 or online at [www.CanadianInstitute.com](http://www.CanadianInstitute.com). We look forward to seeing you at the conference.

*"I learned more about the practice of municipal law in two days than I would have on my own in a 6 – 12 month period"*

Loretta Bouwmeester  
Manager, Legal Services and Corporate Policy, City of Yellowknife

*"Right conference at the right time"*

Peter Mesluk  
By-law Enforcement Manager, Prince Albert Police Service

*"Good opportunity to hear from other lawyers who practice municipal law"*

Leila Gosselin  
Solicitor, City of Calgary

## DISTINGUISHED FACULTY

### CO - CHAIRS :

*George H. Rust-D'Eye*  
Partner  
WeirFoulds LLP

*Rosalie Evans*  
City Solicitor and General  
Manager of Corporate Services  
City of Thunder Bay

### SPEAKERS :

*Juli Abouchar*  
Willms & Shier  
Environmental Lawyers LLP

*Stuart Huxley*  
Legal Counsel, City of Ottawa

*Darlene Barker*  
Senior Enforcement Officer  
Town of Markham

*Barnet Kussner*  
Partner, WeirFoulds LLP

*Linda Bishop*  
Senior Legal Counsel  
City of St. John's

*Gregory J. Levine*  
Barrister and Solicitor

*David Boghosian*  
Barrister & Solicitor  
Boghosian and Associates,  
Litigation Counsel

*Sergeant Robert Paterson*  
Ontario Provincial  
Police Caledon  
Detachment/Highway  
Safety Division

*Elaine Buckstein*  
Director of Enforcement,  
City of Mississauga

*Steven Phipps*  
Solicitor  
City of Edmonton

*Kalli Y. Chapman*  
Solicitor, Litigation Section  
City of Toronto

*David J. Potts*  
Director of Legal Services,  
City of Oshawa

*Bradley S. Coutts*  
Manager of Court Services  
City of Guelph

*Graham Rempe*  
Solicitor  
City of Toronto

*W. Paul Dray*  
Prosecutor  
Provincial Offence Act

*George H. Rust-D'Eye*  
Partner  
WeirFoulds LLP

*Theresa Dust*  
City Solicitor  
City of Saskatoon

*Hans Saamen*  
Senior Prosecutor  
Regional Municipality  
of York

*Rosalie Evans*  
City Solicitor and General  
Manager of Corporate  
Services, City of Thunder Bay

*Melissa E. VanBerkum*  
Assistant Town Solicitor  
Town of Markham

### SEMINAR LEADER :

*Rosalie Evans*  
City Solicitor and General Manager of Corporate Services  
City of Thunder Bay

## A Must Attend Event For

✓ City Solicitors

✓ City Clerks

✓ Municipal / Regional  
Legal Counsel

✓ Municipal / Provincial  
Policy Counsel

✓ Licensing Officials

✓ Lawyers in Private  
Practice Specializing  
in Municipal Law

✓ Bylaw Enforcement

8:00 Registration Opens and Coffee Served 

9:00 **Opening Remarks from the Co-Chair**

**George H. Rust-D'Eye**  
Partner, WeirFoulds LLP

9:15 **The Naked Truth: Controlling the Adult Entertainment Industry**

**George H. Rust-D'Eye**  
Partner, WeirFoulds LLP

**Stuart Huxley**  
Legal Counsel, City of Ottawa

*Controlling the adult entertainment industry is one of the biggest challenges facing municipalities. From strip clubs to escort services to swingers clubs, learn how to use all the powers at your disposal to control the impact of this industry on your municipality. Hear what strategies others have tried: what worked and what didn't.*

- Using zoning by-laws to manage the issue of adult entertainment – *R. v. Konakov, Ajax Health Centre v. Ajax (Town)*
- Using licensing by-laws to regulate body rub parlours – *1515545 Ontario Ltd. v. Niagara Falls (City)*
- Warning: when licensing an activity can equal condoning it – the example of Calgary's escort bylaw
- Regulating holistic centres
- Considering the implications of the Supreme Court decision in *R. v. Labaye, R. v. Kouri* – if swingers clubs are legal, should municipalities regulate them?

10:15 Networking Coffee Break 

10:30 **Best Practices for Reviewing, Consolidating and Amalgamating By-laws**

**Linda Bishop**  
Senior Legal Counsel, City of St. John's

*Reviewing and revising existing by-laws is every bit as crucial as drafting them in the first instance. Review may be undertaken to meet a statutory directive, harmonize a collection of disparate regulations, or just to update the existing laws in response to the passage of time. Municipalities may undertake the review themselves or outsource the process. Learn tips and best practices to ensure that your new and improved by-laws will stand the test of time.*

- Identifying the need: triggers for a review of municipal by-laws
  - beware sunset provisions: have your municipal by-laws already expired?
- Finding the starting point: where to begin a review of existing by-laws
- Starting with the essentials: the major and minor tune-ups that many older by-laws need
- Tips and strategies to ensure by-laws comply with provincial standards
- Analyzing the pros and cons of using Municipal Codes
- Best practices for harmonizing different systems of regulations:
  - minimizing conflict between Regional Municipalities and Local Municipalities
  - coordination of by-laws between communities
  - managing co-ventures between communities
- Outsourcing the overhaul process
  - understanding the risks and benefits
  - choosing where to outsource to
  - essential review by municipal solicitors

11:30 **Using Municipal By-laws to Address Social Problems: Possible Solutions**

**Theresa Dust**  
City Solicitor, City of Saskatoon

**Steven Phipps**  
Solicitor, City of Edmonton

*The trend towards the use of municipal by-laws to deal with issues stemming from social problems is a source of widespread debate. Recent attempts to control youth and gang activity have included fighting, bullying and curfew bylaws, however both the efficiency and effectiveness of such by-laws have been questioned.*

- Identifying the risks and benefits: valuable alternative to the Criminal Code or impermissible encroachment into federal jurisdiction?
- Maximizing returns from limited municipal resources: developing a team approach

**Bullying By-laws**

- Analyzing Edmonton's groundbreaking anti-bullying by-law and how it has played out in practice
- Considering Regina's draft anti-bullying by-law
- Determining the scope – covering threats, violence, consensual fights, spectators at fights and other issues

**Curfews**

- Effectiveness of curfew by-laws: a valuable means of reaching at-risk youth or an unnecessary drain on police resources?
- Lessons learned from Saskatoon's experience
- Managing the enforcement issues: shortage of resources, effectiveness of fine provisions

12:30 **Networking Luncheon for Delegates and Speakers**



1:45 **Ensuring Compliance with Municipal By-laws: Making the Most of Limited Resources**

**Darlene Barker**

Senior Enforcement Officer, Town of Markham

**Sergeant Robert Paterson**

Ontario Provincial Police

Caledon Detachment/Highway Safety Division

**Melissa E. VanBerkum**

Assistant Town Solicitor, Town of Markham

*Once a by-law is enacted, its effectiveness depends on enforcement. Finding the right balance between encouraging voluntary compliance and strictly enforcing the letter of the law is essential. Understanding the options for enforcement will allow municipalities to maximize the power of the by-law while minimizing the drain on resources in the enforcement process. Speakers include an Ontario Provincial Police Officer, senior by-law enforcement officer and in-house municipal solicitor who will canvass the compliance spectrum from voluntary compliance to police-laid criminal charges.*

- Using public relations and communication techniques to promote public education
- Investigative techniques
- Notices and orders
- Laying by-law charges
- Resorting to *Criminal Code* charges
- Co-ordination of enforcement between municipal by-law enforcement officers and police officers
- Understanding the pros and cons of using special constables
- Co-ordination with other Provincial ministries and agencies, including the Ministry of the Environment, the Toronto and Region Conservation Authority, the Alcohol and Gaming Commission of Ontario and the Regional Health Department
- Advantages of consistent and capable enforcement
- Penalties: fines and other orders
- Knowing when to move beyond charges and go the civil route

3:00 **Limiting Signage by Writing By-laws that Withstand Freedom of Expression Challenges**

**Barnet Kussner**

Partner, WeirFoulds LLP

*Signage by-laws present a perennial source of headaches for municipalities. How can a municipality preserve its atmosphere and prevent the visual pollution of billboards without being subjected to by-law challenges based on freedom of expression or other grounds?*

- Cross-country update on sign by-laws and freedom of expression
- Analyzing the protection of commercial expression: the Supreme Court decision in *Guignard v. Ste-Hyacinthe*
- Meeting the burden of proof to defend a sign by-law against a Charter challenge based on freedom of expression – *Vann Niagara Ltd. v. The Corporation of the Town of Oakville* :
  - establishing a pressing and substantial objective
  - demonstrating a rational connection between the by-law and the objective
  - minimizing the impact of the by-law on freedom of expression
  - ensuring proportionality between objects and effects of the by-law
- Finding an approach that works when dealing with billboard, digital and third party signs

3:45 **Networking Refreshment Break**

4:00 **By-law Drafting for Optimum Courtroom Effectiveness: The Prosecutor's Perspective**

**W. Paul Dray**

Prosecutor, Provincial Offence Act

**Hans Saamen**

Senior Prosecutor, Regional Municipality of York

*A key element of by-law effectiveness is successful prosecution. However, some poorly drafted by-laws are set up for failure. Learn from experienced prosecutors about the hurdles that can arise at the stage of prosecuting a municipal by-law. Learn what to include and what to avoid in order to draft by-laws that don't create courtroom hurdles.*

- Analyzing the difficulties faced in prosecuting municipal by-law infractions in court:
  - lack of duty to identify oneself to by-law enforcement officers
  - lack of presumptive clauses in by-laws
  - gaps and / or errors in drafting which increase the time and expense in court
- Considering the hinder and obstruct sections of the *Municipal Act* and how they should be applied and interpreted in by-law investigations and prosecutions
- Recommending improvements to the *Municipal Act*
  - the need presumptive clauses
  - the need to add a duty to identify
- Common drafting errors which give rise to prosecutorial problems and how to remedy them.
- Examples of bad drafting and corrections (ie. noise by-laws)

5:00 **Co-Chair's Recap, Conference Adjourns**

**Friday, September 15, 2006**

8:00 **Registration Opens and Coffee Served ☞**

9:00 **Opening Remarks from the Co-Chair**

**Rosalie Evans**

City Solicitor and General Manager of Corporate Services  
City of Thunder Bay

9:15 **Crafting Successful Licensing By-laws to Manage Controversial Industries**

**David J. Potts**

Director of Legal Services, City of Oshawa

**Kalli Y. Chapman**

Solicitor, Litigation Section, City of Toronto

*Licensing by-laws are frequently a source of litigation for municipalities. Two of the most controversial areas at the moment involve taxi licensing and the licensing of pawnshops and second-hand stores. Learn from the experiences of the municipalities who have already fought the issues out in court as to what can be done, what cannot, and get practical tips on defending a licensing by-law in court.*

**Taxi Licensing and the Municipality's Power to Regulate Business**

- Analyzing the jurisdiction of a municipality to regulate the taxi industry: *United Taxi v. Calgary* and follow-up challenges
- Considering the Court of Appeal of Ontario decision in *Toronto Taxi Alliance Inc. v. Toronto (City)*
- Best practices for regulating
  - the number of plates issued
  - the transfer of plates
  - insurance requirements
- The obligation to provide accessible taxi service

**Pawnshops and Second-hand Stores: Balancing Consumer Protection and Protection of Privacy**

- Understanding the need to collect information from vendors of second hand property
- Balancing consumer protection and crime prevention with protection of privacy
- Analysis of *Cash Converters Canada Inc. v. Oshawa (City)*
- Beginning a trend? Progress of similar by-laws in other jurisdictions

**Other Licensing Challenges**

- Best practices for regulating parking, transient vendors and more

10:15 **Networking Coffee Break ☞**

10:30 **Best Practices for Optimal Municipal / Provincial Relations**

**Elaine Buckstein**

Director of Enforcement, City of Mississauga

**Bradley S. Coutts**

Manager of Court Services, City of Guelph

*Effective partnerships between municipal and provincial governments are essential for the smooth running of the municipality. Increasingly the two levels of government seem to be acting in the same sphere, and new legislation points to expanding the jurisdiction of municipalities. Learn how to meet the challenges and take advantage of the opportunities.*

- What to do when municipal and provincial legislation overlap?
- Choosing which act to prosecute under if there is a choice between municipal and provincial laws:
  - application
  - proof
  - penalties
- Meeting the challenges when municipalities are required to enforce and / or prosecute provincial legislation
  - the *Dog Owners Liability Act*
  - the *Smoke-Free Ontario Act*
- Considering Bill 53 – new *City of Toronto Act* and increasing municipal powers
  - What will it mean for Toronto? For the province?
  - Will it be rolled out to other municipalities?
- Increasing municipal powers in the planning realm
  - Bill 51 changes to the *Planning Act* and the *Conservation Act*
  - Proposed changes by MAH to Ontario Municipal Board
- Balancing increased municipal powers with increasing downloading of costs
- Building a working relationship between provincial and municipal officials

## 11:30 **Managing New Responsibilities: The Municipality as Environmental Steward**

**Juli Abouchar**

Willms & Shier Environmental Lawyers LLP

**Graham Rempe**

Solicitor, City of Toronto

*Municipalities are taking an increasingly active role in environmental matters. From restricting pesticide use to acting as a gatekeeper on issues relating to water and waste, to managing issues relating to noise, the responsibilities are constantly increasing. Get an update on the opportunities and obligations for municipalities.*

- Taking advantage of the expanded jurisdiction of the municipality to regulate environmental matters
- Examples of environmental by-laws:
  - banning the use of pesticides – the legal landscape following *Croplife v. Toronto*
  - controlling the noise: *City of Montreal v. 2952-1366 Quebec Incorporation*
  - crafting by-laws regarding trees
- Meeting the municipality's responsibilities as steward:
  - managing drinking water systems
  - implementing source water protection
- New directions for the future in environmental regulation by municipalities

## 12:30 **Networking Luncheon for Delegates and Speakers**



## 1:45 **Cross-Canada Update on Challenges to Municipal By-laws and Best Practices to Pre-empt Challenges at the Drafting Stage**

**David Boghosian**

Barrister & Solicitor, Boghosian and Associates, Litigation Counsel

*Municipal by-laws are being challenged in the courts with increasing frequency. Learn what the most common challenges involve and what steps can be taken at the drafting stage to pre-empt them. A brief review of recent challenges will allow you to learn from the experiences of other municipalities.*

- Understanding common challenges to municipal by-laws:
  - challenges to the jurisdiction of the municipality
  - challenges based on freedom of expression under s. 2 of the *Charter*
  - challenges for vagueness under s. 7 of the *Charter*
  - challenges for discrimination under s. 15 of the *Charter*
- Cross-Canada update on recent challenges to municipal by-laws
- Avoiding the common drafting errors and omissions that can lead to challenges
- Winning strategies for defending against challenges

## 2:30 **Networking Refreshment Break**

## 2:45 **Practical Exercises: Interactive By-law Drafting**

**Rosalie Evans**

City Solicitor and General Manager of Corporate Services, City of Thunder Bay

*Back by popular demand! This is your chance to put together everything you've learned so far. In this session, you will complete practical drafting exercises which will encompass various issues discussed during the conference. This practical, interactive session will ensure that you are able to put it all together, and will continue to do so once you go back to the office.*

## 3:45 **Drafting and Enforcing a Municipal Code of Conduct**

**Gregory J. Levine**

Barrister and Solicitor

*Focus on ethics and accountability in government has been intense this past year. In the wake of scandals throughout the country and amidst increasing levels of ethics regulation at other levels of government, municipalities have to think seriously about the way in which they manage ethical and accountability issues. Promoting an ethical civic culture and being able to deal with breaches of ethics rules is becoming more and more important in government and administration.*

- Assessing the current state of provincial ethics regulation for the local level with a particular focus on the *Municipal Conflict of Interest Act*, the *Municipal Act, 2001*, and the *Stronger Toronto for a Stronger Ontario Act*
- Moving towards the Integrity Commissioner / code of conduct as compliment of current system or alternative to it
- Drafting and enforcing a municipal code of conduct
  - appraising current examples; assessing potential models
  - understanding application and content issues
  - evaluating enforcement methods
- Moving towards a municipal Ombudsman / administrative justice code
  - understanding the role of ombudsman in public administration
  - exploring the ideas of administrative fairness and administrative justice
- Drafting and enforcing a municipal administrative justice code
  - appraising current examples; assessing potential models
  - understanding application and content issues
  - evaluating enforcement methods

## 5:00 **Co-Chair's Closing Remarks, Conference Concludes**

### Pre-Conference Seminar

Wednesday September 13, 2006

2:00 p.m. – 5:00 p.m. (Registration Opens at 1:30 p.m.)

### Fundamentals of By-law Drafting

**Rosalie Evans**

City Solicitor and General Manager of Corporate Services, City of Thunder Bay

*This intensive, interactive seminar explores the fundamentals of municipal by-law drafting. Delegates will receive valuable precedents and practical tips which they can put to use upon return to the office. Whether you are new to the world of municipal by-laws or just need a comprehensive refresher, this seminar will ensure that you start off the conference up to date and ready to learn.*

#### Jurisdiction

- Considering the sources of municipal jurisdiction
- Navigating the jurisdictional issues for single, upper and lower-tier municipalities
- Analyzing the trend towards increased jurisdiction for municipalities

#### Essentials of Bylaw Drafting

- Understanding the basic mechanics of a by-law: structure, title, defining terms, sources of authority, amending provisions
- Writing in plain language
- Proofreading and catching common grammatical errors

### SPONSORSHIP & EXHIBITION OPPORTUNITIES

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 A legal and practical guide

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**Fee Per Delegate**

- Conference only \$1695 + \$101.70 (6%) GST = \$1796.70
- Conference & Seminar \$2190 + \$131.40 (6%) GST = \$2321.40
- I would like to add the conference materials CD-ROM to my order - \$150 (plus applicable taxes & shipping)

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For hotel room reservations, please contact the local hotels.

**Program Materials**

Conference participants will receive a comprehensive set of conference materials prepared by the speakers. These materials are intended to provide the participants with an excellent reference source after the conference.

**Cancellation and Refund Policy**

Substitution of participants is permissible without prior notification. If you are unable to find a substitute, please notify **The Canadian Institute** in writing no later than 10 days prior to the conference date and a credit voucher will be issued to you for the full amount paid, redeemable against any other **Canadian Institute** conference. If you prefer, you may request a refund of fees paid less a 15% service charge. No credits or refunds will be given for cancellations received after 10 days prior to the conference date. **The Canadian Institute** reserves the right to cancel any conference it deems necessary and will, in such event, make a full refund of any registration fee, but will not be responsible for airfare, hotel or other costs incurred by registrants. No liability is assumed by **The Canadian Institute** for changes in program date, content, speakers or venue.

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