

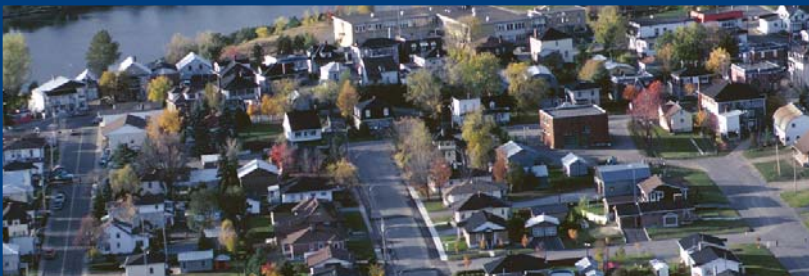
The Canadian Institute's
14th Annual

PROVINCIAL / MUNICIPAL GOVERNMENT LIABILITY

February 7 & 8, 2008

Marriott Bloor Yorkville Hotel, Toronto
Workshop February 6, 2008

COUNTRY-WIDE COVERAGE
OF THE MOST CRITICAL ISSUES
FOR 2008



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Learn about critical developments in government liability and acquire new strategies to help your clients manage risk from our cross-Canada panel of experts, including:

- Successful strategies for defending against negligent building inspection claims
- Protecting public officials from negligent investigations following the recent Supreme Court of Canada decision in *Hill*
- Avoiding aging infrastructure litigation through early warning sign detection
- Navigating new developments in highway and road liability
- Managing personal injury litigation: a view from the bench
- Overcoming liability when delivering infrastructure and related services

...and much more!

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Are you Equipped for the Huge Changes in Provincial and Municipal Government Liability?

Keeping on top of emerging trends in liability is necessary for the smooth functioning of government. A lack of knowledge can lead to dire consequences such as increased litigation and prohibitive damage awards.

The Canadian Institute's "14th Annual Conference on Provincial/Municipal Government Liability" gives you the comprehensive coverage you need of the most pressing liability issues facing government. Attend this conference and you will acquire practical strategies from leading professionals necessary to avoid lawsuits and manage risk. This event will help you:

- Place government in a more defensible position in building inspection claims
- Minimize government exposure to joint and several liability
- Avoid being sued for regulatory negligence
- Identify, manage and mitigate risk
- Navigate legal trends in highway and road liability
- Prevent privacy breaches and government fall-outs
- Stay current with the latest legislative changes effecting government liability

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Willms & Shier Environmental
Lawyers LLP

David Boghosian

Partner, Boghosian & Associates
Professional Corporation

Doug Brown

Risk Manager, City of Regina

Dennis W. Brown, Q.C.

Legal Counsel
Ministry of Attorney General (Ontario)

George Cowley

Director of Legal Services
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Daniel Ferguson

Partner, WeirFoulds LLP

Andrew J. Heal

Partner, Blaney McMurtry LLP

The Honourable

Mr. Justice Joseph R. Henderson
Ontario Superior Court of Justice

Alan Korell

Managing Director, City of North Bay
Chair of MMS Task Force

Barnet Kussner

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David Lewis

Manager litigation, City of Calgary

Charles Loopstra, Q.C.

Partner, Loopstra Nixon LLP

Marc McAree

Partner
Willms & Shier Environmental
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Legal Counsel, City of Ottawa

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Partner, WeirFoulds LLP

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Priscilla Platt

Heenan Blaikie LLP

John Robinson

Chief Road Safety Engineer
Delphi, MRC Halifax (Halifax)

George Rust-D'Eye

Partner, WeirFoulds LLP

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Director, Risk Management Services,
Frank Cowen Company

Peter Hope-Tindall

Head of Privacy Service Ontario
Ministry of Government
and Consumer Services

Robert Warren

Partner, WeirFoulds LLP

Penny Wyger

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City Solicitor, City of Brampton

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	Conference	Seminar:
Municipal Law	12.5 hours	3 hours
Civil Litigation	12.5 hours	
Environmental Law	1.0 hour	

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Thursday, February 7, 2008

8:00 Registration Opens and Coffee Served 

9:00 Opening Remarks from the Co-Chairs

Barnet Kussner

Partner, WeirFoulds LLP

Penny Wyger

Commissioner of Corporate Services and City Solicitor
City of Brampton

9:15 Successful Strategies for Defending Against Negligent Building Inspection Claims

Andrew J. Heal

Partner, Blaney McMurtry LLP

Diana Dimmer

Director of Litigation, City of Toronto

Doug Brown

Risk Manager, City of Regina

Negligent building inspection is an area of concern for municipalities who are viewed by the courts as having “deep pockets”. A thorough understanding of joint and several liability is essential for both claims examiners and counsel defending claims on behalf of the municipalities. Learn strategies from experts across the country about how to minimize risk, defend against negligent building inspection claims and reduce the impact of joint and several liability.

- Update on recent decisions in building inspection litigation and its implications for municipalities across Canada: *Jay M Holdings, Ennis*
- Best practices for placing municipalities in a more defensible position in the event of building inspection claims
 - What constitutes a “reasonable inspection”?
- Comparing building permit and inspection regimes across Canada
- Outlining changes to the *Ontario Building Code*
- Comparing the ultimate limitation period across Canada
- Reviewing defences available to municipalities
 - Registered code agencies (“RCA”)
 - Limiting the duty of care through policy decisions
 - Reasonable reliance on design professional
- Understanding the role of expert witness in defending cases
- Reducing damages through contributory negligence and failure to mitigate
- Emerging risk management techniques

10:15 Understanding and Managing the Impact of Police Claims on Public Officials

David Boghosian

Partner, Boghosian & Associates Professional Corporation

George Cowley

Director of Legal Services, Toronto Police Force

Claims against the police are on the rise in recent years and the potential exposure to government and regulatory bodies that have the power to issue rulings or orders is outstanding. In this session, learn from experts about current cases against the police and how to minimize liability for public officials who are increasingly being held accountable for their actions.

- Analyzing the Cross-Canada implications of *Hill v. Hamilton and Odhavi* for government and public officials who investigate and prosecute quasi-regulatory offences
 - To what extent has Crown immunity been reduced?
 - What is “compensable damages”?
 - When can public officials be held personally liable?
- Reviewing trends in litigation across the provinces and learning how to build and defend cases in:
 - Malicious prosecution
 - Negligent investigation
 - Abuse of public office
 - Breach of Charter rights

- Tips on the best ways for police and government to protect themselves from negligent investigations in light of the recent *Hill* decision at the Supreme Court of Canada
- Discussing the gaps in jurisprudence in the intentional tort of abuse of public office
 - What is meant by “public officer”?
 - To what extent does government control have to be exercised over an individual to be deemed a “public officer”?
- Exploring the latest cases on recovery of damages

11:00 Networking and Refreshment Break

11:15 Aging Infrastructure: Early Warning Signs for Litigation

Dr. Dianne Saxe

Saxe Law Office, Barristers & Solicitors

John Robinson

Chief Road Safety Engineer

Delphi, MRC Halifax (Halifax)

Despite changes in the law designed to protect municipalities, they are still being sued successfully by Canadian homeowners and businesses for damages resulting from sewer and water main failures, and local governments had better wake up to the fact that their aging underground pipes pose serious risk of liability. Municipalities face civil suits and quasi criminal prosecutions if they fail to adequately inspect, maintain, repair and replace their aging infrastructure; they are not automatically protected by statutory authority and statutory immunity.

- Emerging trends in aging infrastructure litigation across Canada
 - Analyzing the scope of potential liability
 - Flooding post *Tock v. St. John's Metropolitan Area Board*
- Preventing litigation through early warning sign detection
 - Aging versus legacy infrastructure
- Developing proactive techniques for dealing with aging infrastructure
- Best practices for improving water and sewer pipes before they become a liability
- Managing risk through innovative design

12:15 Networking Luncheon for Delegates and Speakers



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1:30 Adopting Proactive Measures: Preventing Political Liability for Privacy Breaches

Priscilla Platt

Heenan Blaikie LLP

Peter Hope-Tindall

Head of Privacy Service Ontario

Ministry of Government and Consumer Services

Privacy issues are moving up the public agenda with Canadians becoming increasingly concerned about protecting personal information. The potential for political liability for privacy breaches is significant for government organizations that collect mass amounts of personal information. The risk is further attenuated by access to information legislation that governs public sector and broader public sector institutions throughout Canada, which can enable dissemination of breach information. In this session hear from experts about the protection of privacy issues and how to safeguard government against risk.

- Reviewing privacy legislation across Canada
 - How does private sector privacy legislation apply to municipalities?
 - What are the responsibilities of institutions governed by public and broader public sector privacy legislation?
- Implementing measures to prevent privacy breaches from occurring in the first place
 - Effective strategies for mitigating risk in the public and broader public sectors
 - Understanding compliance obligations
- Exploring liability for the public and broader public sector and its impact on elected officials and litigation
- Responding to privacy breaches: what are the key steps?

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2:15 Identifying, Managing and Mitigating Risks: The Clean Water Act and the Safe Drinking Water Act

Juli Abouchar

Partner, Willms & Shier Environmental Lawyers LLP

Robert Warren

Partner, WeirFoulds LLP

- Acquiring up to date information on developments under the Clean Water Act and the Safe Drinking Water Act
 - What obligations do these Acts impose on municipalities?
 - Strategies for effectively managing these obligations
- Understanding liability and enforcement issues under the Clean Water Act
 - What are source protection plans and assessment reports?
 - What obligations and powers do municipalities have as regulators in the area of inspection and enforcement?
 - When are municipalities immune from and exposed to liability?
 - Tips for defending challenges at the ERT and OMB
- Emerging trends in technical defences against charges under the Safe Drinking Water Act
- Learning how to mitigate risks
 - When to “contract out”

3:00 Networking and Refreshment Break

3:15 Regulatory Negligence Liability: How to Avoid Being Sued

Dennis W. Brown, Q.C.

Legal Counsel, Ministry of Attorney General (Ontario)

Charles Loopstra, Q.C.

Partner, Loopstra Nixon LLP

Liability against regulatory bodies is on the rise particularly in the area of health and the environment. This session explores recent cases across the country, the alarming trend of which is to award damages for the regulatory negligence of public bodies as well as public officials. Whether you are a member of a provincial police force or a municipal planner, you may owe a private law duty of care to those affected by your decisions. In this session learn from experts about private law duty of care and how to avoid being sued by members of the public.

- Discussing legal developments in regulatory negligence cases in the area of health and environment
- Understanding what duties of care are owed by government as regulators and whether the duty of care is different from the private sector
- Learning lessons from public health class actions including West Nile Virus and S.A.R.S
- Exploring legal developments in causation
- Gaining an overview of statutory and common law defences
- Overcoming changing standards of care
- Emerging trends in the recovery of damages
- Communicating effectively with the press to minimize exposure to liability

4:15 Managing Risk When Delivering Infrastructure and Related Services

Bradley McLellan

Partner, WeirFoulds LLP

Daniel Ferguson

Partner, WeirFoulds LLP

Governments around the world are facing the critical challenge of renewing and developing infrastructure, which is necessary for a healthy economy and quality of life. In Canada, municipalities have become the #1 infrastructure provider. Municipalities are constantly assessing what infrastructure needs to be renewed and developed as well as determining how to structure and finance these projects. In this session, get the latest on the various options available to municipalities for structuring project relationships with the private sector and optimally apportioning risk.

- Reviewing the different forms of Public Private Partnerships (P3's) and AFP's available to government
 - Is the chosen form consistent with the risk management policies of your local government?
- How to best allocate risk when contracting with the private sector
- Understanding the role of provincial and federal governments in municipal infrastructure projects
 - What is the impact on risk allocation?
 - What are the liability issues?
 - Do municipalities remain accountable?
- Examples for managing risk in developing and operating infrastructure projects
 - Public transit
 - Toll roads and highways
 - Water and wastewater facilities
 - Energy and power projects
- Resolving disputes arising from P3's

5:00 Co-Chairs Recap Conference Adjourns

Friday, February 8, 2008

8:30 Coffee Served ☕

9:00 Opening Remarks from the Co-Chairs

9:15 Navigating New Developments in Highway and Road Liability

Alan Korell

Managing Director, City of North Bay

Chair of MMS Task Force

Ernest McArthur

Legal Counsel, City of Ottawa

Barb Szychta

B.A., C.R.M., C.I.P., Director, Risk Management Services, Frank Cowen Company

Highway and roads remain a top liability concern for provincial and municipal governments. In this session, hear from experts on behalf of the Ontario Good Roads Association about the following:

- Analyzing the MMS Task Force Review and proposed changes to minimum maintenance standards: what do they mean for municipalities?
- Evaluating emerging legal trends in minimum maintenance standards
- Reviewing Ontario Regulation 239/02 and how it is being used to deny claims
- Determining liability for failure to meet minimum maintenance standards and/or protection for meeting them
- Clarifying section 44 of the Municipal Act
- Discussing what constitutes “normal travel portion of the roads” and any recent case law for losses outside of the normal use of roads
- Exploring the statutory obligation to maintain across Canada and its impact on risk management
- Getting up to date on technical defences available to municipalities

10:15 Minimizing Nuisance Liability Challenges: Spills, Contamination and Odours

Marc McAree

Partner, Willms & Shier Environmental Lawyers LLP

Lise Favreau

Legal Counsel, Ministry of Attorney General (Ontario)

Governments are increasingly being sued as parties to nuisance lawsuits arising from spills, contamination and odours. In this session, get the latest on nuisance liability and how to identify and manage your environmental risks.

- Latest developments in contamination lawsuits and class actions
- Tips for preventing and controlling litigation

- How to effectively communicate information to avoid losing rights under the Limitations Act
- When is knowledge of front line employees imputed to the decision maker?
- Effective strategies for reducing exposure to liability for odours
 - Public nuisance versus private nuisance: post *Newmarket v. Halton Recycling*
- Recovering costs of responding to environmental nuisances
 - Update on statutory powers to recover for costs of responding to spills
- Emerging trends in risk management

11:00 Networking and Refreshment Break

11:15 Emerging Trends in Motor Vehicle Liability and Damage Awards

Diana Dorey

Lawyer, Davis LLP (Vancouver)

Jay Stolberg

Partner, Blaney McMurtry LLP

- Exploring legal developments in vicarious liability in motor vehicle related claims
- Discoverability of insurance policies: strategies you need to know
- Understanding the latest in damage awards
 - What constitutes soft tissue and minor injuries in personal injury litigation?
 - What is the impact of provincial caps on general damages for soft tissue and minor injuries?
 - Reviewing recent cases on mitigating exposure to double recovery for special damages and pecuniary damages
- Strategies for containing damages once an action is commenced

12:15 Networking Luncheon for Delegates and Speakers



1:30 Strategies for Managing Personal Injury Litigation

The Honourable Mr. Justice Joseph R. Henderson
Ontario Superior Court of Justice

David Lewis

Manager litigation, City of Calgary

- Getting the judicial viewpoint on personal injury litigation
 - Practical tips for conducting settlement conferences and pre-trials
 - What do judges look for in pre-trial memoranda?
 - Best practices for increasing the effectiveness of the settlement process
 - Exploring the perception of municipalities as “deep pockets”
 - What is the role of expert witness?
- Winning techniques for restructuring your litigation department to manage risk
 - Rethinking how government lawyers handle claims
 - Reducing personal injury litigation through in-house training programs
 - Working with municipal departments to avoid exposure to liability
 - Tips for putting litigators through municipal employee training

2:30 Networking and Refreshment Break

2:45 Country-Wide Update: Significant Legislative Changes Effecting Government Liability

M. Rick O'Connor

City Solicitor, City of Ottawa

George Rust-D'Eye

Partner, WeirFoulds LLP

- Providing a comprehensive look at amendments to the Municipal Act, 2001
- Understanding new legal powers provided by Bill 130
 - Analyzing the liability implications of Bill 130 and expanded city counsel powers
 - Exploring strategies for applying provisions in Bill 130

- Reviewing changes to the Limitations Act with respect to government claims
- Emerging trends in increased accountability and transparency: what it means for provincial and municipal government liability

3:45 Reducing Exposure to Legal Risks Inherent in Publicly Owned Facilities

Bruno de Vita

Partner, Alexander Holburn Beaudin & Lang LLP (Vancouver)

Liability issues related to the operation of publicly owned facilities continues to be an important concern for government and operating committees. Municipalities are particularly vulnerable to liability as they are employers, landlords, service providers, regulators and program providers. In this session learn important tips for minimizing exposure and drafting indemnification and hold harmless agreements.

- Reviewing legal developments related to the operation of municipal facilities such as arenas and community halls
- Learning the latest on slip and fall litigation
- Rollerblading, bicycling and walking: emerging trends in active transportation liability
- Limiting liability to third parties through “risk transfer”
 - Tips for drafting Indemnification and Hold Harmless Agreements
 - Using liability insurance coverage for co-occupiers
- Reviewing judicial trends: when will courts uphold Indemnification and Hold Harmless Agreements?
- New and emerging risk opportunities
 - The risk manager as intermediary

4:30 Closing Remarks from the Co-Chairs Conference Concludes

WORKSHOP

Wednesday, February 6, 2008

2:00 p.m. – 5:00 p.m.

Managing Settlements in Multi-Party Complex Litigation

Speaker to be announced

Borden Ladner Gervais LLP

Governments have become more and more concerned with achieving the early settlement of disputes. Where several parties are involved, especially in complex litigation, there are usually differing opinions on liability and damages, which can hinder attempts at settlement. A method of breaking through these impasses, which is often overlooked, is the use of partial settlement agreements. In this session get hands on practical information on how to facilitate a settlement of multi-party claims involving government and reduce exposure to joint and several liability.

- Reviewing the development of Mary Carter Agreements and Pierringer Agreements in Canadian jurisprudence
 - What are the essential features?
 - What is the impact of these agreements if a case does not settle in its entirety?
 - How do courts treat these agreements?
- Winning techniques for negotiating partial settlement agreements
 - When should partial agreements be considered?
 - What is the role of expert witness?
- Tips and traps for drafting partial agreements: what issues to consider
 - Proper disclosure
 - Procedural safeguards to prevent prejudice to the non-settling defendants
 - Champerty and maintenance
 - Costs
 - Limits of Protection

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FOR 2008

Top Reasons to Attend

- Learn practical strategies from leading professionals for preventing and defending litigation and managing risk
- Gain valuable information for avoiding the "deep pocket" epidemic facing government
- Navigate new developments in highway and road liability with the Ontario Good Roads Association

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