



*"Excellent conference. Content was current and timely. Presentations all achieved appropriate depth and written materials are excellent".*

*Michael Jack, Solicitor*

*City of Winnipeg - Legal Services*

*The Canadian Institute's Provincial/Municipal Government Liability, 2003 Conference*

# CREATING ENFORCEABLE MUNICIPAL BYLAWS

**Thursday and Friday, October 2 and 3, 2003**  
**The Sutton Place Hotel, 955 Bay Street, Toronto**

## CONFERENCE CO-CHAIRS

### ***Rick O'Connor***

Deputy City Clerk & Legal Counsel  
City of Ottawa

### ***George H. Rust-D'Eye***

Partner  
Weir Foulds LLP

## A Must-Attend event for:

- **Municipal solicitors, clerks, CAO's, administrators**
  - **Lawyers in private practice**
- from across Canada

## Leading municipal experts will share their up-to-date knowledge and provide practical advice on:

- Navigating debates over contentious bylaws such as smoking restrictions, pesticide usage, and adult entertainment licensing
  - Striking the balance between individuals and community in property standards bylaws
  - Cutting-edge, "best practices" advice for drafting new bylaws
  - How to benefit from the new legislative powers granted to municipalities
  - Drafting bylaws that withstand court challenges: understanding the perspective of the front-line prosecutor and defence counsel
  - Understanding the new "spheres of influence" and "natural person" powers to create truly new bylaws
  - Managing the new accountability obligations imposed by the province
  - Best practices in procurement and hiring bylaws
- and much, much more...

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## WHY YOU SHOULD ATTEND

In order to properly serve the needs of municipalities and clients, it's crucial for municipal officials and lawyers to maintain an up-to-date knowledge of both the scope of and limitations upon municipal law-making powers. Several provinces have recently passed laws granting more autonomy to local governments. And the Supreme Court of Canada noted recently that making and implementing laws is often achieved best at a level of government closest to the affected citizens.

Whether you want to enact bylaws that make maximum use of the new powers or represent a client challenging a bylaw, this *Canadian Institute* conference will provide valuable advice on municipal law-making and process. An expert faculty drawn from law, municipal government, and the Ministry of Municipal Affairs & Housing will share with you the latest developments from several perspectives, including:

- How to use the new powers to create bylaws that meet the growing needs of cities, towns and counties

- Understanding the new limits and restrictions upon municipal rule making
- How to implement the new licensing bylaws... and how to challenge them
- Practical advice on drafting bylaws that withstand courtroom challenges
- Compliance with the new accountability requirements in municipal lawmaking

And much, much more...

Participants will also receive a comprehensive set of written materials prepared by our speakers for the conference. These are invaluable reference materials that you will use again and again long after the conference is over.

Don't miss this opportunity to learn from the experts and network with key municipal practitioners. Spaces will go quickly, so register now and ensure your reservation by calling **1-877-927-7936** or in Toronto **416-927-7936**. Or visit our website and register online at **www.CanadianInstitute.com**. We look forward to seeing you at the conference.

## DISTINGUISHED FACULTY

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

## WHO SHOULD ATTEND

- Municipal solicitors
- Lawyers in private practice
- Municipal clerks, CAO's, administrators
- Policy researchers
- Municipal mayors, reeves, commissioners and councilors
- Provincial administrators, lawyers, regulators, policy and research officials

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Thursday, October 2, 2003

8:00 Registration Opens — Coffee Served ☞

9:00 Opening Remarks from the Co-Chairs

**Rick O'Connor**

Deputy City Clerk and Legal Counsel  
City of Ottawa

**George H. Rust-D'Eye**

Partner, Weir Foulds LLP (Toronto)

9:15 What You Need to Know About the New Municipal Act to Draft Powerful Bylaws: An Overview

**Robert A. Blackwell , Q.C.**

General Manager of Legal Services  
and City Solicitor, City of London

- What "Natural Person" powers mean for municipalities: new rights and new obligations
- An introduction to the spheres of jurisdiction
- Why it's important to comprehend the scope of the right
  - the legislative authority for the grant of power
  - what a municipality can do today that it couldn't do before
  - what are the limits on the new autonomy?
- Learning from the Alberta experience
- The impact of city charters upon Quebec bylaw development
- What can we expect from the new regulations?
- Where will municipal reform go from here: future developments in municipal autonomy and law-making powers

10:00 Expanding the Scope of Municipal Law-making Through the "Spheres of Jurisdiction"

*Under the former municipal acts, local governments were required to justify council actions by pointing to specific authority for those acts in the provincial legislation. Frequently, municipal councils were forced to seek provincial or state legislative amendments to permit a new venture or bylaw. Several provinces have now abandoned this approach and have instead authorized local governments to make laws for municipal purposes in certain areas. In this important session, learn how to draft innovative and powerful bylaws while avoiding the pitfalls.*

**Ansuya Pachai**

Solicitor, Legal Services Division  
City of Toronto

- Bylaw creation pursuant to the "spheres" of the new act and the limited powers or purposes of the old act
- What limitations exist on the spheres?
  - when does a bylaw conflict with federal or provincial statutes?
  - what constitutes a non-municipal system that cannot be regulated by bylaws?
- When will provincial authority still be required for bylaw creation?
- A survey of the scope of bylaws that can be created pursuant to the 10 spheres:
  - public utilities

- waste management
- public highways
- transportation systems
- culture, parks, recreation and heritage
- drainage and flood control
- parking
- economic development services
- structures, including fences and signs
- animals
- The scope of the residual or general power to regulate

10:45 Networking Refreshment Break

11:00 The Mechanics of Bylaw Drafting: Getting Started

**M. Rick O'Connor**

Deputy City Clerk and Legal Counsel  
City of Ottawa

- The practical impact of the natural person powers and spheres of jurisdiction on drafting a bylaw
- Drafting the bylaw with the end user in mind
- Identifying the authority to pass the bylaw
- When is a resolution required instead of a bylaw?
- Components of the bylaw: using form and substance to enhance clarity and comprehension
  - corporate name, bylaw number, enacting clause, purpose and recitals interpretation clause, operative clause,
  - table of contents, schedules, definitions, arrangement of sections, headings and numbering
  - readings, signature line, statutory approvals & effective dates
- Regulation, offence, penalty, short form wording, and enforcement provisions
- Winning tips for amending bylaws and repealing bylaws

11:45 Best Practices for Managing Ethics, Accountability and Conflicts of Interest in the Bylaw Process

**Rosalie Evans**

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

- Winning methods to implement notice by-laws under s. 251
- Mastering the key accountability provisions in the bylaw process
- Procedure bylaws governing the calling, place and proceedings of council meetings
- Notice of intention to pass bylaws
- Conflicts of interests under the *Municipal Conflict of Interest Act*
  - how do they affect the bylaw process?
  - what constitutes pecuniary interest?
- Solicitor-client privilege in municipal government
- Managing communication strategies with the press and stakeholders
- Access to municipal government, freedom of information, protection of privacy and the right to attend meetings
- Professional, ethical and other issues and problems facing the municipal legal advisor

12:15 Luncheon for Delegates and Speakers



**1:45 How To Draft Bylaws that Successfully Sustain Legal Challenges: Prosecution and Defence Perspectives**

**Paul Dray**  
Manager of Prosecutions  
City of Brampton

**Laszlo Pandy**  
Barrister & Solicitor (Brampton)

- An overview of the legal challenges to bylaws
- How are the traditional attacks on validity affected by greater powers given to municipalities?
- The latest case law on challenge for uncertainty
- *Ultra vires* and exceeding jurisdiction conferred upon municipalities
- How to challenge or defend a bylaw that is outside a sphere of jurisdiction
- Enacting a discretionary power in a bylaw: what are the limits?
- How to ensure that an offence is defined
- Improper delegation — what can and cannot be delegated
- Tips and traps in short form wording
- Putting teeth into the enforcement process
- Alternatives to prosecution
- The role of mediation in bylaws

**2:45 Love Thy Neighbour: Tips and Techniques for Balancing Individual and Community Rights**

**M. Virginia MacLean Q.C.**  
Partner  
Willms Shier (Toronto)

- Understanding the critical elements for property standards bylaws
- Managing the challenges of “fence” restrictions
- Clothing-optional beaches, parks and yards
- Noise management and abatement bylaws
- Process requirements and how to de-politicize the issues
- How to enforce property standard bylaws?
- Implementing bylaws for mediating neighbourhood conflicts

**3:30 Networking Refreshment Break**

**3:45 Implementing Bylaws to Support Procurement and Hiring: The Legal Guide to Sharing the Public Purse**

**Glenn W. Ackerley**  
Partner  
WeirFoulds LLP (Toronto)

- The required bylaws for the procurement and hiring process
- Public relations issues in procurement
- Legal limitations on procurement
- Public bid processes from the government and private perspectives
- Procurement issues in capital projects
- Key elements for architectural, engineering, bidding, construction-management, and construction transactions

- Understanding the required bylaws to support public works tenders and contracts
- Winning strategies for outsourcing technology systems
- How to legally institute shared policing and other support services between communities
- When and how can you delegate the collection system for fines, penalties and taxes?

**4:30 Conference Adjourns**

**Friday, October 3, 2003**

**8:45 Opening Remarks from the Chair**

**9:00 Winning Strategies for Justifying New Business Licensing By-Laws**

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

**Weir Foulds LLP (Toronto)**

- Understanding the scope of the purposes for which licensing bylaws may be enacted:
  - health and safety
  - nuisance control
  - consumer protection
- Best practices tips on drafting a defensible preamble
- The most common strategies for attacking the preamble
- What can and can't be licensed
- Restrictions on fees — the relationship to costs
- What constitutes the costs of administration and enforcement?
- Exemptions from licensing bylaws

**9:45 Navigating the Transition to the New Municipal Act: What to Keep and Not to Keep From the Former System**

**Mary Ellen Bench**  
City Solicitor  
City of Mississauga

- Judging old bylaws by new standards
- Grand-fathering and transitional provisions
- The most important bylaws that should be updated
- Drafting bylaws under the former *Municipal Act*
  - when can you follow the drafting principles developed under the former act?
  - what are the risks of using the old rules?
  - what are the benefits lost from using the old rules of drafting?
- The role of case law decided under the former *Municipal Act*
  - which principles still apply?
  - which principles do not apply?

**10:30 Networking Refreshment Break**

**10:45 Maneuvering Through the Most Contentious Bylaws: Public Relations and Process Concerns**

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

**Susan Jones**  
Director of Bylaw Services  
City of Ottawa

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

- Strategic use of bylaws to deal with politically sensitive issues
- What type of bylaw is best suited for the task:
  - zoning and building bylaws
  - property standards bylaws
  - licensing bylaws
  - bylaws under the spheres of jurisdiction
- Implementing bylaws for environmental management and pesticide control
  - clean water, storm water and wetlands issues
  - can an organic approach to pest management be mandated?
  - Brownfield redevelopments and remediation process bylaws
  - waste management systems
- Sin-and-vice regulation: tips, traps and strategies
  - body rubs and adult entertainment
  - smoking bylaws
  - charitable casinos
  - red light districts and traffic control
- Good Samaritan bylaws: making room for unwanted neighbours
  - community living dwellings
  - halfway houses
  - drop-in centres
  - homeless shelters
- Preservation of heritage
  - heritage architecture
  - preserving centre business districts
  - regulating the big boxes
- Taxicab licensing — controlling the supply and price of licenses

**12:15 Luncheon for Delegates and Speakers**



**1:15 Creating a Safe Community: Critical Concerns for Drafting Security, Emergency and Disaster Planning Bylaws**

**Warren Leonard, CEM**  
Manager, Office of Emergency Management  
City of Toronto

- Understanding the requirements of provincial legislation
- The role of the Toronto Municipal Code in Toronto's emergency plan
- Learning from the Municipal Emergency Plan for the City of Toronto
- Disaster and emergency protocols
- Creating an emergency operations control group, defining roles
- Administrative vs. operational functioning
- Authority and reporting roles
- Creating emergency service standard operating procedures
- Emergency response systems:
  - hazardous materials spills
  - terrorism
  - containment of infectious disease

**2:00 How to Effectively Create Bylaws that Help Communities Partner with Other Communities**

**Valerie R. M'Garry**  
Lawyer (London)

**Brian W. Knott**  
Former Legal Counsel  
Municipality of Chatham-Kent

- How to minimize the conflict between Regional Municipality and Local Municipality
- Coordination of bylaws between communities
- Tips and strategies to ensure bylaws comply with provincial standards
- Managing the relationship between urban and rural municipalities: lessons learned from *The Nutrient Management Act* Regulations
- Harmonization of transportation bylaws
- Co-ventures between communities

**2:45 Networking Refreshment Break**

**3:00 Case Study on Drafting Effective Bylaws: From Council Motion to Enforceable Bylaw**

Roll up your sleeves session

**Christina A. M. Hueniken**  
Legal Counsel, City Solicitor's Office  
City of Toronto

*In this interactive session, an expert municipal solicitor will guide you through the history and key elements of 3 different bylaws enacted by the City of Toronto. Learn how the following assists in drafting winning bylaws:*

- Information from council debates and resolutions that assist in drafting the bylaw
- The starting point for drafting the bylaw
- Implementing a drafting team
- The benefit and drawbacks of precedents
- Preambles and purposes clauses
- Short form wording
- Enforcement provisions
- How the bylaw stood up in court challenges
- What would be changed with hindsight

**4:30 Co-Chair's Closing Remarks  
Conference Concludes**

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Thursday and Friday, October 2 and 3, 2003  
The Sutton Place Hotel, 955 Bay Street, Toronto



From: *The Canadian Institute*  
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