



The Canadian Institute's 7th Annual

WHAT'S NEW IN ENVIRONMENTAL LAW & REGULATION IN ONTARIO

The Most Comprehensive Coverage of the Critical
Issues for 2004 and Beyond

December 7 and 8, 2004

Intercontinental Bloor Yorkville Hotel, 220 Bloor St. W., Toronto

Attend this comprehensive forum to get up-to-the-minute, practical analysis of:

- Recent trends in enforcement, prosecution and sentencing
- The impact of Ontario's new brownfields regulations on developers, lenders, owners, industry and municipalities
- How Ontario's proposed *Drinking Water Source Protection Act* will affect industry and municipalities
- Environmental implications of Ontario's recent land-use legislation
- The rising tide of personal liability for environmental matters
- The fallout from significant recent Court of Appeal and Supreme Court of Canada decisions on environmental matters
- The latest developments on air emissions and greenhouse gases
- Ten mistakes that will delay your application for a Certificate of Approval

**OPTIONAL ONE-DAY CONFERENCE
December 9, 2004**

Selling Contaminated Real Estate: A Step-by-Step Guide
See inside for details.

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WHY YOU SHOULD ATTEND

Since taking office, Ontario's Liberal government has introduced an unprecedented volume of environmental legislation, much of which comes into force in late 2004 and early 2005. To mention just a few examples, industry and municipalities need to get up to speed on new brownfields regulations, the proposed *Drinking Water Source Protection Act* and several other water-related statutes, the *Greenbelt Protection Act*, *Nutrient Management Act*, draft regulations on disposal of hazardous waste, the Clean Air Action Plan, and new air-dispersion models for Certificates of Approval.

At the same time, the temperature of the enforcement and prosecution climate has risen dramatically, while the Supreme Court of Canada and Ontario Court of Appeal have released rulings that take an aggressive stance against polluters.

And, at the federal level, 2004 is the first year for which large greenhouse gas emitters will have to report emissions data; new hazardous waste regulations are coming; and Bill C-45 has imposed new criminal liability for both corporations and individual managers.

Whether you're an environmental lawyer, in-house counsel, environmental manager, consultant, property owner, developer, planner, health and safety manager or compliance

officer, you need to get up-to-date information about these wide-ranging changes, in order to protect your organization from civil or criminal liability.

On December 7 and 8, 2004, *The Canadian Institute* will hold its **7th Annual Conference on "What's New in Environmental Law and Regulation in Ontario"** in Toronto. This conference was specifically developed to ensure you have the latest information you need to survive and thrive in this constantly changing regulatory landscape.

This year, *The Canadian Institute* is offering an optional one-day conference on **Selling Contaminated Real Estate: a Step-by-Step Guide**, on December 9, 2004. This is your chance to learn about the legal framework of these complex transactions as well as gain practical advice from representatives of a leading lender, an appraiser, insurance expert, and consultant.

Spaces go quickly every year, so register now to secure your place by calling *The Canadian Institute* toll-free at **1-877-927-7936**, faxing the registration page on the reverse to **1-877-927-1563**, or registering online at **www.CanadianInstitute.com**. We look forward to seeing you at the conference.

DISTINGUISHED FACULTY

Co-Chairs:

Rosalind Cooper

Partner, Fasken Martineau
DuMoulin LLP

Mark Madras

Partner, Gowling Lafleur
Henderson LLP

Speakers:

Ahab Abdel-Aziz

Partner and Chair, Environmental Law
Group, Osler Hoskin & Harcourt LLP

Corinne Boone

Managing Director, Environmental
Brokerage Services, CO2e Canada

David Chadder

Principal, Rowan Williams Davies
& Irwin, Guelph

Harry Dahme

Partner, Gowling Lafleur Henderson LLP

Lisa DeMarco

Partner, MacLeod Dixon LLP

Dr. Elizabeth Dowdeswell

President, Nuclear Waste
Management Organization

Mitchell Fasken

President, Kimshaw Holdings Ltd.

James Flagal

Counsel, Ontario Ministry
of the Environment

Mike Garrett, P. Eng.

Chief Administrative Officer
Region of York

Cathy Grant

Risk Management Coordinator
(Engineering Specialist), Technology
Standards Section, Ontario Ministry
of Environment

Doug Hamilton

Partner, McCarthy Tétraut

Jonathan Kahn

Partner, Blake Cassels & Graydon LLP

Tim Lotimer, P. Geo.

President and C.E.O.
Lotowater Geoscience Consultants Ltd.,
Lotowater Technical Services Inc.

Grant Macpherson

Acting Director, Policy Analysis
Large Final Emitters Group
Natural Resources Canada

Marc McAree

Partner, Willms & Shier Environmental
Lawyers LLP

Theresa McClenaghan

Counsel, Canadian Environmental
Law Association

John Meaney

Counsel, Department of Justice at
Environment Canada, Ontario Region

Duncan Moffett

Golder Associates

Daniel O'Connor

Counsel, Legal Services Branch
Ontario Ministry of the Environment

Michael Peterson

Partner, MacMillan Binch LLP,
Chair, Recycling Council of Ontario

Harry Poch

Environmental Lawyer

Gord Reusing, P. Eng.

Conestoga-Rovers & Associates

Dianne Saxe, D. Jur.

Saxe Law Office

Gray E. Taylor

Partner, Davies Ward Phillips
& Vineberg LLP

Don Wharton

Director, Greenhouse Gas Offsets and
Strategy, Transalta Corporation, Calgary

Robert Wright

Counsel, Sierra Legal Defence Fund

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Maximize your company's visibility in front of key decision-makers in *your* target market! For more information, contact Business Development Manager **Rubina Manji** at **416-927-0718 ext. 302**, toll-free **1-877-927-0718 ext. 302** or by email at **r.manji@CanadianInstitute.com**

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Tuesday, December 7, 2004

8:00 Registration Opens — Coffee Served ☞

9:00 Opening Remarks From the Co-Chair

Rosalind Cooper, Partner
Fasken Martineau DuMoulin LLP

9:10 From SWAT Teams To Sentencing:
An Update on Environmental
Enforcement and Prosecution

Moderator and Speaker:

Ahab Abdel-Aziz, Partner and Chair
Environmental Law Group
Osler Hoskin & Harcourt LLP

Panelists:

John Meaney, Counsel
Department of Justice at Environment Canada,
Ontario Region

Daniel O'Connor, Counsel, Legal Services
Branch, Ontario Ministry of the Environment

Doug Hamilton, Partner, McCarthy Tétrault

Robert Wright, Counsel
Sierra Legal Defence Fund

The Rising Temperature of Civil Enforcement

- The Environmental SWAT team in the Chemical Valley: is MOE blurring the *Inco* line between inspections and investigations?
 - the rights of a company in the course of investigations
- The aftermath of the report from Ontario's Industrial Pollution Prevention Action Team
- The Supreme Court's decision in *Imperial Oil*: can statutory liability ever end?
- Costs awards by the ERT to control unreasonable conduct by MOE: *Becker's and Petro-Canada v. MOE*
- Threatening directors personally as a means of silencing corporate debate: unfair and unconstitutional practices by MOE?
- Drawing the battle lines in Ontario: are provincial enforcement officers working on a quota system, and are corporations hunkering down for the long haul?
- Will the use of Environmental Protection Compliance Orders ("EPCOs") increase?
- Stepped-up federal enforcement under the *Fisheries Act*

Prosecution Round-Up

- Following in American footsteps: the use of private prosecutions by interest groups against Kingston and York
- Fishy business in the Ontario Court of Appeal: the treatment of discharges to water in the *City of Kingston*, *Imperial Oil* and *Inco* cases
 - clarification of the evidentiary burden under the *Fisheries Act* in *City of Kingston*
- How to work with prosecutors to negotiate an outcome you can live with
 - what is possible under different statutes
 - why sentences have increased in the last few years
 - Environmental Protection Alternative Measures and creative sentencing
- Recent prosecutions under the *Fisheries Act* and *CEPA 1999*
- Bill C-45's changes to the *Criminal Code*: initial prosecutions

- Are the courts setting the due diligence bar too high? An update on this moving target: *Imperial Oil*, *BHP Billiton Weyerhaeuser*, *Petro-Canada*

10:30 Networking Refreshment Break

10:45 Ontario's New Brownfields
Regulations: What You Need
to Know to Be in Compliance

Mitchell Fasken, President
Kimshaw Holdings Ltd.

James Flagal, Counsel
Ontario Ministry of the Environment

Dianne Saxe, D.Jur., Saxe Law Office

- What will the impact of the regulations be on developers, lenders, owners, industry and municipalities?
- What the Record of Site Conditions provisions will mean to owners of contaminated sites
 - what is the process leading up to the filing of an RSC?
 - how do you determine the applicable site condition standards for your property?
 - who is a qualified person who can undertake the work?
 - can purchasers and vendors rely on an RSC to protect them from MOE cleanup orders?
- What exemptions apply?
- What rules apply to the preparation of risk assessments?
- When is a Phase 2 assessment required?
- Will lenders and municipalities be pressuring owners to comply ahead of the legislative timetable?
- Taking advantage of tax assistance for owners of remediated properties

12:00 Networking Luncheon for
Delegates and Speakers



Keynote Luncheon Speaker

Dr. Elizabeth Dowdeswell, President
Nuclear Waste Management Organization

Elizabeth Dowdeswell, former Executive Director of the UN Environment Program and Assistant Deputy Minister of Environment Canada, has taken on a seemingly impossible task: building public consensus about how to deal with nuclear waste. Get her insights on how to effectively involve citizens in controversial policy decisions, which have broad application to proponents of any project where public consultation is involved.

1:15 How Will Ontario's New and Proposed
Water Legislation Affect Municipalities
and Landowners?

Mike Garrett, P. Eng., Chief Administrative
Officer, Region of York

Tim Lotimer, P.Geo., President and C.E.O.
Lotowater Geoscience Consultants Ltd.
Lotowater Technical Services Inc.

Theresa McClenaghan, Counsel
Canadian Environmental Law Association

- What will Ontario's *Drinking Water Source Protection Act*, expected to be introduced in late 2004, contain?
 - how will this legislation affect water-taking and discharging by industry?
 - how will the *Act* affect where industry will locate?
 - will watershed plans override municipal planning and zoning, and how will that affect developers?

- will the *Act* conflict with brownfields regulation and other land-use legislation?
- the effect of fees, limits or moratoria on permits to take water
- consultations regarding regulations: what issues should stakeholders be concerned about?
- Does the *Safe Drinking Water Act* apply to your organization?
 - implications of the new S.12 of the *Act* and new regulations, in force August 1, 2004
 - what operators of schools, private schools and day nurseries need to know
- Update on amendments to the *Ontario Water Resources Act*, in force as of October 1, 2004
- How do Ontario's legislative and enforcement initiatives relate to the jurisdiction of the DFO and approvals under the *Navigable Waters Protection Act*?

2:15 The Environmental Implications of Ontario's Recent Land-Use Initiatives

Jonathan Kahn, Partner
Blake Cassels & Graydon LLP

Harry Poch, Environmental Lawyer

The Greenbelt Protection Act

- How will this legislation affect development of new plants and expansion of existing ones?
- Will the *Act* add value to brownfields and make them more attractive to developers?
- What will the legislation mean to wetlands protection? Will municipalities need to develop wetlands policies?
- How does the legislation interact with proposed amendments to S.3 of the *Planning Act*?

Understanding the Widespread Effects of the Nutrient Management Act and Regulations

- What activities are covered by the *Act*?
- How will the *Act* affect municipalities, their advisors and other stakeholders? New regulations and their incorporated protocols which have been passed into law
- What is the interplay between the *Nutrient Management Act* and other legislation, including the *Planning Act* and the new *Municipal Act*?
- How does the *Act* alter municipal authority?
- How will the *Act* change agricultural practices?
- What rights of appeal exist?

3:15 Networking Refreshment Break

3:30 New Developments Affecting Personal Civil Liability for Environmental Damages

Gray E. Taylor, Partner
Davies Ward Phillips & Vineberg LLP

- Are we experiencing a return to imposing personal liability to achieve improved environmental performance?
 - the effectiveness of charging executives: *Bata* revisited
 - individual liability for contaminated land and corporate offences
 - personal liability under Ontario's *EPA* and the *Water Resources Act*: are more operators being charged personally?
 - environmental aspects of the new *Criminal Code* liability for companies, officers and operating managers (Bill C-45)
 - new personal accountability provisions in the *Safe Water Drinking Act* and how they may interact with Bill C-45

- What in-house counsel and lawyers acting for public companies need to know about new disclosure requirements for environmental liabilities
 - new personal certification requirements for CEOs and CFOs in Canada and the U.S.
 - liability of directors and executives of Ontario reporting issuers for disclosure violations: penalties and defences to come under Bill 198
- Will Sarbanes-Oxley affect interlisted companies with respect to environmental disclosure obligations?
- Climate change: are risk assessments about to be required by securities regulators and large pension fund investors or as a defence to lawsuits against directors and officers?
- Best practices in light of the recent changes

4:15 What Stewards Need to Know About Ontario's Waste Diversion Act

Michael Peterson, Partner, MacMillan Binch LLP
Chair, Recycling Council of Ontario

- What changes should you be making to supplier and customer contracts as a result of the *Act*?
- How will liabilities under the *Act* affect mergers, acquisitions, public offerings, due diligence and analysis of companies?
- How will municipalities be affected by the 2008 target of 60% diversion from landfill?
- Are the targets feasible?
- Recent policy changes for voluntary stewardship
- How do you comply in the absence of regulations?

5:00 Co-Chair's Closing Remarks Conference Adjourns

Wednesday, December 8, 2004

8:00 Registration Opens — Coffee Served

9:00 Opening Remarks From the Co-Chair

Mark Madras, Partner
Gowling Lafleur Henderson LLP

9:05 Recent Developments in Environmental Assessments

Harry Dahme, Partner
Gowling Lafleur Henderson LLP

Duncan Moffett, Golder Associates

- The Court of Appeal decision in *Sutcliffe v. MOE and Canadian Waste*, due in late 2004, and what it will mean to the assessment process
- How are the 2003 amendments to the *CEAA* working in practice?
- Recent prosecutions for failing to conduct a proper environmental assessment
- Ontario's 2004 review of the environmental assessment process
- What will the *CEAA*'s 2004-2006 Sustainable Development Strategy mean to proponents?
- The new *CEAA* and constitutional requirement for consultation with First Nations:
 - what does it mean to municipalities who want to build roads, sewers and other public works?
 - the pending decisions from the Supreme Court of Canada in the *Haida* and *Taku River* cases
 - how is it working in practice?
 - what do proponents need to know?
 - how Ontario Realty Corporation was successfully prosecuted for failing to consult First Nations

- the effect of the *Mikisew Cree, Whitefish and Apsassin* cases
- environmental assessment processes under self-government and land-claims agreements

10:00 Networking Refreshment Break

10:15 Litigation Update: 2004 in Review and a Look Ahead to 2005

Marc McAree, Partner
Willms & Shier Environmental Lawyers LLP

Robert Wright, Counsel
Sierra Legal Defence Fund

- Important changes to the calculation of damages: the *Canfor* case at the Supreme Court of Canada
- An update on *CEPA 1999*'s new provisions for civil suits by the Crown
- An update on the *Croplife* appeal of pesticide restrictions
- Toxic mould litigation: is the U.S. trend moving to Canada?
- Agricultural nuisance and the recent \$10 million mushroom-farm claim
- The impact the Supreme Court of Canada's decision in *B.C. v. Okanagan Indian Band* on advance costs
- Class actions: has the bar been raised too high for plaintiffs? *Pearson v. Inco Ltd.*

11:15 Recent Initiatives Regarding Hazardous Waste

Mark Madras, Partner
Gowling Lafleur Henderson LLP

- What will Ontario's draft regulation on the restriction of land disposal of hazardous waste, expected in late 2004, mean to industry?
- The Hazardous Waste Information Network (HWIN): is it working? Who is using it? Is it reliable?
- An update on the Waste Advisory Panel

Proposed Changes to Federal Hazardous Waste Regulations

New regulations are expected to be in place by the end of 2004, applying to the management of hazardous waste on federal lands and federal works and undertakings. The government also plans to replace the 1992 regulations.

- An update on new Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations
- Limits on gaseous release to the air, effluent releases and leachate releases from solids
- Liability insurance requirements

12:00 Networking Luncheon for Delegates and Speakers



1:15 Critical Developments in Air Emissions

Corinne Boone, Managing Director
Environmental Brokerage Services, CO2e Canada

David Chadder, Principal
Rowan Williams Davies & Irwin, Guelph

Cathy Grant, Risk Management Coordinator (Engineering Specialist), Technology Standards Section, Ontario Ministry of Environment

- 2004 developments from the NPRI working group on particulate matter speciation: what changes will be likely for the 2005 reporting year?
- Ontario's Clean Air Action Plan, announced in June 2004: how will it affect industry and municipalities?

- Formalization of an odour standard
 - implications for land-use planning and C of A filing requirements
- Introduction of new air dispersion models and new POI limits
- Ontario's extended emissions trading system: how will it affect industry?
- New regulatory caps on NO_x and SO₂ starting in 2006
- The MOE's proposed revisions to Regulation 346:
 - new standards for 29 pollutants
 - understanding the proposed risk-based process for implementing standards and models and proposed regulatory changes

2:30 Networking Refreshment Break

2:45 Domestic and International Greenhouse Gas Regulation and Emissions Trading: New Opportunities for Emitters

In the past year, there has been significant movement on regulatory initiatives to implement the goals of the Kyoto Agreement in Canada, the U.S., the E.U. and other parts of the world. Large emitters will have to begin reporting 2004 data by early 2005. New emissions-trading initiatives will offer direct opportunities to 300-500 Canadian companies who may be eligible for credits, and indirect benefits to many other companies who will benefit from resulting pricing adjustments. Get timely information about these recent developments and what they may mean to your organization, in this interactive session.

Corinne Boone, Managing Director
Environmental Brokerage Services, CO2e Canada

Lisa DeMarco, Partner, MacLeod Dixon LLP

Grant Macpherson, Acting Director, Policy Analysis, Large Final Emitters Group, Natural Resources Canada

Don Wharton, Director, Greenhouse Gas Offsets and Strategy, Transalta Corporation, Calgary

- An update on the Large Final Emitters system for greenhouse gas emissions:
 - backstop legislation and regulations
 - negotiated covenants
 - emissions trading
 - offsets
- The lowdown on international air-related environmental markets
- Why now is the time for industry to lobby government on policy directions
- What's next after the demise of the voluntary climate change registry?

4:00 Expediting Certificates of Approval

Gord Reusing, P. Eng.
Conestoga-Rovers & Associates

- Understanding the different types of certificates of approval, and when it is preferable to apply for a particular type
 - how long are delays in approving the various types of certificates?
 - the new comprehensive Certificates of Approval
- Ten mistakes that will delay your application, and how to avoid making them
- How will the new air-dispersion models affect applicants?
 - what will the Ministry be looking for?

4:45 Wrap Up by Co-Chair Conference Concludes

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WHAT'S NEW IN ENVIRONMENTAL LAW & REGULATION IN ONTARIO

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December 7 and 8, 2004

Optional One-day Conference: December 9, 2004

Intercontinental Bloor Yorkville Hotel, 220 Bloor St. W., Toronto

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ENVIRONMENTAL LAW AND REGULATION — Conference Code: 326V05-TOR
SELLING CONTAMINATED REAL ESTATE — Conference Code: 335V05-TOR

YES! Please register the following delegate(s) for ENVIRONMENTAL LAW AND REGULATION IN ONTARIO \$1599 + \$111.93 (7%) GST = \$1710.93

SAVE \$200 Register for this conference and The Canadian Institute's "Selling Contaminated Real Estate: a Step-by-Step Guide" conference (December 9, 2004)

YES! Please register the following delegate(s) for both ENVIRONMENTAL LAW AND REGULATION IN ONTARIO, and SELLING CONTAMINATED REAL ESTATE: A STEP-BY-STEP GUIDE \$2299 + \$160.93 (7%) GST = \$2459.93

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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.

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VOLUME DISCOUNT

Any firm or company registering three people at the same time will be entitled to a fourth registration free of charge.

One-day Conference

SELLING CONTAMINATED REAL ESTATE: A STEP-BY-STEP GUIDE

Thursday, December 9, 2004 — 9:00a.m. – 5:00 p.m.
Intercontinental Bloor Yorkville Hotel, 220 Bloor St. W., Toronto

This practical one-day conference will examine the sale of a contaminated property from start to finish. What steps should the vendor take? What are the vendor's legal obligations and options? How can the deal be structured so that environmental risks are allocated? What role do experts, lenders and insurers play in the transaction? You will have plenty of opportunity to interact with and ask questions of a variety of stakeholders.

Thursday, December 9, 2004

8:00 Registration Opens — Coffee Served ☕

9:00 Introductory Remarks from the Chair

Barry N. Spiegel
Willms & Shier Environmental Lawyers LLP

9:10 The Legal Framework

Ahab Abdel-Aziz, Partner and Chair
Environmental Law Group
Osler Hoskin & Harcourt LLP

Janet L. Bobechko, Partner and Head of
Environmental Law Group, Goodman & Carr LLP

Kevin Miyauchi, Vice President, Development
Reon Development Corporation

Judith Smale, Counsel, Imperial Oil Limited

A Transaction Checklist

- Who does what, and when

Selecting an appropriate purchaser

- How do you assess a purchaser's ability to perform?
- Criteria for a desirable purchaser profile

Who is Responsible at Law for Clean-Up?

- What does the law say?
- Working with the MOE
- What the MOE can order the owner/vendor to do?
- What if the pollution was caused by a neighbour?
- At what point will the Ministry agree that the property has been remediated?
- Implications of the *Limitations Act, 2002*

Legal and Contractual Tools for Allocating Risk

- Indemnities
- Escrow accounts and other forms of security
- Drafting and negotiating covenants, representations and warranties
- How to ensure the purchaser does its due diligence
- Getting third parties or their liability insurers to pay for the cleanup

How Much Do Vendors Have to Disclose to Purchasers?

- Statutory obligations
 - Record of Site Condition (RSC)
- Common-law obligations
- The status of *caveat emptor*
- What do you need to do beyond the Agreement of Purchase and Sale?
- The consequences of inadequate disclosure

Q & A

12:00 Networking Lunch for Delegates and Speakers 

1:15 A Little Help From Your Friends: Building a Team for Successful Transactions

Kate Dobson-Parks, Regional Manager
for Canada, AIG Environmental

David Harper, M.Sc., P.Geo., Practice Leader
Brownfield Site Development
Area Manager, Jacques Whitford Limited, Oakville

Sandra Odendahl, Senior Manager,
Environmental Risk Management
Royal Bank of Canada

Grant Uba AACI, Senior Consultant,
Real Property Advisors, Inc.

Lenders: Will they Finance a Transaction for Contaminated Land?

- How easy is it to finance a transaction or remediation or to renew a mortgage on contaminated property?
- What are banks' environmental departments looking for?
 - what makes some deals more attractive than others?

The Role of Appraisers:

- When should the appraiser get involved?
- Choosing an appraiser and setting terms of reference
- Discounting for stigma
- The effect of various types of contamination
- The potential effort of RSCs and Notices of Certificate of Property use

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- Accounting for contingent events
- Tax implications of valuation issues

Environmental Consultants, and How to Use them Effectively

- Remediation to a saleable condition
- Integration of site remediation techniques with site re-development
- Types of environmental reports and scheduling considerations
- Satisfying other stakeholder requirements such as municipalities and regulators
- Confidentiality and access issues
- Determining and conducting appropriate environmental assessment programs

Insurers: How Can They Help Close the Deal?

- How available is environmental impairment liability insurance?
- What risks will insurance companies underwrite, and how much will the owner pay?
- Third-party claims
- Insuring against the risks of remediation and new-found contaminants
- What to look for in the wording of policy clauses

4:30

Q&A Roundtable

5:00

Closing Remarks from the Chair Conference Concludes

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PAYMENT MUST BE RECEIVED PRIOR TO THE CONFERENCE

VOLUME DISCOUNT

Any firm or company registering three people at the same time will be entitled to a fourth registration free of charge.