

Municipal Government Liability and Litigation

Top lawyers from municipalities and private practice, representing plaintiffs' and defendants' perspectives, will address such key areas as:

- Current status and role of integrity commissions and Codes of Conduct - how well is the system working?
- The likely impact of *City of Vancouver v. Ward* on awards of *Charter* damages against municipalities
- Municipal environmental liability hot spots - current approaches to risks of soil, groundwater and water contamination
- Municipal employees as plaintiffs or defendants in defamation suits
- The municipal employee: current law and best practices re: labour and employment issues
- The current scope of police liability
- Municipal procurement practices under the microscope in budget-conscious times
- Critical cases on the maintenance and repair of roads and sidewalks
- Cost-effective and judicious management of municipal government litigation
- The best current thinking on risk management and insurance strategies

Chairs

David Boghosian, Boghosian + Associates Professional Corporation
Anna Kinastowski, City Solicitor, City of Toronto



DATES & TIME

May 30 - 31, 2011
9:00 a.m. - 5:00 p.m. EDT/EST

LOCATION

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

Webcast
Available



Municipal Government Liability and Litigation

What previous delegates have said:

“Wonderful materials - very comprehensive...[and] a well-qualified faculty with thorough presentations”

Graham Rempe, City of Toronto

“An informative and well-run conference”

“Excellent program, speakers and networking opportunity”

Ursula Goeres, City Solicitor
City of Winnipeg

Pressures on municipal budgets, and the expansion of municipalities’ responsibilities and jurisdiction in recent years, have placed their practices and potential liabilities under the closest scrutiny. The potential for liability is vast: claims arising from the repair and maintenance of roads and sidewalks, occupiers’ liability, environmental liability, police conduct, bidding and tender practices, *Charter* challenges to municipal action (and since the SCC’s decision in *Ward*, claims for *Charter* damages) – the list seems endless, and the challenges posed to local governments, daunting.

The third *Osgoode Professional Development* program in this area since 2006, *Municipal Government Liability and Litigation* provides a comprehensive analysis of the most critical issues in municipal litigation and risk management. A top-notch faculty, including experienced government counsel from across Canada and leading lawyers in private practice, will provide up-to-the-minute practical advice, strategies, tips and tools you need to stay on top of this difficult and wide-ranging area.

Whether you’re a plaintiffs’ or defence lawyer in private practice, a government counsel or insurance professional, don’t miss this opportunity to get up to speed on how the law is affecting municipalities large and small across the country, and what this means for both risk management and for the conduct of municipal litigation.

Reserve your place now to have your questions answered by a faculty of distinguished experts.

Register now by visiting www.osgoodepd.ca, calling 416.597.9724 or 1.888.923.3394, emailing opd-registration@osgoode.yorku.ca or faxing 416.597.9736.

Chairs

David Boghosian, Boghosian + Associates Professional Corporation
Anna Kinastowski, City Solicitor, City of Toronto

Faculty

Avril Allen, Boghosian + Associates Professional Corporation

Diana W. Dimmer, Director of Litigation
City of Toronto

Thomas J. Donnelly, Thomas Gold Pettingill LLP

R. Douglas Elliott, Roy Elliott O’Connor LLP

Paul Emanuelli, The Procurement Office

Julian N. Falconer, Falconer Charney LLP

Brian G. Grant, Lerner LLP

Andrew J. Heal, Blaney McMurtry LLP

The Hon. Justice Peter H. Howden
Superior Court of Justice (Ontario)

Joy Hulton, Regional Solicitor
Regional Municipality of York

Barry Kuretzky, Kuretzky Vassos
Henderson LLP

Charles M.K. (Chuck) Loopstra, Q.C.
Loopstra Nixon LLP

Marc McAree, Willms & Shier Environmental
Lawyers LLP

Kevin A. McGivney, Borden Ladner Gervais LLP

David J. Mullan, Professor Emeritus
Faculty of Law, Queen’s University

The Hon. Justice Bruce A. Noble
New Brunswick Court of Queen’s Bench

Lawson Oates, Director, Toronto Environment
Office, City of Toronto

M. Rick O’Connor, City Solicitor, City of Ottawa

David A. Potts, Barrister & Solicitor

Alan C. Preyra, Bergmanis Preyra LLP

Murray E. Stieber, Stieber Berlach LLP

Deborah Tracogna, Risk & Insurance Manager
City of Brampton

Tomasz M. Zworski, City Solicitor
City of Victoria

Agenda

Day One: Monday, May 30, 2011

8:30 **Registration and Continental Breakfast**

9:00 **Chairs' Welcome and Introductory Remarks**

9:05 **Damages for Breaches of *Charter* Rights in Municipal Litigation After *Vancouver v. Ward***

Tomasz M. Zworski, City Solicitor, City of Victoria
R. Douglas Elliott, Roy Elliott O'Connor LLP

- The new prospects for liability even in the absence of malice, bad faith, malicious intent, *ultra vires*, etc., discussed by two highly experienced practitioners (including one who argued *Ward* in the Supreme Court of Canada)
- Getting a handle on the "appropriate and just" standard
- Understanding the scope of the court's discretion to award damages versus other remedies

10:15 **Refreshment Break**

10:30 **Municipal Liability/Litigation Issues in Relation to Land Use and Property**

Andrew J. Heal, Blaney McMurtry LLP

Charles M.K. (Chuck) Loopstra, Q.C.
Loopstra Nixon LLP

This segment of the program canvasses a variety of "hot button" land-and-property issues faced by municipalities across the country, such as:

- Liability for negligent handling of the land use planning process
- Suits relating to site plan agreements
- Liability re: source water protection
- Claims in relation to deteriorating infrastructure
- Municipal property and occupier's liability
- Liability for negligent building inspections

11:45 **Networking Luncheon**

12:45 **Libel and Reputation Management and the Municipality**

David A. Potts, Barrister & Solicitor

- Municipalities as defendants – or plaintiffs
- Qualified privilege of municipal councillors
- Latitude in speaking to the press

1:30 **Current Law in Relation to Road and Sidewalk Repair and Minimum Maintenance Standards**

Avril Allen, Boghosian + Associates
Professional Corporation

Alan C. Preyra, Bergmanis Preyra LLP

Including discussion of such bread-and-butter matters as:

- How municipalities aim to minimize/limit liability in this area, including liability for slips and falls

- Scope of the statutory duty to repair
- What constitutes non-repair?
- What's the standard of care? What considerations govern whether or not the municipality is in breach of its duty?
- Are budgetary considerations taken into account in determining reasonableness?
- Does it matter what other municipalities are doing out there?
- Who bears the burden of proof?
- What's been the impact of minimum maintenance standards?
- Winter maintenance issues: what factors bear on whether a municipality has exhibited "gross negligence"?
- Liability of adjacent property owners for a dangerous condition on the sidewalk – can the municipality shift liability?
- Policy decision immunity: when will it apply?
- Transit vehicle/transportation-related liability

2:15 **Procurement and Tendering: Municipal Government Obligations and Potential Liabilities in Commercial Contracts**

Paul Emanuelli, The Procurement Office

- Municipal governments' obligations in the tendering process
- Practical tips for drafting bid call documents and procurement bylaws
- Recent law on bid compliance
- Disclosure of confidential information
- The role of advisors in the procurement process
- Conflicts of interest, lobbying and codes of conduct: what's allowed and what to avoid in the procurement process?
- Potential pitfalls when waiving non-compliance

3:00 **Refreshment Break**

3:10 **Municipal Liability in Nuisance and for Environmental Contamination: A Practical Guide to Managing the Risks**

Marc McAree

Willms & Shier Environmental Lawyers LLP

Lawson Oates, Director

Toronto Environment Office, City of Toronto

Municipalities have become more involved in environmental regulation in recent years. As large landowners, operating significant industrial facilities, they also find themselves at increasing risk of environmental liability claims. Don't miss this important update, which will address a variety of developments in such areas as:

- Situations where the party responsible for the original contamination is gone from the scene – and the municipality constitutes a tempting "deep-pocket" target

Agenda

- The emergence of new software for climate change risk identification/assessment
- Managing risks of soil, groundwater and water contamination from municipal operations
- Responding to contamination of municipal property from private-sector owners
- Road allowances
- Risks of involvement in brownfields development
- Spill response (responding to events/ recovering costs)
- Managing air emissions from municipal facilities and operations
- Recycling, composting, landfill sites, sewage and water treatment facilities and associated potential liabilities
- Dealing with nuisances to residents caused by private owners

4:15 Chairs' Closing Observations and Questions from the Floor

4:30 Day One Adjourns

Day Two: Tuesday, May 31, 2011

8:30 Continental Breakfast

9:00 Chairs' Welcome

9:05 The Scope of Police Liability: Still Expanding?

Julian N. Falconer, Falconer Charney LLP

Kevin A. McGivney, Borden Ladner Gervais LLP

Moderator

Anna Kinastowski, City Solicitor, City of Toronto

- Legal aspects of law enforcement civil liability
- The use of force: what's reasonable?
- High-speed police pursuits – the standard of care
- Failure to respond
- Duty to warn
- Racial profiling
- Malicious prosecution

10:15 Refreshment Break

10:30 Cutting-Edge Labour and Employment Law Issues for Municipalities and Municipal Employees

Barry Kuretzky, Kuretzky Vassos Henderson LLP

**Joy Hulton, Regional Solicitor
Regional Municipality of York**

- Employees' improper downloading of material on the job
- Personal emails on city-issued Blackberrys/ smartphones

- Where the law now stands on employees' reasonable expectation of privacy
- Employees' possession and use of confidential information
- Problems where employees' personal information is leaked or inadvertently disclosed by the municipality
- Current extent of the duty to accommodate employees alleging harassment and/or bullying
 - the latest on best practices in conducting investigations of such allegations

11:30 Municipal Accountability and Transparency: Ethics and Conflicts of Interest Today

**David J. Mullan, Professor Emeritus
Faculty of Law, Queen's University (and formerly
Integrity Commissioner, City of Toronto)**

M. Rick O'Connor, City Solicitor, City of Ottawa

- What's driving the backlash against integrity commissions and Codes of Conduct?
- Problems involving investigations of complaints under the Codes
- "Direct", "indirect" and "deemed" pecuniary interests
- Liability for abuse of office/breach of trust
- To what extent are Codes a way for council majorities to squelch the opinions of dissenting members or damage political opponents?
- Current scope of conflicts of interest in the municipal context
 - enforcement and penalties for breaches of municipal conflict-of-interest legislation
 - potential conflicts problems where the mayor appoints the integrity commissioner
- A province-wide Integrity Commissioner's Office?

12:30 Networking Luncheon

1:20 Insurance Issues for Municipalities: What's Covered, What's Not, the Best Options

**Deborah Tracogna, Risk & Insurance Manager
City of Brampton**

Thomas J. Donnelly, Thomas Gold Pettingill LLP

Municipalities' insurance deductibles are high – often rising from \$500,000 in smaller centres to a whopping \$5 million in Toronto. Accordingly, municipalities – and ultimately the taxpayers – can be on the hook for serious money unless the municipality can claim the status of additional named insureds under third-party policies. These and other "hot-button" insurance issues and strategies will be explored.

- Insuring against emerging municipal risks and getting the right coverage – and deductibles
- Co-ordinating insurance for various municipal entities
- Understanding key exclusions from coverage

Agenda

- A municipality's options where insurance isn't available
- Establishing reserve funds

2:15 **Conducting Municipal Litigation: A Checklist of Key Procedural Issues and Best Practices for Plaintiffs and Defendants**

Diana W. Dimmer, Director of Litigation
City of Toronto

Brian G. Grant, Leners LLP

Murray E. Stieber, Stieber Berlach LLP

- Limitations issues
- Joint and several liability
- Mediating/arbitrating disputes with municipalities
- *Bona fide* offers to settle
- Cost issues
 - when is a municipality likely to recover costs?
 - costs in public interest litigation
- Managing the municipal solicitor's role in relation to external counsel
 - with emphasis on the conduct of commercial/personal injury/other litigation – pleadings, motions, discovery, trial, appeal

3:30 **Refreshment Break**

3:35 **Cross-Country Roundtable: Addressing Emerging Trends and Risks in Municipal Liability**

The Hon. Justice Peter H. Howden
Superior Court of Justice (Ontario)
(and former vice-chair, Ontario Municipal Board)

The Hon. Justice Bruce A. Noble
New Brunswick Court of Queen's Bench
(and former City Solicitor, Fredericton)

Diana W. Dimmer, Director of Litigation, City of Toronto

Tomasz M. Zworski, City Solicitor, City of Victoria

Moderator

David Boghosian, Boghosian + Associates
Professional Corporation

- "Recent Cases That Really Scare Us": The most serious/most probable emerging liability risks as spelled out in recent jurisprudence
- Which of these developments are likely to have the most lasting impact?

- What are the lessons for municipalities following or seeking a proactive approach to risk management and liability?
 - including ethical and professional issues
 - are torts such as abuse of process, unjust enrichment or interference with economic relationships still "exotic"? What about liability for pandemics, terrorism and climate change?
- The panel's/chairs' assessment of the most key points of the day

5:00 **Program Concludes**

Who Should Attend

- **Municipal Government Counsel**
- **Plaintiffs' and Defence Counsel**
- **Risk Managers**
- **Municipal Insurance Professionals**

Registration

Please complete all registrant information.

With more municipal autonomy comes greater exposure to liability...

Register me for: **Municipal Government Liability and Litigation**

I will attend: On site Via webcast (single viewer)

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Fee Per Delegate

\$795 plus 13% HST for a total of \$898.35

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available for both on site and webcast participants. Visit www.osgoodepd.ca for details. Please inquire about financial assistance and CPD credits.



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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 (less \$75 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

Dates & Times

May 30 - 31, 2011
Day One: 9:00 a.m. - 4:30 p.m.
Day Two: 9:00 a.m. - 5:00 p.m.

Please arrive a half hour early for sign-in and material pick-up.

Dress is business casual.

Location

**Osgoode Professional Development
Downtown Toronto Conference Centre**
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