

The Canadian Institute's 17th Annual

PROVINCIAL/MUNICIPAL GOVERNMENT LIABILITY



Co-Chairs

J. Murray Davison, Q.C.

Partner
Paterson, MacDougall LLP

Tina Gardiner, CRM, CIP

Manager, Insurance and Risk
York Region

**“Professional, focused, detailed,
varied & relevant.”**

– Darren Goldman, Claims Manager,
QBE Canada, 2010 Participant

Get up to date on these crucial areas of potential liability:

- ✓ Important developments in liability for road repair and sidewalk incidents
- ✓ Transferring risks at recreational facilities
- ✓ Police liability to the public and to employees
- ✓ Significant recent case law on *Charter* damages
- ✓ Avoiding the top risks leading to procurement challenges
- ✓ Managing emerging risks arising from online activity, social media and data/privacy breaches

And much more!

This program counts towards MCLE requirements in several provinces. Please see inside for details.

Sponsored by:



Supported by:



Media Partner:



Register Now • 1-877-927-7936 • CanadianInstitute.com/Govliability



Litigation is a major expense for municipalities and provinces

More than ever, plaintiffs are going after the deep-pocket defendants whenever there's a potential claim. Inevitably, that means increasing and costly litigation against municipalities and provinces.

The Canadian Institute's 17th Annual Provincial/Municipal Government Liability program is your best source of the critical information you need to litigate these claims. You'll benefit from the diverse array of speakers that include experienced lawyers, risk managers and insurance professionals. Their insights will help you address potential problems not only at the litigation stage but **before the claim arises**.

In addition to updates on topics of perennial concern, such as **roads, sidewalks and recreational centres**, we've refreshed the program this year with a number of areas of **emerging claims**, including:

- Liability for injuries caused by objects falling off buildings and construction sites
- Challenges to regulation of land held under Crown patents
- New case law from the Supreme Court of Canada on *Charter* damages
- Claims for damages arising from nearby wind turbines
- Issues arising from unsafe holes in the ground left by defaulting landowners
- How to embrace social media without attracting liability

And much more!

Unable to travel? Now you can participate from the comfort of your office via live webcast.

Don't delay! Register today by calling **The Canadian Institute** toll-free at **1-877-927-7936**, faxing the registration form to **1-877-927-1563**, or registering online at **www.CanadianInstitute.com/Govliability**.

Distinguished Faculty

Co-Chairs

J. Murray Davison, Q.C.

Partner
Paterson, MacDougall LLP

Tina Gardiner, CRM, CIP

Manager, Insurance and Risk
York Region

Speakers

Belinda Bain

Partner
Gowlings LLP

Richard N. Billington, Q.C.

Billington Barristers
Calgary

Kirk Boggs

Partner
Lerners LLP

David Boghosian

Principal
Boghosian & Associates Professional
Corporation

Julian Falconer

Partner
Falconer Charney LLP

Andrew Heal

Partner
Blaney McMurtry LLP

Philip Huynh

Assistant City Solicitor
City of Surrey, B.C.

Marc McAree

Partner
Willms & Shier Environmental Lawyers LLP

Valerie M'Garry

Principal
Valerie M'Garry Law Office

Dan Michaluk

Partner
Hicks Morley Hamilton Stewart Storie LLP

Alan Rudakoff

Partner
Macleod Dixon LLP
Calgary

George Rust D'Eye

Partner
WeirFoulds LLP

Judy Wilson

Partner
Blake Cassels & Graydon LLP

Who Should Attend

- City Solicitors
- Provincial and Municipal Counsel
- External and Litigation Counsel
- Plaintiff Counsel
- Claims Adjusters
- Underwriters
- Insurance Claims Examiners
- Directors of Claims
- Risk Managers

Register at **1-877-927-7936** or in Toronto **416-927-7936** or **www.CanadianInstitute.com/Govliability**

8:00 **Registration Opens – Coffee Served** ☕

9:00 **Announcements and Welcome from the Co-Chairs**

J. Murray Davison, Q.C.

Partner
Paterson, MacDougall LLP

Tina Gardiner, CRM, CIP

Manager, Insurance and Risk
York Region

9:10 **Cross-Country Roundup on Hot Topics, Major Cases and Emerging Issues**

Moderator:

Andrew Heal

Partner
Blaney McMurtry LLP

Panelists:

Valerie M’Garry

Valerie M’Garry Law Office

Alan Rudakoff

Partner
Macleod Dixon LLP
Calgary

George Rust D’Eye

Partner
WeirFoulds LLP

- Recent case law on limitations periods as they apply to provinces and municipalities
- A cross-country update on “apology” legislation
- An update on the rule on joint and several liability
 - Managing risks
- The effect of Pierringer agreements on deep-pocket public defendants
- The fate of the doctrine of collateral attack, currently under reserve at the SCC
- Recent SCC pronouncements on the tort of breach of statutory duty
- New challenges to municipal and provincial regulation of land held under Crown patents
 - Are reservations valid?
 - Liability implications
 - Results of the pending test case
- Managing liability arising from wrongdoing or negligence by volunteers in care facilities, hospitals and related institutions
- Important defamation cases of the last year
 - Should governments have to indemnify insured-vs.-insured claims such as one councillor suing another for defamation?

- Implications for governments of the rising maximum dollar claims in Small Claims Courts
- Are municipalities whose litigation is handled in-house succeeding in getting their costs?
 - Recent cases in Alberta and the impact of relevant provisions in its *Municipal Government Act*
- Class actions
 - Implications of the Court of Appeal decision in the Nanticoke case, expected to be released before this conference
 - Trends in claims based on fear, stress and mental trauma
 - Claims for institutional abuse: a growth industry?
 - Flood claims
 - Identifying small issues that could explode into class actions

10:30 **Networking Refreshment Break**

10:45 **Road Liability: Getting Up to Speed on Case Law Developments**

Kirk Boggs

Partner
Lerners LLP

J. Murray Davison, Q.C.

Partner
Paterson, MacDougall LLP

- What is non-repair?
 - Does the standard include keeping roads safe for negligent drivers?
- The proper use of TAC Manuals and other reference materials in evaluating whether the standard of care has been met
- The MMS defence: is it working as intended, and will the amended regulation make any difference?
- Other defences: when might they apply?
- Understanding the importance of and limitations on the role of experts
- Handling and investigating non-repair cases
 - The importance of proper record keeping and early detailed investigation
- The status of the court challenge to the constitutionality of the minimum maintenance standards

12:00 **Networking Luncheon for Speakers and Delegates** 

1:15 **Can You Effectively Transfer Risks at Recreational Facilities?**

David Boghosian

Boghosian & Associates Professional Corporation

- How effective are waivers? Are they enforceable?
- Designing on-line “clickthrough” waivers for enforceability
- Using indemnities and hold-harmless agreements
 - What if the organization renting the facility is not a legal person?
 - The practicalities of requirements for insurance

SPONSORSHIP & EXHIBITION OPPORTUNITIES

Maximize your organization’s visibility in front of key decision-makers in your target market. For more information, contact Director Business Development **Daniel Gellman** at 416-927-0718 ext. 7389, toll-free 1-877-927-0718 ext. 7389 or by email at d.gellman@CanadianInstitute.com

2:00 **Recent Trends in Police Liability to the Public and to Employees**

Julian Falconer

Partner
Falconer Charney LLP

Andrew Heal

Partner
Blaney McMurtry LLP

- Did *Hill v. Hamilton* open any floodgates in terms of actions for negligent investigation?
 - Meeting the standards in litigation
 - Case law update
- Liability for off-duty conduct
- Is there a duty to protect?
- Negligent training as a cause of action
- Liability for procedural breaches in the course of investigations
- Recent case law on malicious prosecution in relation to police, and how it differs from the tort in relation to the Crown
- Dealing with the increasing complexity of litigation
- Police pursuits
 - What is the standard of care?
- Personal injury and wrongful death actions
 - Care of persons in custody
 - How do you decide when providing medical attention is reasonable?
- Emerging liability to employees
 - Recent decisions that create police exceptions to the *Weber* line of cases
- Risk management tips for police forces
 - Special-duty police
- Are statements and documents compelled under an investigation of an incident involving police privileged from discovery in a parallel civil suit?
 - Is there an implied undertaking?

3:15 **Networking Refreshment Break**

3:30 **Understanding Charter Damages**

Philip Huynh

Assistant City Solicitor
City of Surrey, B.C.

- Implications for municipalities of important recent case law
 - The Supreme Court of Canada's decision in *Vancouver v. Ward*
 - Is the malice element dead? – the status of many contrary decisions in courts of appeal
 - The BCCA's *Arkininstall v. Surrey* decision, striking down a municipal grow-op detection program
- Avoiding *Charter* damages associated with police activities and persons in custody
- Will we see class actions for *Charter* damages sustained by citizenry?
- What limitation periods apply for *Charter* damages? – recent word from the SCC

4:15 **Co-Chair's Remarks**

4:30 **Adjournment**

WEDNESDAY, FEBRUARY 9, 2011

8:30 **Coffee Served** ☕

9:00 **Announcements**

Co-Chairs:

J. Murray Davison, Q.C.

Partner
Paterson, MacDougall LLP

Tina Gardiner, CRM, CIP

Manager, Insurance and Risk
York Region

9:05 **Slip and Fall and Other Sidewalk Incidents: Are They Still Defensible?**

Belinda Bain

Partner
Gowlings LLP

Richard N. Billington, Q.C.

Billington Barristers
Calgary

- Recent case law on gross negligence
- Liability for injuries caused by objects falling off buildings and construction sites
 - Sorting out the different liability and legal regimes involved
 - Advanced wind warning systems: are they a good investment?
- Notice periods under Ontario's *Municipal Act*
 - When will the courts accept a "reasonable excuse" for missing a limitation period?

10:15 **Networking Refreshment Break**

10:30 **Essential Developments in Environmental Liability and Related Claims**

Richard N. Billington, Q.C.

Billington Barristers
Calgary

Marc McAree

Partner
Willms & Shier Environmental Lawyers LLP

Valerie M'Garry

Valerie M'Garry Law Office

- What will the Kawartha Lakes case mean to municipalities in terms of liability for discharges it did not cause?
- An update on the *Berendsen* case at the Supreme Court of Canada: how foreseeable do damages have to be?
- How do Ontario's amendments to its brownfields regulation affect the municipalities as landowners and issuers of building permits? What are the liability risks?
- An update on Ontario's Bill 72, which would require municipalities to submit detailed sustainability plans for municipal water, waste water and storm water services

- Dealing with mould issues in public housing and other public buildings
- Legislative changes in Saskatchewan regarding relief for nuisance claims
- Emerging claims for damages arising from nearby wind turbines
 - Effects of Ontario's *Green Energy Act*
 - Will municipalities be found liable even though the *Act* takes away their ability to control the projects?
 - Are there statutory authorities municipalities can still use?
- Are cities going to become *de facto* sureties for defaulting landowners who have left unsafe holes in the ground in the recent recession?
 - What about where nearby buildings have to be evacuated because of subsidence, water leaks or other dangerous conditions?

12:00 **Networking Luncheon for Speakers and Delegates** 

1:15 **Avoiding and Managing Procurement Risks**

Judy Wilson

Partner

Blake Cassels & Graydon LLP

- How the *Tercon* decision from the SCC has affected the landscape for procurement challenges
 - How much can you rely on liability protection?
- Avoiding the top mistakes that lead to successful challenges and claims for breach of contract
 - Ambiguity over type of procurement
 - Failure to comply with corporate policies
 - Common drafting mistakes in tender documents
 - Lack of controls on capacity to contract
 - Errors in compliance
 - Errors in evaluating bids
 - Errors in governance and transparency
 - Poor debriefing strategies
- What to do when a challenge lands on your desk

2:15 **Networking Refreshment Break**

2:30 **What You Should be Doing Now to Prevent Future Flooding Claims**

- How global warming has affected loads on storm and sanitary systems
- Why political pressures and public relations can lead to payouts even where statutory immunity exists
- Identifying weaknesses in your infrastructure
- Practical measures municipalities can take now to mitigate future liabilities

3:15 **Managing Risks Related to Online Activity, Social Media and Data/Privacy Breaches**

Dan Michaluk

Partner

Hicks Morley Hamilton Stewart Storie LLP

- What can government demand of its employees, both on and off the job?
- Obligations that flow from public sector and health-privacy legislation
- How to embrace social media without attracting liability
- Special issues for government – open meetings and records retention
- Avoiding the pitfalls of managing the “citizen out of control”

4:00 **Closing Remarks and Program Concludes**

Accreditation

This program can be applied towards 9 of the 12 hours of annual Continuing Professional Development (CPD) required by the **Law Society of Upper Canada**. Each workshop may be applied for 2.75 hours. Please note that these CPD hours are not accredited for the New Member Requirement.

You may apply 10 hours toward your continuing legal education requirements in **British Columbia** (substantive law) and **New Brunswick**.

The **Barreau du Québec** automatically recognizes the number of hours that have been accredited by another Law Society subject to MCLE.



This program has been approved by the **Law Society of Saskatchewan** for 10 credit hours for Continuing Professional Development (CPD). Each workshop has been approved for 2.5 hours.

Attendance at this program by members of the **Law Society of Alberta** may be submitted to the Law Society for Continuing Professional Development credits.



Enhance your meetings and add to your bottom line by offering audience response solutions from **Turning Technologies Canada**, the global leader in audience response technology. The first choice

of presenters everywhere, our simple, intuitive, polling products add engagement, encourage interaction, collect valuable data and provide instant feedback in meetings and events using RF or web-based devices. Invest in workplace training and employee development with the press of a button. Visit us at www.turningtechnologies.ca

The Canadian Institute's Green Initiatives: What are we doing to reduce the environmental impact of hosting conferences across Canada?

EFFORTS

- ✓ We print all brochures with The Canadian Institute's Environmentally Tri-Certified (FSC, PEFC, SFI) Print Partner
- ✓ We have reduced paper print and use by more than 25% over the past year
- ✓ We provide webcast options for individuals unable to travel to our events
- ✓ We encourage our delegates to recycle their conference badges

PARTNERS



The **Canadian Institute**, in partnership with **Zerofootprint**, is pleased to announce a program that will allow attendees to contribute to the reduction of carbon emissions associated with our events. For only \$5 you can offset your contribution and support tire recycling projects in Canada. For more information visit www.zerofootprint.net

- ✓ We also work very closely with all conference venues to reduce, reuse and recycle

Register at 1-877-927-7936 or in Toronto 416-927-7936 or www.CanadianInstitute.com/Govliability

February 8–9, 2011 | Marriott Bloor Yorkville | Toronto


The Canadian Institute's 17th Annual

PROVINCIAL/MUNICIPAL GOVERNMENT LIABILITY

REGISTRATION FORM

To expedite your registration, please mention your Priority Service Code

239D11_INH

CANADA		POSTES
POST		CANADA
Postage paid		Port payé
Addressed Admail		Médiaposte avec adresse
7243028		

ATTENTION MAILROOM: If undeliverable to addressee, please forward to: City Solicitor, Municipal Lawyer, Counsel, Risk Manager, Claims Manager



5 Reasons to Attend

- ✓ Get up to date on the latest litigation risks facing municipalities and provinces
- ✓ Find out how to avoid costly errors
- ✓ Hear from lawyers, risk managers and insurance professionals
- ✓ Qualify for MCLE credits in several provinces
- ✓ Network with your peers

5 EASY WAYS TO REGISTER

-  **Phone:** 1-877-927-7936 or 416-927-7936
-  **Fax:** 1-877-927-1563 or 416-927-1563
-  **Email:** CustomerService@CanadianInstitute.com
-  **Mail:** The Canadian Institute
1329 Bay Street
Toronto, Ontario M5R 2C4
-  **Online:** www.CanadianInstitute.com/Govliability

PROGRAM CODE: 239D11-TOR

YES! Please register the following delegate for Provincial/Municipal Government Liability

Register 4 for the price of 3!

FEE PER DELEGATE	Register & Pay by January 11, 2011	Register & Pay after January 11, 2011
<input type="checkbox"/> Program (on site)	\$1995 + 13% HST	\$2195 + 13% HST
<input type="checkbox"/> Live Webcast (Program Only)	\$1595 + 13% HST	
Program participants will receive a BINDER of the program materials as part of their registration fee.		
<input type="checkbox"/> Please add a copy of the *Program Proceedings (CD-ROM) to my order for \$195 + \$15.95 (S&H) + applicable taxes <small>*Published and shipped within 4 weeks from program</small>		
<input type="checkbox"/> I cannot attend, but I would like to purchase the CD-ROM for \$320 + 15.95 (S&H) + applicable taxes		

STEP 1

CONTACT DETAILS

NAME _____ POSITION _____

ORGANIZATION _____

ADDRESS _____

CITY _____ PROVINCE _____ POSTAL CODE _____

TELEPHONE _____ FAX _____

EMAIL _____

TYPE OF BUSINESS _____ NO. OF EMPLOYEES _____

APPROVING MANAGER _____ POSITION _____

STEP 2

PAYMENT

Please charge my VISA MasterCard AMEX

NUMBER _____ EXP. DATE _____

CARDHOLDER _____

I have enclosed my cheque for \$ _____ including applicable taxes made payable to **The Canadian Institute** (GST No. 84221 1153 RT0001)

STEP 3

Wire Transfer (\$CAD)

Please quote the name of the attendee(s) and the program code 239D11 as a reference.

Beneficiary: **The Canadian Institute**

Bank Name: HSBC / Account #: 362-055319-001

Address: 150 Bloor St, Suite M100, Toronto, ON

Swift Code: HKBCCATT / Branch #: 10362

ADMINISTRATIVE DETAILS

VENUE: Marriott Bloor Yorkville
ADDRESS: 90 Bloor St. East, Toronto, ON
TEL.: 416-961-8000

Hotel Reservations

For information on hotel room availability and reservations, please contact the Marriott Bloor Yorkville at 1-800-859-7180. When making your reservation, please ask for "The Canadian Institute's Corporate Rate".

Registration Fee

The fee includes the program, all program materials, continental breakfasts, lunches and refreshments.

Program Materials

Program participants will receive a comprehensive set of program materials prepared by the speakers. If you have paid and are unable to attend, these will be shipped to you upon request only. Request must be received within 30 days upon conclusion of the program.

Payment Policy

Payment must be received in full by the program date to ensure admittance. All discounts will be applied to the Program Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization. **Groups of 4 will be invoiced individually at 25% off the available rate at the time of registration. For groups of 5 or more please call 1-877-927-7936 for additional discounts.**

Cancellation and Refund Policy

You must notify us by email at least 48 hrs in advance if you wish to send a substitute participant. Delegates may not "share" a pass between multiple attendees without prior authorization. If you are unable to find a substitute, please notify **The Canadian Institute** in writing no later than 10 days prior to the program date and a credit voucher will be issued to you for the full amount paid. Credit Vouchers are valid for 1 year and are redeemable against any other program by **The Canadian Institute**. If you prefer, you may request a refund of fees paid less a 25% service charge. No credits or refunds will be given for cancellations received after 10 days prior to the program date. **The Canadian Institute** reserves the right to cancel any program 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.