

The Canadian Institute's 18th Annual

PROVINCIAL/MUNICIPAL GOVERNMENT LIABILITY

Critical Updates to Help You Successfully Manage the Costs and Risks of Litigation



Chair

David Boghosian

Principal
Boghosian + Associates Professional
Corporation

Benchmark your risk management strategies with experts from:

Association of Municipalities of Ontario
City of Calgary Law Department
City of Greater Sudbury
City of London
Ministry of the Attorney General (Ontario)

Gain the comprehensive advice and practical strategies you need to overcome your specific government liability challenges including:

- ✓ IMPORTANT developments in **road and highway repair liability**
- ✓ PROVEN TECHNIQUES for managing the risks from building inspection and **building code claims**
- ✓ EFFECTIVE **litigation strategies** for provincial and municipal class actions
- ✓ AVOIDING mistakes that lead to **procurement challenges**
- ✓ OVERCOMING the challenges of claims against **law enforcement**

And much more!

PLUS! Learn to efficiently implement best practices for your organization by attending the pre-program workshop:
Practical Risk Management Strategies to Reduce Your Claims and Expenses

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TAKE ACTION NOW: Learn how to limit your liability, reduce risks, and minimize economic losses, in just two days!

Provincial and municipal governments are facing more pressure than ever to reduce their litigation costs as plaintiffs are increasingly turning to government bodies as defendants to fund their claims. Damage awards have risen to unprecedented levels, and it is crucial to stay on top of the latest legal developments to lessen your risk of litigation which can cause serious damage to your reputation and finances.

Attend **The Canadian Institute's 18th Annual Provincial/Municipal Government Liability** event to gain the critical updates and practical strategies you need to prevent lawsuits, minimize exposure, and reduce your risks. Our outstanding faculty of speakers will provide you with practical advice on a full range of core and emerging issues in government liability, including:

- BEST PRACTICES for reducing road, highway, and sidewalk liability
- ANALYZING the impact of key regulatory challenges to minimum maintenance standards and joint and several liability
- PREVENTING exposure for bicycles, failing trees, and other park and recreational trail hazards
- MINIMIZING the cost of critical injuries through proper response and valuation
- SUCCESSFUL STRATEGIES for overcoming the challenges posed by environmental claims

And much more!

Plus! Learn how to do more with less at our new pre-program workshop, “**Practical Risk Management Strategies to Reduce Your Claims and Expenses**”. Ensure you can balance your needs for effective risk management with current financial constraints.

Don't miss this opportunity to hear from leaders in the industry! Register today by calling toll-free **1-877-927-7936**, by faxing the registration form to **1-877-927-1563**, or online at www.canadianinstitute.com/GovtLiability.

We look forward to seeing you in February!

Distinguished Faculty

Chair

David Boghosian

Principal
Boghosian + Associates Professional Corporation

Speakers

Belinda Bain

Partner
Gowling Lafleur Henderson LLP

Pino Cianfarani

Partner
Lerners LLP

Bruce Drake

Risk Management / Insurance Officer
City of Greater Sudbury

Paul Emanuelli

Managing Director and General Counsel
Procurement Law Office

Scott Hamilton

Boghosian + Associates Professional Corporation

Joy Jackson

Risk Manager
City of London

Jonathan Lisus

Partner
Lax O'Sullivan Scott Lisus LLP

Valerie M'Garry

Principal
Valerie M'Garry Law Office

Marc McAree

Partner
Willms & Shier Environmental Lawyers

Kevin McGivney (tentatively confirmed)

Partner
Borden Ladner Gervais LLP

Alison G. Orr

Building Engineer
Orr Brown Consulting Engineers Ltd.

Charles A. Painter

Paterson, MacDougall LLP

Terry Patterson

Managing Director
Jardin Lloyd Thompson Canada Inc.

Alan S. Rudakoff

Partner
Macleod Dixon LLP

Dr. Dianne Saxe

Saxe Law Office, Barristers & Solicitors

Hart Schwartz

Counsel
Ministry of the Attorney General (Ontario)
Constitutional Law Branch

Terry Shillington

Shillingtons LLP

Colleen Sinclair

Barrister & Solicitor
City of Calgary Law Department
Litigation Section

Anne E. Spafford

Partner
Lerners LLP

Matthew Wilson

Senior Policy Advisor
Association of Municipalities of Ontario

A must attend event for

- Lawyers specializing in municipal, provincial, and civil law
- Provincial and Municipal Legal Counsel
- City Clerks
- City Treasurers and Directors
- Risk Managers
- Insurance Claims Adjusters and Directors
- Insurance Underwriters
- Operations Managers
- Town/City Managers
- City Planners

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

7:45 **Registration and Coffee Served**

8:20 **Opening Remarks from the Chair**

David Boghosian

Principal, Boghosian + Associates Professional Corporation

8:30 **Road, Highway, and Sidewalk Liability – Getting Up to Speed on Minimum Maintenance Standards and Other Developments**

Charles A. Painter

Paterson, MacDougall LLP

Anne E. Spafford

Partner, Lerner LLP

- The latest on road and highway case law, non-repair, signage requirements
- Evaluating the impact of the minimum maintenance standards
 - What are the consequences of failing to meet them?
 - Does compliance offer protection? Examining the gaps between common law standards and the regulations and what they mean for municipal maintenance practices
 - Getting up-to-date on the constitutional challenge to the minimum maintenance standards
- Learning other possible defences to road liability claims and when it is most effective to apply them
- Developments in bridge inspection liability
- Strategies for developing and investigating your non-repair case
 - How to conduct your investigations to ensure the best available evidence is obtained
- What are the limitations on a municipality's duty of care? The Ontario Court of Appeal's reversal of *Morsi v. Fermar Paving Limited* and how this decision may impact your future litigation
- *Guy v. Toronto* and its effect on municipal maintenance and snow removal requirements
 - Will the standard of care for laneways be elevated to that for sidewalks?
- Balancing resources and priorities while avoiding negligence: *Billings v. Mississauga*
 - Can the reasonableness of a winter snow removal system be an effective defence?

9:45 **Networking Refreshment Break**

10:00 **Avoiding and Defending Civil Liability for Municipal Bylaw Enforcement**

Scott Hamilton

Boghosian + Associates Professional Corporation

- What responsibilities are imposed on municipalities to actively enforce bylaws? Establishing the threshold for a duty of care in light of new case law
- When could a municipality be held liable? Determining the circumstances in which a duty of care could arise
- Preventing liability by understanding your options for enforcement of bylaws
 - What types of sanctions are available and when/how often should they be enforced?

11:00 **Reducing the Risk of Liability from Emerging Trends in Park and Recreational Trail Cases**

Belinda Bain

Partner, Gowling Lafleur Henderson LLP

Colleen Sinclair

Barrister & Solicitor, City of Calgary Law Department, Litigation Section

- How have the courts apportioned liability in connection with bicycle accidents?
 - Understanding the differing standards for bicyclists under the *Occupier's Liability Act*
 - Why is there such a disparity in case law for the amount of contributory negligence?
 - Factors to take into consideration when planning and designing trails
- Minimizing your exposure in falling tree cases
 - Applying the proper liability standards: no strict liability for falling trees
 - Utilizing the causation defence
 - Best practices for minimizing exposure
- Crucial developments in respect of recreational trail liability
 - What is the duty of a municipality to ensure the safety of recreational trails for different groups of users?
 - Practical advice for limiting liability for both existing trails and when planning new trails
- How will planning have to change in light of the Alberta court of Appeal's *Christensen v. Calgary (City)* decision? Hear directly from the City of Calgary on the developments of the case and the status of the appeal
 - Determining which standards to apply when established standards do not exist
- Proper procedures to limit liability in respect of trail signage
 - What standards and/or guidelines apply?
 - What will be considered to be a sufficient warning sign?

12:00 **Networking Luncheon**

1:15 **Effectively Managing the Risks of Disasters and Emergencies: Procedures for Prevention and Response**

Valerie M'Garry

Principal, Valerie M'Garry Law Office

- Ensuring your employees are properly and effectively trained to meet legislative standards
- Proactive steps to identify and minimize exposure to potential disasters
- Establishing your infrastructure for crisis management
 - How can you guard against potential liability?
- Developing an emergency response plan
 - How to co-ordinate with supporting agencies to maximize efficiency
- Minimizing liability of emergency response teams
 - Can the speed of emergency response result in liability?
- Defending flooding claims
 - What safeguards are offered by legislation?
 - Proper maintenance of sewers and issues that can arise
- Effective emergency response and management lessons learned from recent forest fire cases

2:00 **Networking Refreshment Break**

2:15 **Successfully Navigating the New and Emerging Risks of Procurement**

Paul Emanuelli

Managing Director and General Counsel
Procurement Law Office

- Emerging trends in provincial and municipal procurement
- Analyzing the procurement models employed in Canada and their effectiveness
- Preventing claims for breach of contract
- Strategies for balancing fiduciary duties, public accountability, and business responsibilities
- How to successfully respond to challenges to bids and bid protests

3:15 **Cross-Canada Update: Understanding the Serious Impact of Case Law and Regulatory Developments on Government Liability**

Charles A. Painter
Paterson, MacDougall LLP

Alan S. Rudakoff
Partner, Macleod Dixon LLP

Hart Schwartz
Counsel, Ministry of the Attorney General (Ontario)
Constitutional Law Branch

Matthew Wilson
Senior Policy Advisor
Association of Municipalities of Ontario

- Significant case law and legislative changes affecting government liability
 - Litigation loans and the costs ruling in *Giuliani v. Regional Municipality of Halton et. al.*
- Examining joint and several liability across Canada
 - Strategies to help you minimize your exposure to liability
- Understanding the emerging developments in joint and several liability reform
 - What initiatives have been taken and what is their status?
 - What alternatives to joint and several liability have been proposed?
- Ensuring your regulations will not infringe on federal powers: the impact of recent Supreme Court of Canada decisions on the interjurisdictional immunity doctrine
 - How are conflicts between federal and municipal law being resolved?
 - What areas are being limited by the courts?

4:45 **Concluding Remarks from the Co-Chairs**



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**. Please note that these CPD hours are not accredited for the New Member Requirement.

This program has been approved by the **Law Society of Saskatchewan** for 12.5 CPD hours for the conference. Members will also receive 3.0 additional CPD credit hours for attending the workshop.

The same number of hours may be applied toward your continuing legal education requirements in **British Columbia**.

The **Barreau du Québec** automatically recognizes the same number of hours for this training activity, the latter having been accredited by another Law Society subject to MCLE.

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

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

8:00 **Coffee Served**

8:20 **Opening Remarks by Co-Chairs**

8:30 **Identifying, Managing, and Minimizing the Risk of Environmental Liability**

Marc McAree
Partner, Certified Environmental Law Specialist
Willms & Shier Environmental Lawyers LLP

Dr. Dianne Saxe
Saxe Law Office, Barristers & Solicitors

- Managing government liability for historic contamination
 - Use and ownership of government owned land; contamination imposed on government owned land by neighbours
 - Disclosure requirements in transactions where there is actual or potential contamination
 - Expropriating contaminated land and deduction of environmental costs
- Understanding the issues of municipal regulation of fills and limiting potential exposure to claims by neighbours to fill operations
- The aftermath of *Berendsen v. MTO* on negligence and foreseeability of damages, and *Smith v. Inco* on nuisance and strict liability
- Reducing the risk of municipal liability exposure under Ontario's source protection planning regime
- Emerging claims arising from Ontario's *Green Energy Act*
- Government exposure to liability in light of climate change and the need for adaptation

10:00 **Networking Refreshment Break**

10:15 **Effective Litigation Strategies for Class Actions against Municipalities and Provinces**

Joy Jackson
Risk Manager, City of London

Jonathan Lisus
Partner, Lax O'Sullivan Scott Lisus LLP

Valerie M'Garry
Principal, Valerie M'Garry Law Office

- Examining the latest trends in the ever increasing number of class actions against provincial and municipal governments
 - What level of government is being sued?
 - What situations are leading to class actions? Identifying issues that could result in a class action and steps to take to prevent them from blowing up
 - What are the damages being awarded in class actions? Strategies to minimize the costs against you
- Policies for record retention and filing
 - Effectively managing the overwhelming amounts of data and records required in class action litigation

11:30 **Decreasing Your Potential Exposure to Building Inspection and Building Code Claims**

Alison G. Orr
Building Engineer, Orr Brown Consulting Engineers Ltd.

Terry Shillington
Shillingtons LLP

- Understanding municipal obligations for buildings
 - Examining what is required for effective building permit and inspection programs
- Strategies for minimizing liability for building inspections
 - What constitutes a negligent inspection?
- Understanding the interaction between new building code provisions and existing constructions
- Defending negligent building inspection claims
 - Best practices for record keeping
 - Knowing the role of expert witnesses and how to best introduce evidence
 - Contributory negligence of common parties to a building inspection claim
 - Analyzing requirements for plaintiffs: What is considered a failure to mitigate?

12:30 Networking Luncheon

1:45 Emerging Issues in Critical Injury Cases: Complying With Reporting Requirements and Understanding Valuation

David Boghosian

Principal, Boghosian + Associates Professional Corporation

- Critical injury reporting requirements imposed by the “Blue Mountain” Decision
 - Recommended changes to reporting procedures to ensure compliance with reporting obligations of employers
 - What injuries/events are captured by the definition of “critical injury”?
 - What is a “workplace”? Ensuring that you are properly protected for all possible areas from which liability might arise
 - Best practices for meeting the time requirements imposed on reporting
 - Proper critical injury response: training procedures and instructions for staff to ensure investigations are not interfered with
- Understanding how to properly quantify future care costs to minimize damage awards

2:45 Networking Refreshment Break

3:00 Managing the Increasing Number of Claims Against Law Enforcement

Pino Cianfarani

Partner, Lerner LLP

Kevin McGivney (tentatively confirmed)

Partner, Borden Ladner Gervais LLP

- Current trends and cases on claims against law enforcement
 - Latest legal developments arising from mass arrests
- Discussing the aftermath of *Hill v. Hamilton*: What have the implications been for police standards and for the number of negligent investigation claims?
- Resolving the conflict between the duty of care owed to the general public and the duty owed to specific persons
- Responding to a malicious prosecution or negligent investigation claim
 - When can a statement of claim be struck out?
 - What is considered to be a statement of admission?
- Strategies for successfully responding to claims of excessive use of force
- Best practices for minimizing liability for police officers
 - Training procedures, protocols, and communication for officers
- Defending common actions: malicious prosecution, negligent investigation, Charter violations, false arrest and false imprisonment

4:15 Closing Remarks by the Co-Chairs

PRE-PROGRAM WORKSHOP

FEBRUARY 22, 2012 • 2:00-5:00 P.M.

(Registration begins at 1:30 p.m.)

Practical Risk Management Strategies to Reduce Your Claims and Expenses

Bruce Drake

Risk Management / Insurance Officer
City of Greater Sudbury

Terry Patterson

Managing Director, Jardin Lloyd Thompson Canada Inc.

Risk management is key to successfully defending litigation and reducing legal costs, however, establishing an effective risk management program poses a significant challenge to many municipalities. Limited resources and aging infrastructure can make it difficult to implement the new risk management practices you need to respond to the ever developing liability issues faced by government.

Equip yourself with proven strategies to improve your risk management practices today! This practical and interactive workshop is designed to provide you with the tools you need to protect yourself from costly lawsuits. Hot topics you will learn about include:

- A concise overview of the current state of municipal risk management implementation
- Best practices for the implementation of risk management departments
 - Techniques for restructuring departments to manage risk
 - Reducing liability and litigations costs through in-house training programs
 - Cost-effective dispute resolution and resource allocation strategies
- Ensuring you will have the evidence you need to defend claims: Strategies for creating record retention policies
 - Effectively designing documents and maintenance policies
- Properly utilizing liability transfer vehicles
- Managing minimum maintenance requirements
 - Balancing the need for regulatory compliance with financial concerns
- Practical Exercise: *What would you do to properly prepare for specific risks?*
- Testing your risk management plan
- Risk assessment for excluded activities

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Since 1891, **Municipal World** magazine has been the best source for information, news, views, case summaries and trends in the Canadian municipal forum. Published 12 times a year, the magazine is targeted at elected and appointed officials, engineers, public boards and committees, lawyers, consultants and manufacturers. Municipal World provides up to date information in this fast changing environment, including public private partnerships, economic development, municipal finance, technology and coming events. www.municipalworld.com.

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The International Municipal Lawyers Association (IMLA) is a non-profit organization that has been an advocate and resource for local government attorneys since 1935. It serves more than 3,400 member municipalities and local government entities in the U.S. and Canada, and is the only international organization devoted exclusively to the needs of local government lawyers. www.imla.org

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PROVINCIAL/MUNICIPAL GOVERNMENT LIABILITY

Critical Updates to Help You Successfully Manage the Costs and Risks of Litigation

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YES! Please register the following delegate for PROVINCIAL/MUNICIPAL GOVERNMENT LIABILITY

FEE PER DELEGATE	Register & Pay by Dec. 1, 2011	Register & Pay by Jan. 26, 2012	Register & Pay after Jan. 26, 2012
<input type="checkbox"/> ELITEPASS*: Program + Workshop	\$2390 + 13% HST	\$2490 + 13% HST	\$2690 + 13% HST
<input type="checkbox"/> Program (on site)	\$1795 + 13% HST	\$1895 + 13% HST	\$2095 + 13% HST
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Program participants will receive a BINDER of the program materials as part of their registration fee

Please add a copy of the *Program Proceedings (CD-ROM) to my order for \$195 + \$21.95 (S&H) + applicable taxes
*Published and shipped within 4 weeks from program

I cannot attend, but I would like to purchase the CD-ROM for \$320 + 15.95 (S&H) + applicable taxes

*ELITEPASS is recommended for maximum learning and networking value.

CONTACT DETAILS

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Top Reasons to Attend

- ✓ Get up to date on the latest liability risks to provinces and municipalities
- ✓ Learn practical strategies for preventing litigation and managing risk
- ✓ Discover best practices for reducing road, highway, and sidewalk liability
- ✓ Network with your peers and leading practitioners

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
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1329 Bay Street
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-  **Online:** www.CanadianInstitute.com/GovtLiability

ADMINISTRATIVE DETAILS

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

Hotel Reservations

For information on hotel room availability and reservations, please contact the Marriott Bloor Yorkville at 416-961-8000. When making your reservation, please ask for "The Canadian Institute's Preferred 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. For groups of 4 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.

STEP 1

STEP 2

STEP 3