

# ENVIRONMENTAL LAW

## M. VIRGINIA MACLEAN, Q.C. JOINS WILLMS & SHIER

M. Virginia MacLean Q.C., one of Canada's foremost administrative and municipal lawyers, joins us in 2002.

We're all excited at the prospect of working with Virginia, who will provide additional depth to our municipal and land use planning practices and will extend our capabilities in complex municipal and regulatory litigation.

Virginia was called to the Bar in 1969. She served as Director of Legal Services for the Corporation of the City of Mississauga for twelve years, and practised at Cassels, Brock and Blackwell, LLP for 14 years, representing municipalities and private companies before regulatory and land use planning tribunals and in the Courts. Virginia has lectured extensively, and has co-authored several books, most recently *A User's Guide to Municipal By-laws*, (Butterworths, 2001)

Virginia's ongoing contribution to the development of the legal profession in Canada reaches a pinnacle this summer, as Virginia takes on the demanding role of President of the Ontario Bar Association.

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## COMPLIANCE ONLINE

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- Emergency numbers

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- Laws, regulations and policies

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- Links to federal and Ontario laws, registries and compliance sources

### CONFERENCES AND TRAINING

- Program downloads and info

## MANDATORY P2 PLANNING UPDATE

### TORONTO P2 PLAN SUMMARIES DUE

The Toronto Sewer Use By-law requires that businesses in a number of sectors prepare Pollution Plant (P2) Plans and file Plan Summaries by December 31, 2001. These sectors include:

- Automotive – including gas stations, repair shops, transmission shops, etc.
- Photofinishing labs, including 1-hour outlets
- Medical – including doctors, dentists, hospitals, medical laboratories
- Dry cleaning and laundries (except coin-operated)
- Transportation – including rail, air, bus, auto
- Printing, including - book printing, quick printing, commercial printing, screen printing, as well as printing ink manufacturing.

City staff told us that compliance with the filing requirement so far is good. The City has 90% compliance by the metal forming

and finishing sector (plans were due June 30, 2001).

Manufacturing businesses, such as those in the chemical, plastics, petrochemical industries must submit P2 Plan Summaries by June 30, 2002. A detailed breakdown of sectors and P2 Plan Summary Due Dates is laid out in Appendix 1 to the By-law.

Download copies of the Sewer Use By-law (Municipal Code 641), amendments, the P2 Planning Guidance Manual and P2 Plan and Summary Forms from the **Willms & Shier Online Compliance Centre** (Water and Wastewater Tab).

While the City will accept P2 Plan Summaries by fax, those wishing to maintain a higher level of confidentiality over their Plan Summaries should send them by mail or courier. In the event the P2 Plan Summary may disclose confidential business information, consider including confidentiality submissions under the *Municipal Freedom of Information and Protection of Privacy Act*.

For legal advice on complying with the Sewer Use By-law or making confidentiality submissions call Doug Petrie (416) 862-4835 or Tony Fleming (416) 862-4826.

### CEPA 1999 MANDATORY P2 UNDER DEVELOPMENT

Under the *Canadian Environmental Protection Act 1999*, Environment Canada (EC) has the power to order Pollution Prevention (P2) Plans to control toxic substances listed on Schedule 1 to the Act.

Currently EC has not implemented any P2 Plan requirements. The program is just getting up and running. In due course, EC plans to conduct stakeholder consultation to consider P2 Plan requirements to control certain toxic substances. EC has not notified the public of which substances they will target as the first P2 targets. We expect to be notified as stakeholders, and we will provide an update on the development of these regulatory obligations.



**COURT UPHOLDS  
LIVESTOCK LIMITS  
WEST PERTH BY-LAW VALID**

Ontario's Divisional Court recently upheld an O.M.B. ruling that a zoning by-law can put an absolute cap on the livestock permitted on a factory farm site. In 1999, the Township of West Perth enacted a zoning by-law that required nutrient management plans, and limited the size of any intensive livestock operation to 600 livestock units. Other provisions of the by-law required that the owner of the operation own at least 30% of the land required for handling the manure generated. The by-law also required that all land required for management of the manure be located within eight kilometres of the operation.

Ben Gardiner Farms Inc. (BGF), a large livestock operator, appealed to the Ontario Municipal Board, as (surprisingly) did the Ministry of Municipal Affairs. The O.M.B. upheld most of the provisions of the by-law, except those relating to the hauling of manure. The Board determined that hauling

manure is governed by the *Highway Traffic Act*. Both the O.M.B. decision and the leave to appeal decision were discussed in more detail in recent issues of Willms & Shier Environmental Law (posted on our Web Site).

BGF successfully obtained leave to appeal the O.M.B. decision last April, but the Divisional Court dismissed the appeal in November 2001. The Divisional Court stated that by-laws under s. 34 of the *Planning Act* made for the purpose of protecting agricultural resources and the environment may be more restrictive than federal and provincial legislation, so long as there is no direct conflict. Moreover, municipalities have the power to regulate and control intensive livestock production under the *Planning Act*, despite farm practices protection legislation. The Court stated: "A cap on the number of animals does not restrict normal farm practice."

The Divisional Court relied heavily in its decision on the recent Supreme Court of Canada in *Spraytech v. Hudson* (see W&S Environmental Law – Summer 2001). That decision, authorizing municipalities to limit pesticide use, empowers municipalities to act alongside federal and provincial governments to protect the environment.

The *West Perth* decision supports Ontario municipalities who are proactively working with farmers and other stakeholders to make locally appropriate solutions. If enough of these are established before the province gets its *Nutrient Management Act* together, the province will be more likely to respect local solutions instead using its powers in the *Act* to overrule them.

such as *Spraytech v. Hudson*, make it clear that the courts have already adopted this view.

A significant amendment that was made after Committee hearings provides for a mandatory review of the Act to commence before the end of 2007, and thereafter every five years. A commitment by the Province to consult with municipalities before amending the legislation or passing regulations is being formalized by way of a memorandum of understanding between the Province and AMO.

We will provide more analysis of the new *Municipal Act* and its potential impacts and benefits over the course of 2002. The Act will be available for download at our Online Compliance Centre ([www.willmsshier.com/compliance](http://www.willmsshier.com/compliance)).

**ENGAGEMENTS OF NOTE**

Upcoming conferences:

**John Willms** and **Doug Petrie** are speaking at the Metropolitan Toronto Lawyers Association on January 21, 2002.

**Marc McAree** is speaking at the INFONEX Heavy Construction Conference on January 22, 2002.

**Marc McAree** is Chairing the Ontario Bar Association 2002 Institute Environmental Law Program on January 25, 2002.

**Marc McAree** is speaking on Municipal Liability at the Provincial/Municipal Government Liability Conference on February 21, 2002. (CI)

**Doug Petrie, Tony Fleming, Donna Shier** and **John Willms** are speaking on Industrial Air and Industrial Wastewater Compliance at the Environmental Compliance and Management Conference on April 9-10, 2002. (Templegate)

**Doug Petrie** and **Marc McAree** are presenting a two day workshop on the Fundamentals of Environmental Law in Ontario on April 25-26, 2002. (CI)

View our Conference Calendar:  
<http://www.willmsshier.com/compliance>.

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**NEW MUNICIPAL ACT  
WILL BE LAW JANUARY 1, 2003**

In a flurry of legislation, Bill 111 received Royal Assent on December 12, 2001, after what the Association of Municipalities of Ontario (AMO) described as 102 years of debate concerning changes to an act that originated in 1849.

According to AMO, who strongly endorsed the Bill at Committee, the new Act will finally recognize municipalities as responsible governing bodies. Recent decisions of the Supreme Court of Canada,

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