

Toronto's New Harmonized Zoning By-law

What you need to know

MAY 2010



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What you need to know

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Toronto's New Harmonized Zoning By-law

What you need to know

PROFILES OF TODAY'S SPEAKERS



James Harbell
Stikeman Elliott LLP



Calvin Lantz
Stikeman Elliott LLP



James W. Harbell

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9
Direct: (416) 869-5690 Fax: (416) 947-0866 jharbell@stikeman.com

Law Practice

Mr. Harbell is a partner and head of the Real Estate Department in the firm's Toronto office, chair of the firm's Energy Group and a senior member of the firm's Public-Private Partnerships/Infrastructure Group. He sits on the firm's Partnership Board.

Mr. Harbell is a certified Specialist in Environmental Law by the Law Society of Upper Canada and is practice leader for the firm's national environmental practice. He has appeared before various levels of courts and regulatory agencies including the Ontario Municipal Board, Environmental Assessment Board, Committees of Adjustments, Land Division Committees and various municipal councils and committees.

Mr. Harbell has considerable expertise in independent development and power project finance, as well as the environmental and municipal law areas. He has acted for developers requiring regulatory approvals for power plants and transmission lines, contractual negotiations with utilities, steam hosts and major power consumers. From a lender's perspective, Mr. Harbell has provided advice on regulatory and commercial approvals and related risk issues for project finance.

Mr. Harbell is listed and recognized in the following publications:

- The 2010 Chambers Global's *The Guide to the World's Leading Lawyers for Business* as a recommended lawyer for Energy: Power (Transactional).
- *The Best Lawyers in Canada 2010* in the areas of Real Estate and Environmental Law.
- The 2009 Lexpert/American Lawyer's *Guide to the Leading 500 Lawyers in Canada* for Energy (Electricity).
- *The Canadian Legal Lexpert Directory 2009*, as a leading lawyer in the Property Development and Energy (Electricity) sectors.
- The 2009 *PLC Which Lawyer?* as highly recommended in the Environment sector.
- *The International Who's Who of Environment Lawyers 2009*.
- The 2009 LawDay's *Leading Lawyers* in the areas of Energy-Corporate and Energy-Regulatory.
- PLC's *Cross-border Environment Handbook 2007/08*.
- The 2007 Legal Media Group's *Guide to the World's Leading Environmental Lawyers*.

Professional Activities

Mr. Harbell is a member of ABA Standing Committee on Environmental Law (2004-2010) and was chair of the Environmental, Energy and Natural Resources Committee of the ABA Business Law Section (2003-2006). He was a member of Council (2000-2003) of the Section

of Environment, Energy and Resources of the American Bar Association, a past chair of the Environmental Transactions, Audits and Brownfields Committee of the Section. He was chairman (1991-92) of the Municipal Law Section of the Canadian Bar Association-Ontario.

Mr. Harbell has been involved in many community initiatives such as being a member of the Board of Governors of St. Clement's School, past Clerk at Rosedale United Church and was a former Board Member of the Evergreen Foundation.

Representative Work

Mr. Harbell's experience includes acting for:

Energy

- Sithe Global Power, LLC in its sale of a 50% interest in the 875-MW Goreway Station, to Chubu Electric Power Company, Inc. and Toyota Tsusho Corporation.
- Sithe Global Power, LLC on the development of two 875-MW generation facilities in Brampton and Mississauga, Ontario.
- Ontario Power Authority concerning the Integrated Power Supply Plan and the Procurement Process hearing process before the Ontario Energy Board.
- Ontario Power Authority in its procurement process (RFP III) for Renewable Energy Supply.
- Coral Energy Inc. (Shell) concerning its application for a gas distribution line to connect its Brighton Beach power project with the TransCanada Pipeline System and related approvals.
- Coral Energy Inc. in the negotiation of a gas/power tolling agreement for the Atco Power 580 MW generation facility in Windsor.

Real Estate, Municipal, Land Use & Environmental

- Women's College Hospital in land use approvals for redevelopment of the hospital.
- The City of Toronto on its acquisition of the Green Lane Landfill near St. Thomas, Ontario.
- National Rubber Technologies Inc. before the OMB in its successful opposition to a Toronto condo development.
- The Town of Richmond Hill in the processing of development approvals and related contested OMB hearing for the Tridel development on Historic Yonge Street.
- Toronto Transit Commission concerning Court challenges to the environmental assessment and City of Toronto jurisdictions to approve the St. Clair Streetcar Project.
- The Region of York to defend the Region's position concerning the King City "Big Pipe" at Divisional Court and Court of Appeal proceedings.
- Chrysler Canada Inc. concerning rezoning portion of its Bramalea Assembly Plant, and representing DaimlerChrysler as it relates to residential subdivisions in the vicinity of the assembly plant to ensure compatibility with the industrial operation.
- O&Y Properties Corporation concerning the required land use permissions to construct the Maritime Life Building including issues related to public transit, bonusing, heritage building preservation.
- Affordable Housing Agreement for its "Lets Build Program" for affordable housing.
- LP Heritage concerning its bid for a long-term lease of Union Station in the City of Toronto.

- City of Toronto regarding the developing and drafting of its Land Transfer and Personal Vehicle Taxes.
- Monarch Construction regarding approvals for residential uses in Oakville.
- Redpath regarding land use issues related to Toronto Waterfront Redevelopment.
- Urban Capital regarding Waterfront Toronto's West Don Lands Development.

Publications and Presentations

Mr. Harbell has written and spoken extensively on the legal aspects of real estate, environmental, land-use, and energy matters, including the following:

- Co-chair, "Feed-In Tariffs: The Key to a Green Economy?", EUCI conference, September 2009.
- Moderator, "Multi-Sector Overview, Outlook and Perspectives – Senior Executives from Major Commodity and Consuming Sectors", New England-Canada Business Council and Energy Trade & Technology Conference, Boston, MA, November 7, 2008.
- Facilitator, "Aboriginal Consultation and Environmental Law", Law Society of Upper Canada, October 28, 2008.
- Co-author, "Climate Change in Canada – Hot Topics in Environmental and Energy Law", American Bar Association, Dallas, TX, March 3, 2008.
- Moderator, "Province panel discussion – Towards a shared body of experience", Western Canada Innovation Infrastructure Finance Forum, Banff, AB, June 15, 2007.
- Co-chair, "Global Warming: How the Law Can Best Address Climate Change" Conference, American Bar Association, Baltimore, MD, June 8, 2007.
- Chair, "3rd Annual Ontario Power Forum: Power Investment Realities in a Volatile Market: Competitive Procurement, Pure Play vs. Diversification, Finance", Platts, Toronto, ON, February 22-23, 2007.
- Co-author, Canadian chapter of *Electricity Regulation* 2004, 2005 and 2006 (Global Competition Review).
- "Brownfield Redevelopment", Zoning and Land use in Ontario, Lorman Educational Services, November 2005, September 2003.
- "Canada Tackles Environmental Problems – There are Some Differences up North", *ABA Business Law Today*, November/December 2002.
- "Towards a Smart Tomorrow", SCI Canada Centennial Conference, Smart Growth, Sustainable Development, November 2002.
- "Managing Contaminated Land and Brownfields Redevelopment", Air & Waste Management Association Ontario Section, Ontario Society for Environmental Management, November 2001.
- Presenter, "Brownfields", Ontario Municipal Board Extensive Training Seminar, May 2001.
- "Environmental Issues Relating to Shopping Centres", 2001, ICSC Canadian Shopping Centre Law Conference, March 2001.
- Panellist, "Managing Integration of National Practices into Local or Branch Offices: How They Can Work Together", The Law Firm Practice Group Leadership Summit: Canada – Mastering the Balancing Act Between Practice and Leadership Responsibilities, Fulcrum Information Services Inc., January 2001.

- Organizer, “Keep Out of Hot Water - Water Quality Issues for 2001; Hot Topics in Environmental Law”, ABA Section of Business Law, Committee on Environment, Energy and Natural Resources Annual Meeting, August 2001.
- Co-lecturer, “Contaminated Lands – Structuring Commercial Transactions of Contaminated Sites”, Federated Press, November 2000.
- “Brownfield Redevelopment – The Canadian Context”, October 2000.

Education

Osgoode Hall Law School (LL.B. 1982), University of Toronto (Trinity College 1977-1979).

Bar Admission

Ontario, 1984.



Calvin W. Lantz

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9
Direct: (416) 869-5669 Fax: (416) 947-0866 clantz@stikeman.com

Law Practice

Calvin Lantz is a partner in the firm's Municipal Group and Public-Private Partnerships/Infrastructure Group in the Toronto office of Stikeman Elliott. Mr. Lantz is recognized as a Certified Specialist in Municipal Law (Land Use Planning and Development) by the Law Society of Upper Canada. He secures municipal approvals for official plan and zoning by-law amendments, consents to sever lands, minor variances, subdivision and site plan approvals, condominium conversions, building and demolition permits, and other related municipal and provincial approvals that are necessary for land development.

Mr. Lantz represents a broad range of residential, commercial, industrial and institutional clients. As a municipal and land use planning lawyer, Mr. Lantz:

- Strategizes and leads teams of development approval professionals (e.g. architects, land use planners, engineers, etc.)
- Negotiates with senior municipal staff and councillors, government agencies and land owners
- Prepares and submits land use planning applications and provides strategic direction on the approval process and related municipal and other government approvals
- Provides legal opinions on a broad range of municipal issues, zoning by-laws and land use policies and prepares land use planning instruments (e.g. Official Plan Amendments, Zoning By-law Amendment, etc.)
- Negotiates municipal and development agreements, including section 37 agreements, subdivision and site plan approval agreements, heritage easement agreements and agreements with Conservations Authorities
- Advocates on behalf of clients at public meetings, Municipal Councils, Land Division Committees, Committees of Adjustment, Heritage Preservation Boards and the Ontario Municipal Board

Professional Activities

Mr. Lantz contributes at municipal law and land use planning events and participates regularly in professional organizations. He is a member of the Building Industry and Land Development (BILD), Canadian Urban Institute (CUI), Urban Land Institute (ULI), Law Society of Alberta, Canadian Bar Association (Municipal Law section of the Ontario Bar Association), and Law Society of Upper Canada.

Education

University of Alberta (LL.B. 1997), University of Waterloo (MA 1994, Honours BA 1992).

Bar Admission

Ontario, 2000. Alberta, 1998.

Toronto's New Harmonized Zoning By-law

What you need to know

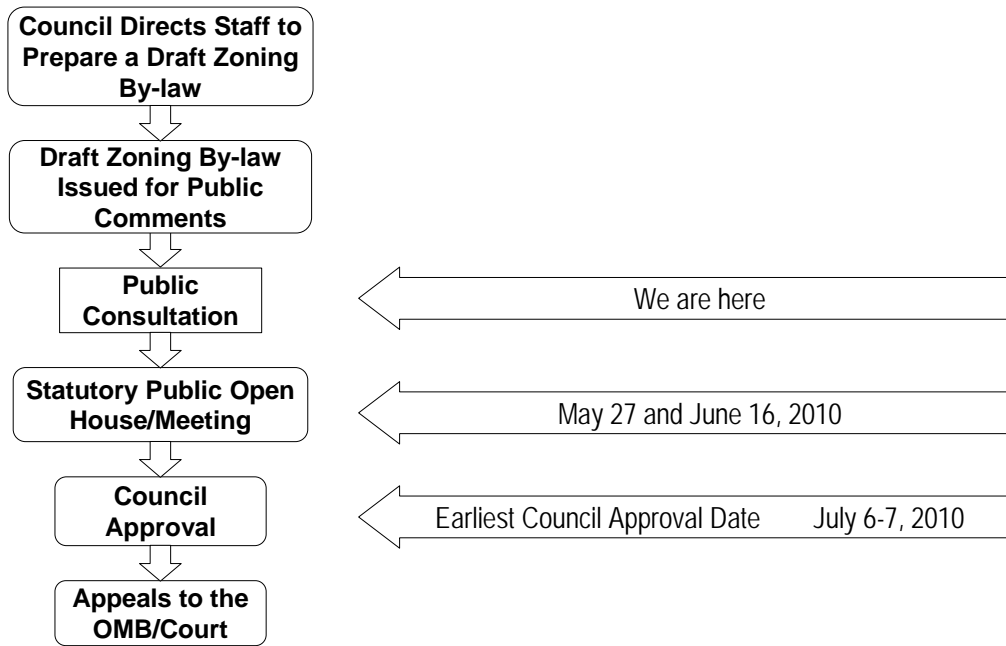
PRESENTATION SLIDES

Toronto's New Harmonized Zoning By-law: What You Need to Know

The Amalgamated City



The Draft By-law Approval Process





Zoning and Land Value

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Four Important Points About the Draft By-law and the Approval Process

Point #1

- City Staff are not undertaking a comprehensive review of how the new zoning impacts each parcel of land in Toronto. The onus is on the land owners and those with an interest in land to stay informed and get involved

Draft By-law and the Approval Process

Point #2

- Any land owner (or party with an interest in land) who fails to express concerns or issues with the proposed new zoning prior to City Council passing the new zoning by-law will not be able to maintain an appeal of the new zoning by-law and risks not being added as a party to an appeal at the Ontario Municipal Board
 - According to the Planning Act and regulations, if a person does not make oral submissions at a public meeting or make written submissions to the City of Toronto before the zoning by-law is passed, the person is not entitled to appeal Council’s decision to approve the by-law to the Ontario Municipal Board ¹
 - As well, if a person does not make oral submissions at a public meeting, or make written submissions to the City of Toronto before the zoning by-law is passed, the person may not be added as a party to the hearing of an appeal before the Ontario Municipal Board unless, in the opinion of the Board, there are reasonable grounds to do so ¹

Draft By-law and the Approval Process

Point #3

- Development permissions secured through minor variances may not be captured in the current draft of the new zoning by-law

Draft By-law and the Approval Process

Point #4

- During the time that the new zoning is under appeal to the Ontario Municipal Board, the Chief Building Official will likely treat the new zoning, as passed by City Council, as "applicable law" when considering the issuance of building permits where the new zoning is more restrictive than the current in force zoning. In other words, if the new zoning is more restrictive than the existing zoning during the time that the zoning by-law is under appeal, building permits will not be issued

After the By-law Has Been Approved by Council
Legal Non-conformity

- What Does it Mean?
 - Lawful use of property commenced prior to passage of the prohibiting by-law
 - Legal non-conforming use is not prohibited by the subsequent zoning by-law, even though not permitted by it

After the By-law Has Been Approved by Council *Legal Non-conformity*

- How is the Status Preserved?
 - Land must be continue to be used for its pre by-law purpose after the passage of the by-law
 - Use does not have to be continuous, however, there must be an intention to continue the use and the use must actually continue so far as it is possible to do so
 - Use must not be unlawfully extended, without a minor variance or rezoning. As the character of and the intensity of the use changes relative to surrounding lands, the legal non-conforming status is lost and it may become difficult to obtain a lawful extension

After the By-law Has Been Approved by Council *Legal Non-conformity*

- Issues Raised by Legal Non-conforming Status
 - Financing
 - Increased risk if use/development needs to evolve or change and approvals are required to do so
 - Difficulty remaining economically competitive, to respond to changing regulatory requirements or take advantage of changing market opportunities

Title Insurance

- A typical title insurance zoning endorsement will not provide coverage against changes that may occur with the enactment of the new zoning by-law or for failure to obtain a building permit as a result of such changes
- Watch the timing of enactment of the by-law when purchasing the title insurance policy
- Title insurance is not a substitute for conducting an independent zoning review

Varying or Amending a By-law that is not in Force

- New language in s. 45(1) of the Planning Act
 - Committee of Adjustment is permitted to approve minor variances to a by-law that has been “passed” but not yet in effect

- s. 34(10) of the Planning Act
 - City Council is permitted to approve an amendment to a by-law that has been “passed” but not yet in effect

TOP 10 ZONING ISSUES/CHANGES

#1 Goal of Harmonization By-law

- 43 by-laws to be reduced to 1
- Intention is to preserve existing zoning permissions
- Of course, no solution for minor variances at this time
- Loss of zoning permissions may result for some lands

TOP 10 ZONING ISSUES/CHANGES

#2 Zoning Boundaries Across the City

- Existing zoning boundaries are not changing in the proposed zoning by-law
- Uses, definitions and performance standards may be changing through the harmonization exercise

TOP 10 ZONING ISSUES/CHANGES

#3 Commercial/Retail Land Use

- In Employment Areas:
 - Properties with significant commercial retail permissions will not be included in the proposed zoning by-law with the exception of existing “big-box” retail
 - Photocopying, printing, postal or courier service facilities are the only forms of retail (other than accessory) permitted in employment zones, subject to size restrictions

TOP 10 ZONING ISSUES/CHANGES

#4 Residential Apartment Land Use

- In Commercial/Residential Areas:
 - Tall buildings guidelines are being elevated into the proposed zoning by-law for downtown area with a height limit of 46 metres or more
 - Mid-rise Typology Study to provide performance standards for mid-rise buildings has been completed. Changes to the proposed zoning by-law resulting from this Study will be presented in a report at the May 19th Planning and Growth Management Committee meeting

TOP 10 ZONING ISSUES/CHANGES

Institutional Land Use

#5 Schools

- All existing schools will retain existing zoning permissions along with permission for a school use within the Residential Zone Category, the Residential Apartment Zone Category, the Commercial Zone Category, and the Institutional Educational Zone
 - Any existing school that exceeds the maximum lot coverage, maximum height, maximum gross floor area, or minimum setback requirement is grandfathered (or can expand to the extent the current zoning allows)
 - New schools are not permitted uses in Residential zones (minor variance or rezoning will be required)

#6 Institutional Uses In Employment Zones

- Schools, places of worship, day nurseries and day care facilities are not permitted uses in employment zones, even as accessory or incidental uses

TOP 10 ZONING ISSUES/CHANGES

Employment Land Use

#7 Manufacturing

- The North American Industry Classification System coding of manufacturing related processes has been used to allocate the 86 various types of manufacturing uses into light (EL), medium (E), and heavy (EH) zones. The current NAICS list is to be added to the zoning by-law
- The most restrictive applicable NAICS code will characterize a manufacturing use
- It is likely that many existing uses will be rendered legal non-conforming

#8 Propane Storage

- A facility for the handling and transfer of propane is only permitted in the Heavy Industrial Zone (EH) on the condition that the lot is a minimum of 300 metres from a lot that permits sensitive uses

TOP 10 ZONING ISSUES/CHANGES

#9 Errors and Omissions

- Errors and omissions in the proposed by-law have occurred. For example, Clause 60.20.40.200 is supposed to be a “vacuum” clause that legalizes existing setbacks for Employment zoned lands but instead the current wording makes more onerous setback provisions applicable with the use of “is the greater of” instead of “is the lesser of” standard
- City staff will make wordsmithing changes, necessary substantive changes and revise the text of the proposed by-law weekly and post the revised by-law on the City’s website. Unless a change is substantive, there will be no note advising that a change has been made
- Independently confirm if requested and promised changes to the proposed by-law have been implemented

TOP 10 ZONING ISSUES/CHANGES

#10 Transition Protocol – “Holes”

- “Holes” are proposed in the fabric of the proposed zoning by-law – the effect is that the current zoning and minor variances will continue to apply
- Anticipated types of “Holes”:
 - Conformity concerns with the Official Plan
 - Lands governed by area-based zoning by-laws (i.e. Harbourfront)
 - Sites proposed for development with site plan approval application
 - Applications for site specific zoning by-law amendments that will be considered by Council during its current session

Approval Process and Appeal Rights

When to Get Involved?

- May 27, 2010 - Statutory Public Open House, Committee Room #4, City Hall
- June 16, 2010 – Statutory Public Meeting before PGMC, Committee Room #1, City Hall
- July 6-7, 2010 – earliest Council meeting when the proposed zoning by-law may be considered for approval
- August 25-26, 2010 – last scheduled Council meeting prior to election when the proposed zoning by-law may be considered for approval

Approval Process and Appeal Rights

Access to the Proposed By-law, Maps, Reports, etc.

- City of Toronto web sites
 - for Staff Reports www.toronto.ca/zoning/index.htm
 - Proposed by-law text: www.toronto.ca/zoning/index.htm
and Mapping: [http:// map.toronto.ca/imapit/iMapIt.jsp?app=ZONING](http://map.toronto.ca/imapit/iMapIt.jsp?app=ZONING)

Appeals

- Timing
- Process
- Settlement Opportunities

How Can We Help?

- Review existing and proposed zoning permissions.
- Strategize and negotiate changes to the proposed zoning by-law (City Staff, Councillors, etc.)
- Preserve OMB appeal rights
- Appeal zoning by-law to the OMB/courts, if necessary



QUESTIONS & ANSWERS

Jim Harbell
jharbell@stikeman.com

Calvin Lantz
clantz@stikeman.com

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What you need to know

FIRM PROFILE

An Overview of Stikeman Elliott

Our Real Estate and Municipal Practices

About Stikeman Elliott

Stikeman Elliott is recognized nationally and internationally for the sophistication of its business law practice. The firm is a Canadian leader in each of its core practice areas – corporate finance, M&A, banking, corporate-commercial, real estate, tax, insolvency, structured finance, competition, intellectual property, administrative law, employment and business litigation – and has developed in-depth knowledge of a wide range of industries including mining, energy, banking, insurance, infrastructure, retail, telecommunications and technology.

Located in Toronto, Montréal, Ottawa, Calgary and Vancouver, its Canadian offices are among the leading practices in their respective jurisdictions. Stikeman Elliott is also prominent internationally, with a longstanding presence in London, New York and Sydney and extensive experience in China, South and Southeast Asia as well as in central and eastern Europe, Latin America, the Caribbean and Africa. The firm's 500 members include many of Canada's most prominent business lawyers, including leading litigators, in several of Canada's provinces.

Chambers Global identifies the firm as one of Canada's two top-tier Corporate/M&A practices and it is frequently ranked among Canada's leaders in domestic and cross-border M&A league tables from Thomson Financial, Mergermarket and Mergerstat Review. Stikeman Elliott is also the leading adviser in Canadian securities offerings, ranking first from 2005 to 2009 (inclusive) in Bloomberg league tables in terms of overall volume, as well as receiving top rankings from the *Financial Post*. The firm's National Litigation Group, whose specializations include class actions, securities litigation and restructurings, has been ranked among the top three business litigation practices in Canada by Lexpert. Among Stikeman Elliott's other highly regarded practices are competition/antitrust (named as a leader by the *Global Competition Review*), taxation (highly ranked by Lexpert) and structured finance (widely considered to be Canada's foremost practice in that field). The firm is also well known for its extensive regulatory and government relations expertise; the latter anchored by its office in Ottawa.

Because Stikeman Elliott has grown through internal expansion, rather than through mergers, the firm's clients can expect a consistently high level of service from each of its eight offices. Its offices frequently work together on major transactions and litigation files, and regularly collaborate with prominent U.S. and international law firms on cross-border transactions of global significance. The firm has invested heavily in leading-edge knowledge management systems in order to assure our clients of advice of the highest quality, grounded in the accumulated expertise of Stikeman Elliott's national and international practice.

"We wouldn't get business done without them. They're that good."

– IFLR1000 (2010)
Client Interview

OUR OFFICES

Stikeman Elliott's Canadian offices are located in the major business and financial centres of Montréal, Toronto, Ottawa, Calgary, and Vancouver. Outside Canada, the firm's network includes offices or representation in the United Kingdom, the United States and the Asia-Pacific region. Our unsurpassed international experience ensures that we can serve our clients wherever their business takes them.



Montréal

The firm's Montréal office is one of the most successful and respected in the city. Its practice is focused on M&A, securities, banking, cross-border financial restructuring, international tax and commodity transactions, real estate, environmental law, intellectual property, information technology, transportation, insurance and employment law. The Montréal litigation group is widely recognized as one of the leading business law litigation teams in Quebec. Stikeman Elliott's expertise in civil law and commercial transactions is particularly significant where an organization has operations in Quebec or in other jurisdictions with codified civil law-based legal systems, such as Central and Eastern Europe and South America. Much of the work carried out in the Montréal office has a strong international focus.

Toronto

The Toronto office of Stikeman Elliott is a broadly based corporate-commercial law practice with a strong transactional focus. The firm's Toronto lawyers include many of Canada's foremost practitioners in the areas of M&A, securities, banking, structured finance, insolvency, tax, real estate, competition, employment, pensions, technology, outsourcing, mining and electricity law. The Toronto business litigation group is highly regarded for its record in commercial litigation, most notably securities litigation, class action defence and complex insolvencies and restructurings. The office is renowned for its expertise in cross-border transactional and litigation work and counts many major global corporations and financial institutions among its clients.

Calgary

Our Calgary office, with currently more than 50 legal personnel, is home to some of Alberta's leading lawyers. The Calgary office opened in 1992 and maintains a business law practice focused on M&A, securities, real estate, joint ventures, project financings, structured financings, tax, employment and banking. The office also has a significant international dimension, advising on foreign investment in the Canadian energy sector and cross-border trade in energy resources. In addition, the office maintains a commercial litigation practice and is renowned for its regulatory practice involving oil and gas and electricity related matters. The Calgary office has recently won two awards for its active role in the community.

Vancouver

Celebrating 20 years in the city in 2008, our Vancouver practice includes a number of British Columbia's leading lawyers in the areas of M&A, securities, banking, litigation and real estate. Our corporate lawyers lead local matters and draw on expertise of other Stikeman Elliott offices in national and international matters. We have one of British Columbia's most prominent real estate development and acquisition practices, while our Litigation Group has acted for all levels of government and offers a broad range of commercial dispute resolution and advocacy services, including significant class action expertise. A very experienced group of lawyers also practice in the areas of public-private partnerships, infrastructure development and project finance. The Vancouver office has a strong cross-border focus, acting as the firm's Canadian gateway to the Asia-Pacific region.

Ottawa

The Ottawa office of Stikeman Elliott focuses on administrative law and regulated industries, with particular emphasis on competition law, intellectual property law, international trade, government procurement and public policy. Industry sectors in which the office has expertise include such federally-regulated commercial sectors as telecommunications, broadcasting, transportation, and energy, as well as those (such as packaging and labelling) that are subject to food and drug administration.

London

Drawing over 40 years of experience in the city, Stikeman Elliott's London office has long been recognized for its leadership in international corporate transactions, including leveraged buy-outs, take-over bids and share and asset purchases. Our London corporate finance team is a leading advisor to Canadian companies with respect to Toronto Stock Exchange and AIM listings and has been recognized for many years as one of the most prominent international advisors in the Eurobond markets. We have also been at the forefront of developing the legal framework for the issuance of Maple Bonds in Canada. Our lawyers have broad industry expertise, as well as significant experience in Africa, in the mining sector. The office also serves as the gateway for our India, Middle East and Sovereign Wealth Fund practices. As well, our private client practice ranks amongst the world's leading practices in the area.

New York

The New York office of Stikeman Elliott has extensive experience in Canada-U.S. cross-border corporate transactions, with a particular focus on M&A, corporate finance, banking and structured finance. The firm's New York lawyers provide Canadian legal advice on cross-border acquisitions, investments, banking, securities and regulatory matters to U.S. corporations, investment dealers, advisors, banks and funds.

Sydney

Stikeman Elliott's Sydney office, the hub of our Asia-Pacific practice, is involved in multi-jurisdictional securities and M&A law with a sectoral emphasis on mining, cross border M&A, infrastructure development and project finance.

Asia

Stikeman Elliott regularly acts in transactions involving clients across Asia, including, in particular, India, China, Hong Kong, Thailand and the Middle East. Reflecting the position of Canada as a target for a rapidly expanding Asian region and as a significant source of capital, the firm provides advice on a large number of significant transactions from Asia into Canada, as well as advising on Canadian investment into Asia. The firm has a particularly high profile in resource-sector transactions and is involved in the vast majority of IPOs originating in Asia that involve placements into Canada.

Our Real Estate and Municipal Practices

REAL ESTATE GROUP

The real estate industry, from developers to managers and institutional investors, values the advice of experienced practitioners who understand the industry. Reflecting our depth as one of Canada's leading business law firms, Stikeman Elliott's Real Estate Group is the number one choice for clients seeking specialized real estate assistance in the Canadian market.

Our practice encompasses the full range of activity for the real estate development, construction and leasing industry. We work for the following industry participants in all of their activities:

- Private, public and institutional investors in the establishment of real estate investment funds, syndications and joint ventures and in their acquisition, development, and management of real estate assets;
- Governments and private-sector participants in the development of innovative public and public-private infrastructure projects;
- Lessors and lessees in negotiating and drafting long-term and ground lease agreements;
- Issuers and underwriters in real estate debt and equity capital markets, including public and private offerings on most major securities exchanges in Canada, the U.S., the U.K. and Europe;
- Developers and lenders in financing and refinancing projects and acquisitions, and in syndicated or securitized financings and refinancings;
- Major corporations, REITs and other entities in all industries in mergers, acquisitions, divestitures, restructurings, financings and public offerings; and
- Domestic and foreign investors, such as REITs and pension and investment funds, in the acquisition, disposal, joint venturing, structuring and offering of investments in the industry.

Fantastic at delivering a comprehensive approach and successfully bringing transactions to market.

Chambers Global 2009

We advise on every type of major real estate development, including commercial/retail, office, hotel, entertainment, industrial, multi-family residential, and mixed-use. We have particular expertise in handling all aspects of large, complex construction transactions, bulk real estate portfolios and restructurings and in the establishment of investment funds and joint ventures. Our Real Estate Group works closely with our environmental practitioners to ensure integrated and responsive service on all transactions.

The excellence of our Real Estate Group is consistently recognized in important industry surveys. The *Canadian Legal Expert Directory* recommends the group in each of Canada's major real estate markets: Toronto, Montréal, Calgary and Vancouver and lists four key partners, drawn from all four offices, as among Canada's best. Several of our members are also listed in *Euromoney's Guide to the World's Leading Real Estate Lawyers* and in Practical Law Company. Chambers Global's *The World's Leading Business Lawyers* also endorses the real estate practice of Stikeman Elliott while *The Best Lawyers in Canada* lists four of the Group's practitioners drawn from our Toronto and Vancouver offices.

The Real Estate Group's international network including London, New York and Sydney, reflects our commitment to serving our real estate clients, whether based in Canada or elsewhere, in an increasingly global industry. International clients find us knowledgeable and helpful on appropriate structures for non-residents, the Canadian income tax treatment of non-residents, the *Investment Canada Act*, the *Competition Act* and other legislation and regulations directed at foreign activity in the Canadian economy and off-shore acquisitions of Canadian real estate.

The ability to draw on the outstanding skills of our real estate practitioners across Canada and around the world, as well as lawyers with expertise in such related areas as tax (structuring), banking (financing and regulatory compliance), environmental, municipal (land use, permitting and approvals), insolvency and litigation (liens and liquidated damage claims), allows us to provide clients with seamless, integrated service on even the largest and most complex transactions.

The Canadian Legal Lexpert Directory recommends the group in each of Canada's major real estate markets: **Toronto, Montréal, Calgary and Vancouver.**

Expertise

Our experience with all aspects of municipal, land use and development, allows us to offer comprehensive services to clients, including:

Real Estate Development and Planning

- Land acquisition and assembly
- Advice as to choice of investment vehicle and structure
- Advice as to pre-development options and strategy
- Coordination of all aspects of the planning and development process, including dealing with government and public agencies, assisting in obtaining regulatory approvals, and representing clients before administrative tribunals and municipalities
- Advice to municipalities on general municipal law matters, including municipal financing and licensing

Acquisitions and Dispositions of Commercial Real Estate

- Purchases and sales of retail, office, hotel, industrial, research and development, recreational and multi-occupancy residential properties
- Purchases and sales of businesses of which real estate is a material asset
- Advice as to choice of investment vehicle and structure
- Analysis of leases and other property contracts, investigating regulatory compliance, performing title searches and reviewing and advising on engineering and environmental audits
- Resolution of disputes arising from the purchase, management and sale of real estate or businesses with real estate holdings

Real Estate Financing

- Acquisition, construction and permanent financing, from both the lender's and the
- Advice as to the choice of investment vehicle and structure, and assistance with due diligence matters, including financial reviews
- Drafting, negotiation and implementation of loan and security documentation
- Resolution of disputes arising from the financing of real estate

Distressed Real Estate

- Advice to receivers and liquidators on the sale of distressed real estate, assets and/or loans; drafting and negotiation of agreements of purchase and sale; and ancillary documentation for distressed real estate
- Advice on and drafting of all documentation with respect to financing the purchase of distressed real estate
- Advice to lenders, receivers, monitors, governments and others in matters arising from work-outs and insolvencies, including assisting in preparation and implementation of work-out strategies and advice with respect to bankruptcy and insolvency matters
- Enforcement of security, including private and court-appointed receivers, powers of sale, foreclosures and judicial sales and other court proceedings required to maximize recoveries

Construction Matters

- Drafting and negotiation of construction contracts
- Construction financing, from both the lender's and the borrower's perspective
- Litigation involving construction lien matters, delay claims and bonding claims, and liquidated damages

Commercial Leasing

- Retail, office and industrial leasing, from the landlord's or the tenant's perspective
- Assistance in negotiating offers to lease and tenant inducement packages
- Advice on landlord-tenant disputes arising during the term of a lease or upon its termination

MUNICIPAL AND LAND USE GROUP

The Municipal and Land Use Group at Stikeman Elliott is uniquely positioned to help clients address issues in dealing with municipal authorities in respect of developments and planning. The group's work in the municipal sphere spans a wide range of activity, encompassing both the traditional involvement of legal advisers in the areas of land use and development and clients' more recent need for business and financial advice. The group's reach is complemented by practitioners with specialized knowledge of land development and zoning, real estate, construction, public-private partnerships and project finance, as well as expertise in the energy, hospital and healthcare, hospitality, and transit industry sectors.

Services

Our experience with all aspects of municipal, land use and development, allows us to offer comprehensive services to clients, including:

Municipal Financing, Licensing, and Restructuring/Privatization

- Providing advice on gaining access to financial markets, on the new finance rules and on structuring public/private financing, including taxation advice.
- Advocacy and opinion work related to municipal licensing disputes.
- Advising on governance structures for joint municipal ownership of water/wastewater facilities and other such services.

Land Use Permits and Approvals

- Providing pre-development opinions and strategic processing advice to crystallize real estate development potential.
- Coordinating and obtaining all *Planning Act* land use approvals such as official plan amendments, rezoning, site plan approvals, plans of subdivision and condominium, consents, and minor variances. Past experience includes work on behalf of the provincial government, local governments, developers and other proponents for projects in the following areas:
 - Residential:** projects ranging from mixed-use and high density housing to public housing and single family dwellings, including urban renewal projects and new community developments;
 - Industrial:** various projects including brownfield redevelopment, light and heavy manufacturing, warehousing, and independent power production facilities;
 - Aggregates:** mines and gravel quarries;
 - Commercial:** all formats ranging from retail warehousing and office/commercial subdivisions to shopping malls and hotels;
 - Institutional:** from hospitals and churches to museums and school expansions; and
 - Recreational:** from private boathouses to NHL arenas and NBA stadiums.
- Negotiating and obtaining all necessary permits and approvals from all levels of government and agencies, including Ministry of the Environment, Ministry of Energy, Ministry of Natural Resources, Ministry of Transportation, Ministry of Municipal Affairs and Housing, area municipalities and conservation authorities.
- Consulting with government authorities, professional consultants, the general public, and public interest groups as well as developing and enhancing relationships with municipal government and staff.
- Negotiating subdivision, cost sharing, condominium, site plan, heritage and agricultural easement, pre-development and development agreements, levies and development charges.
- Presentations before general public meetings, municipal planning committees, Councils, Committees of Adjustment and Land Division Committees.

Formal Defence

- Emphasis on negotiation based on sound planning principles and common interest resolution rather than drawn-out adversarial hearings.
- Acting for government (federal, provincial and municipal), corporations and landowners before administrative tribunals and the courts to appeal and defend municipal decisions or defend a position upon appeal by government agencies, members of the public and public interest groups.

Environmental & Compliance

- Environmental review of proposed acquisitions and financings, environmental assessment work and municipal undertakings, including sewage, water and landfill projects and general environmental opinion work.
- Providing advice with respect to due diligence investigations for the purchase, sale and lease of real estate, commercial lending and corporate financing.

Stikeman Elliott's hallmark is innovative legal advice that works in the real world. Getting results in the municipal sector and the successful implementation of any property development project or approval requires skilful maneuvering within a maze of players and

quasi-governmental, provincial and federal legislation. By giving constant attention to the evolution of legislation and political matters affecting the municipal and planning sphere, Stikeman Elliott offers clients strategic, results-oriented advice.

Governments and Municipalities

With our diverse practice experience, including extensive work for governments on privatization and private-public partnerships, we are able to employ creative, business-oriented solutions to the novel problems facing municipalities. We are fully committed to understanding our municipal clients' needs and the legal environment they face, responding quickly and professionally, and dedicating the resources needed to solve problems. We are able to assist municipalities with their increasing needs to:

- Develop strategic approaches to delivering both existing services and those for which municipalities will have increased responsibility;
- Explore a variety of new delivery mechanisms, including amalgamation, privatization and outsourcing;
- Access financial markets and understand new rules governing municipal finance; and
- Design new assessment regimes in light of current value assessment and increased flexibility in municipal taxation.