IMLA

# Municipal Lawyer

THE JOURNAL OF LOCAL GOVERNMENT LAW

MAR APR 2024
VOL.65 NO.02



## Public Good Meets Private Property: the Hydra-Headed Takings Clause

Page 10

OFFICERS
**President**
**Rose Humway-Warmuth**
City Solicitor
Wheeling, West Virginia
**President Elect**
**Jeffrey Dana**
City Solicitor
Providence, Rhode Island
**Immediate Past President**
**Lori Grigg Bluhm**
City Attorney
Troy, Michigan
**Treasurer**
**Susana Alcala Wood**
City Attorney
Sacramento, California
**General Counsel and Executive Director**
**Amanda Karras**
International Municipal Lawyers Association
Rockville, Maryland
**Board Of Directors**
**James R. Benjamin**
County Attorney
Baltimore County, Maryland
**Shauna Billingsley**
City Attorney
Franklin, Tennessee
**Alan Bojorquez**
City Attorney
Bastrop, Texas
**Beth Anne Childs**
Town Attorney
Bristow, Oklahoma
**Bradford Cunningham**
Municipal Attorney
Lexington, South Carolina
**Renee Garcia**
Acting City Solicitor,
Philadelphia, Pennsylvania
**Arthur Gutekunst**
Sr. Assistant Corporation Counsel
White Plains, New York
**Nina R. Hickson**
City Attorney
Atlanta, Georgia
**Brian Loewen**
Director of Legal Services
Lethbridge, Alberta
**Wynetta Massey**
City Attorney
Colorado Springs, Colorado
**Paige Mims**
City Attorney
Plano, Texas
**Morgain Patterson**
Director of Municipal Law & Training
Kentucky League of Cities
Lexington, Kentucky
**Kimberly Rehberg**
City Attorney
Durham, North Carolina
**Todd Sheeran**
City Attorney
Herriman, Utah
**Amanda Stanley**
City Attorney
Topeka, Kansas
**Jennie Granahan Tarr**
Chief Assistant County Attorney
Hillsborough County Hospital Authority
Tampa, Florida
**Nancy Thompson**
City Counselor
Columbia, Missouri
**Randall Van Vleck**
Town Attorney
Kirtland, New Mexico
**Wendy Walberg**
City Solicitor
Toronto, Ontario
**Jeannine Williams**
Chief Assistant City Attorney
St. Petersburg, Florida

# CONTENTS

MARCH / APRIL 2024


## *RAHIMI*: THE CHALLENGES OF SECOND AMENDMENT HISTORY AND TRADITION

*By: Ravinder Arneja, IMLA Associate Counsel*

The Supreme Court recently declared that constitutional questions are to be analyzed through the societal lens in effect when that seminal document was written. A current firearms case illustrates the complexity of applying Eighteenth Century norms in a contemporary context. An opinion later this Term should provide further insights into the Court's "history and tradition" jurisprudence.

**PAGE 6**

## PRIVATE PROPERTY AND PUBLIC GOOD: THE HYDRA-HEADED TAKINGS CLAUSE

*By: Erich Eiselt, IMLA Deputy General Counsel and Director of Legal Advocacy*

America's founders enshrined in twelve words the principle that private property may not be taken for public use without just compensation. That tenet continues to spawn ever-increasing debate, challenging the meaning of property, the parameters of a Taking, and the character of use. Local governments are at the epicenter of that conflict.

**PAGE 10**




## DEPARTMENTS


### 20 DAY IN THE LIFE
**Ditching Pinstripes for Paradise**
*By: Avery Morris, IMLA Editorial Staff*
An interview with Victoria J. Takayesu, Corporation Counsel, Maui County, Hawaii.

### 22 AMICUS
**Low Profile, but High Impact on Main Street**
*By: Amanda Karras, IMLA Executive Director and General Counsel*
The Supreme Court's local government cases.

### 24 LISTSERV
**Looking to the Second Act**
*By: Brad Cunningham, Municipal Attorney, Lexington, South Carolina*
Knowing when and how to leave the profession.

### 28 INSIDE CANADA
**Renovictions and Tenant Displacement**
*By: Monica Ciriello, Director of Municipal Law and Licensing Compliance, City of Hamilton, Ontario*
Hamilton's by-law addressing "Bad Faith" evictions.

### 30 INTERNATIONAL
**Local Government Lawyers in Italy**
*By: Avv. Antonella Trentini, National President and National Secretary, Unione Nazionale Avvocati Enti Pubblici*
A study in duality.


## STAFF


| EXECUTIVE EDITOR | EDITOR | EDITORIAL STAFF | ART DIRECTION AND PRODUCTION | MARKETING |
|---|---|---|---|---|
| Amanda Karras | Erich Eiselt | Avery Morris | Trujillo Design | Caroline Storer |


Views appearing in *Municipal Lawyer* are those of the authors. Publication of articles in this magazine does not reflect a direct or implied endorsement of an author's views. © Copyright 2024 by the International Municipal Lawyers Association (IMLA). All rights reserved. IMLA is a non-profit professional association of municipal lawyers from across the United States and Canada, offering its members continuing legal education courses, research services, litigation assistance on amicus briefs and an information-sharing network in the field of municipal law. *Municipal Lawyer* is IMLA's membership magazine, published bi-monthly. For membership information contact: IMLA, 51 Monroe Street, Suite 404, Rockville, Maryland 20850, phone: (202) 466-5424, or e-mail: info@imla.org. Contributions of articles are welcome; email eeiselt@imla.org. *Municipal Lawyer* reserves the right to refuse or edit manuscripts submitted for publication.

# INSIDE CANADA

*By:* MONICA CIRIELLO,
*Director of Municipal Law and Licensing Compliance, City of Hamilton, Ontario*

## Renovictions and Tenant Displacement: Hamilton's By-law Addressing "Bad Faith" Evictions

**Background:** The City of Hamilton, like many municipalities across Canada and the United States, is experiencing a housing affordability crisis, with average market rents far outpacing inflation over the last several years. This has significantly impacted long term tenants in rent-controlled units; as their rents remain below current market levels, there is a significant economic incentive for landlords to induce tenants to move out so that they can increase rents on vacated units to market levels.

Hamilton's ageing housing infrastructure contributes to tenants' vulnerability to bad faith evictions, commonly referred to as "renovictions." Over the past decade, Hamilton has lost almost 16,000 rental units that had rent below $750/month (affordable for a household with an income of $30,000/year). Many of these units still exist, but rents have increased due to inflation, vacancy decontrol, or renovation and above-guideline rent increases/evictions – "renovictions." In addition to rental units found in purpose-built apartment buildings, Hamilton has approximately 40,000 rental units located in single detached structures, townhouse/row housing, or duplexes. These units are also at highest risk of being lost to the rental market through private sale to new owners who may utilize the property for personal use – a situation that is overwhelmingly difficult to address at the municipal level.

**Provincial Legislation: *Residential Tenancies Act***

In Ontario, the *Residential Tenancies Act*, 2006 S.O. 2006, c. 17 (*RTA*) is in place to regulate disputes between landlords and tenants. It allows landlords to issue an "N-13," which is a notice to terminate a tenancy because the landlord seeks to make repairs or renovations to its rental unit that cannot be completed while the tenant is continuing to live in the unit. If an N-13 is issued, section 53 of the *RTA* protects tenants from "permanent eviction" by giving the tenants 120 days to determine if they want to re-occupy the rental unit after the completion of the repairs or renovations, at a rate that is no more than what the landlord could have charged if there had been no interruptions to the tenant's tenancy. The *RTA* makes no provision for any short-term accommodation for tenants who exercise their right of first refusal.

Under the *RTA*, when the repairs and renovations proposed by the landlord are "voluntary," tenants who do not wish to return to the rental unit are entitled to compensation or an alternative rental unit, meaning that the landlord can increase the rental price by re-renting the unit to another tenant at a higher rent at the completion of the repairs or renovations. This legal justification for eviction (repairs or renovations) creates a legal opportunity for those landlords who, in bad faith, wish to increase their rent by evicting a tenant in a rent-controlled unit with the hope that such tenant does not return.

As this situation exists in provincial legislation affecting tenancies across the Province, the issue of renovictions is not a Hamilton-only problem; not only is it an issue in every Ontario municipality where there are long-time tenants that are paying significantly lower rents than the current market rent levels in a community, but it is a problem in many other Canadian provinces and American states with similar residential tenancy legislation. Importantly, no municipal jurisdiction has found a "silver bullet" to solve what is effectively a problem born out of the real estate market and gaps in provincial or state legislation. Instead, municipalities that aim to address renovictions generally employ multiple methods simultaneously, involving a variety of policies and programs across a number of municipal divisions and the participation of civil society organizations that provide tenant support.

It is important to note that not all instances of tenant displacement due to renovation are completed in bad faith. In some cases, vacant possession is required to maintain the quality of residential

*Continued on page 32*



**Monica Ciriello** is the Director of Municipal Law and Licensing Compliance at the City of Hamilton, where she provides legal and policy leadership for a multi-functional workforce. Monica holds many professional designations in Canada and the United States, having practiced as a municipal and planning lawyer, mediator, and adjudicator. She has contributed to legal and policy lectures at McMaster University and Western University, as well as a monthly Canadian law column with IMLA since 2013. In her spare time you can find her hiking with her husband Greg and goldendoodle George.

units. However, in all cases, tenants have the right to return to the unit once repair or renovation are completed at the same rent as they had been paying prior to eviction, yet many barriers exist that prevent tenants from being able to do so.

**Bad Faith Evictions or "Renovictions"**

A "renoviction" is most often defined as a situation where a tenant is formally evicted through the provincial legal process prescribed in the *RTA*. It is initiated when a landlord issues a tenant an N-13 notice of eviction or it may occur informally when a tenant is evicted outside the proper legal process, because the landlord needs vacant possession to make repairs or renovations to the rental unit. Situations where a tenant is driven out of their home because the repairs and renovations are making their home uninhabitable, and situations where a tenant is driven out of their home as a result of severe disrepair that makes their home uninhabitable are not technically renovictions because they are not being driven by an N-13 notice, but they have the same result, that being displacement of the tenant.

**Hamilton's Initiatives to Address Renovictions**

To address these issues, Hamilton will be implementing the "HARP": Hamilton Apartment Rental Program. This program comprises of three separate but interconnected new initiatives to address renovictions, tenant displacement and property standards in Hamilton. HARP is made up of a permanent Tenant Support Fund, a Safe Apartment By-law and the first in Ontario Renovation Licence and Relocation By-law.

***Tenant Support Fund***

The Tenant Support Fund is a program designed to provide legal assistance to tenants and will fund the Hamilton Community Legal Clinic to increase its capacity to support tenants beyond their provincially-funded service levels.

***The Safe Apartment Buildings By-law***

The Safe Apartment Buildings By-law will help maintain existing building standards and improve substandard building conditions throughout Hamilton. The objective is to contribute to reducing renovictions as a long-term outcome, as buildings would be required to be kept in a state of good repair and the likelihood of requiring a renovation with vacant possession would be reduced.

The By-law will apply to an estimated 858 buildings in Hamilton which makes up approximately 47,816 units. Enforcement will be proactive in terms of inspecting and evaluating registered properties, and reactive when responding to complaints submitted relating to interior property standards issues. Outside of the evaluation process, officers may attend proactively at their discretion.

This By-law will come into effect in January 2026, with all 858 Apartment Buildings evaluated and inspected by September 2027.

***The Renovation Licence and Relocation By-law***

The first in Ontario Renovation Licence and Relocation By-law was drafted to fill gaps in the *RTA*, taking a reasonable and complementary approach to the *RTA*, balancing the pressing local issue with the overall responsibility of the province to govern landlord and tenant matters.

The By-law accepts that a local government cannot prohibit a landlord from issuing an N-13 under the *RTA*, however a City can use it as the starting point for obtaining a renovation licence.

Under the By-law, within 7 days of issuing an N-13, a landlord must submit an application to the City for a renovation licence. The application shall include:

1. The building permit;
2. A report from a professionally designated engineer or other person with requisite qualifications, stating that vacant possession is required;
3. A copy of the N-13 that was issued to the tenant; and
4. Confirmation that a Tenant Rights and Entitlement Package has been provided to the tenant.

Furthermore, if a tenant does choose to exercise the right to re-occupy the unit following the repair or renovation, under the By-law the landlord is required to make arrangements with the tenant for the duration of the renovation.

An "arrangement" is either a:

1. Temporary comparable accommodation during the duration of the renovation; **or**
**2.** Compensation in the amount equal to the difference between the rent rate currently paid by the tenant for the rental unit being renovated and the average market rent outlined by the Canada Mortgage and Housing Corporation (CMCH).

If the landlord and tenant are unable to make arrangements in accordance with the By-law, a landlord may apply to the City for an exemption to the arrangement provision of the By-law to obtain a renovation licence notwithstanding.

Enforcement of the By-law will be based on a predominantly reactive approach, as officers must receive either a formal complaint from a tenant who has been or may be issued an N-13 notice or be in receipt of an application for a Renovation Licence. Officers will use their discretion to issue Orders to obtain compliance, and fines may follow for non-compliance.

This By-law will come into effect on January 1, 2025.

**Implementation**

The Hamilton Apartment Rental Program was approved by City Council on February 15, 2024 and will roll out consecutively, starting with the Tenant Support Fund in 2024, the Renovation and Relocation By-law in 2025, and the Safe Apartment By-law in 2026. The annual cost of the program is approximately $1.3 million, and 33 new full-time positions will be hired between 2024-2026 to administer and enforce the program city-wide.