

Erosion / Siltation: Municipal Responsibility

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Overview

- Roles, Responsibilities, Risks
- Legal Framework
- Working Together

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Roles, Responsibilities, Risks

- For Conservation Authorities, Municipalities and Their staff
 - Construction of Works
 - Operation of Works
 - Regulation of Private Development

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Construction / Operation

- CA / municipality like anyone else
- Your works, your responsibility, civil and criminal
- BUT, should you be liable when a private developer does the wrong thing?

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Legal Framework

- Statutes
- Criminal Liability
- Civil Liability

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Statutes

- *Fisheries Act*
- *Ontario Water Resources Act*
- *Environmental Protection Act*
 - 14 / 17 / 18; Part X
- *Municipal Act, s.142*
- *Planning Act*
- *Conservation Authorities Act*

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Statutes - NOT

- *Topsoil Preservation Act*
- Repealed, effective January 1, 2003.
- Bylaws can remain in effect until 2005 if not amended
- But: some bylaws create personal risk

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Criminal liability

- *Ontario Water Resources Act*
 - s.30 – “cause or permit” a discharge that pollutes water
- *Fisheries Act*
 - s.35 - carry on a “work or undertaking” that harms fish habitat

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Who Commits the Offence?

- Who “causes or permits”?
- Who carries on a “work or undertaking”?
- “influence or control”

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Who has “control”?

- Developer
- Developer’s engineer
- Contractor

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Who Else?

- Conservation authority?
- Municipality?
 - As land use regulator?
 - Because accepts land dedication?
 - Because silt runs through municipal land?
 - Because municipality inspects developer’s works?

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Example: *R. v. Barrie*

- *s. 35 Fisheries Act*
- charged: municipality, engineer, developer, three individuals
- the arguments
- the result

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Civil Liability

- The Tidal Wave
- The Raft
- The Hole in the Raft

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Civil liability: The tidal wave

- Liability for failure to enforce
- *Kamloops v. Neilson* - SCC, 1984
 - City bylaw on foundations
 - Builder put foundations on fill
 - City issued stop work order
 - Builder filed proper remedial plan
 - Builder didn't comply
 - City did nothing further

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Civil Liability: The tidal wave

- *Scarborough Golf & Country Club v. Scarborough* – OSC, 1986
 - Development increased hard surfaces and runoff
 - City expanded storm water system
 - Storm water peaks were faster and higher
 - Causing erosion of creek banks through golf course

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Civil Liability: The tidal wave

- *Ingles v. Tutkaluk Construction, SCC, 2000*
 - Homeowner deliberately proceeded without building permit
 - Renovator covered footings before building department notified
 - Inspector did not force renovator to uncover footings

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Life Raft #1

- *Municipal Act, 2001 s. 449*
- Municipality cannot be sued for nuisance
 - in connection with the escape of water or sewage
 - from water works or sewage works
 - sewage works – facilities for the collection, storage, transmission, treatment or disposal of sewage
 - sewage “includes storm water and other drainage from land”
 - As of December 19, 1996

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Life Raft #2

- *Municipal Act, 2001* s. 450
- municipality cannot be sued in negligence
 - in connection with a discretionary power or function
 - if the action or inaction results from a policy decision

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Life Raft #3

- *Cooper v. Hobart*
- *Edwards v. Law Society*
- Policy reasons to limit expansion of the civil liability of regulators

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Holes in the Rafts

- Re s. 449:
 - Does “sewage” include silt?
 - Is a valley or stream a “sewage works”?

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Holes in the Rafts

- Re s. 450
 - Is control of erosion a discretionary power?
 - Is a decision to limit attempts to control erosion a policy decision?

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Holes in the Rafts

- Hobart, Edwards
 - We can't tell where the court will draw the line.

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Working Together

- Clear rules
 - What are the standards?
 - Who sets them and how?
 - Who enforces them?
 - Polluter pays
- Effective Enforcement
 - Barrie Pilot Project
- Predictable consequences

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Questions? Comments?

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