Responsibilities and Risk Management in a changing climate

Surviving the Perfect Storm
Managing municipal risk in light of climate change

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Clean Air Partnership Webinar
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Municipalities Response to Climate Change

- Voluntary adaptation
- Required mitigation
- Required adaptation
- Voluntary mitigation
Potential impacts

- Increasing precipitation
- Increased intensity of storms
- More frequent severe freezing/thawing cycles
- More frequent intense summer heat days
- Water level fluctuations
- Water quality and availability changes

- Increased costs
  - effects on physical assets
  - potential legal liability
  - significant driver to adapt
Finch Washout 2005
Floods of Summer 2013

Toronto

Photo courtesy of Tom Ryaboi

Calgary

Photo courtesy of the Canadian Press

Insurable?
2013 IPCC Report indicated increase in extreme weather and heavy precipitation throughout the century.
Jurisdiction to adapt

- Good Government
- Natural Person rights
- Statutory Requirements (OWRA, GLPA, LSPA)
- By-law/code/planning powers
- Implicit authority
Why adapt?

• Cost control and prudent planning
• Resilience
• Liability
• Insurance costs
Responsibility to Adapt

liability & climate

- Duties to provide services
- Accidents & municipalities
- The enterprising lawyer
Adaptation in Statutes

- Great Lakes Protection Act
- Lake Simcoe Protection Act
- Water Opportunities Act
- Ontario Water Resources Act

References to the need to adapt and plan for the changing climate. Providing anchors and impetus for municipal adaptation.
Negligence

• Injury to person(s) or property because another has failed to take reasonable care
  • Duty, Standard of Care, Causation, Foreseeability
• E.g.) flooding – if standard of care breached and reasonably foreseeable
• Who could be negligent?
  • Owner or occupier (including municipality)
  • Government entities
  • Engineers, architects and other design professionals
  • Contractors
• Defences
Class Actions

• A real and present threat – currently at least two major cases regarding flooding with municipal defendants:
  • City of Thunder Bay ($300M)
  • City of Mississauga ($200M)
• Uses traditional causes of action (e.g. negligence)
• Efficient and improved access to justice
• Representative plaintiff for similarly situated, defined class
• Common issues decided together
Settlement

- Certification often major hurdle to settlement
- If certified, settlement must be approved by Court
- Remember the contingency fee
- Examples
  - McLaren v Stratford - claimed $200 million, settled for $7.7 million.
  - City of Lloydminster, Saskatchewan - similarly sued after flooding, settled before certification
  - Ottawa – 1996 flood, settled before trial (City then sued expert), now being sued again for 2009 flood
Risk minimization

- Information accountability
- Review existing facilities/codes/by-laws/policies/plans
- Protect via integration into decision making
- Continuous review
Protect: ongoing decision-making

Costs must be viewed in light of potential future costs of repair, rebuilding, legal liability
Status quo has changed

- Legislative delays ≠ irrelevance
- Business as usual is changing
- Infrastructure, planning and processes should include adaptation
- Processes should build defences and show diligence
Thank you

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