

Responsibilities and Risk Management in a changing climate

Surviving the Perfect Storm

Managing municipal risk in light of climate change

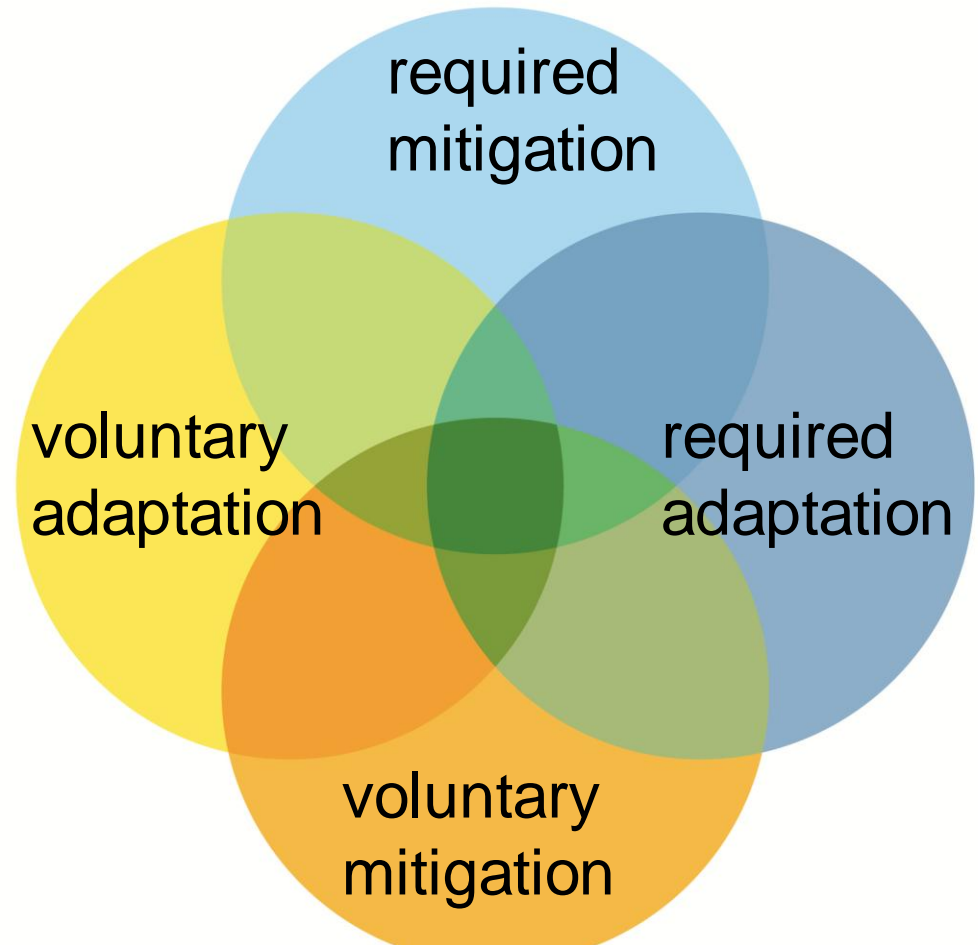
February 6, 2014

Clean Air Partnership Webinar

Laura Zizzo

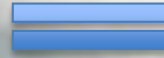


Municipalities Response to Climate Change



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



Photo courtesy of Jane-finch.com

Floods of Summer 2013

INSURABLE?

Toronto



Photo courtesy of Tom Ryaboi

Calgary



Photo courtesy of the Canadian Press

More to Come

2013 IPCC Report indicated increase in extreme weather and heavy precipitation throughout the century.

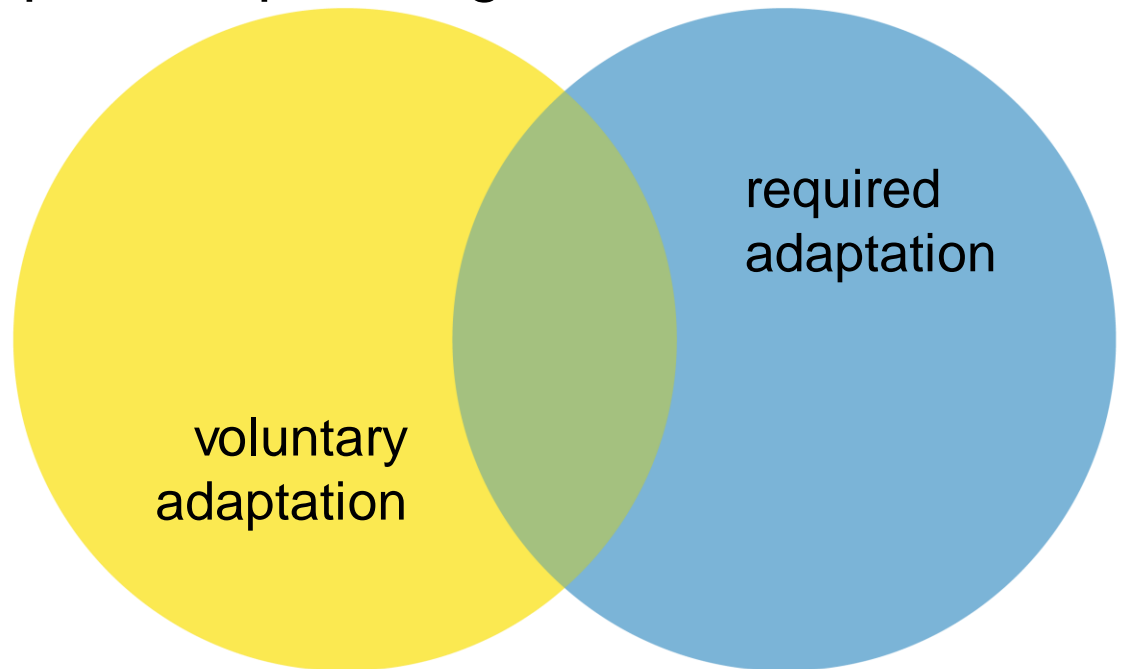


Jurisdiction to adapt

- 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

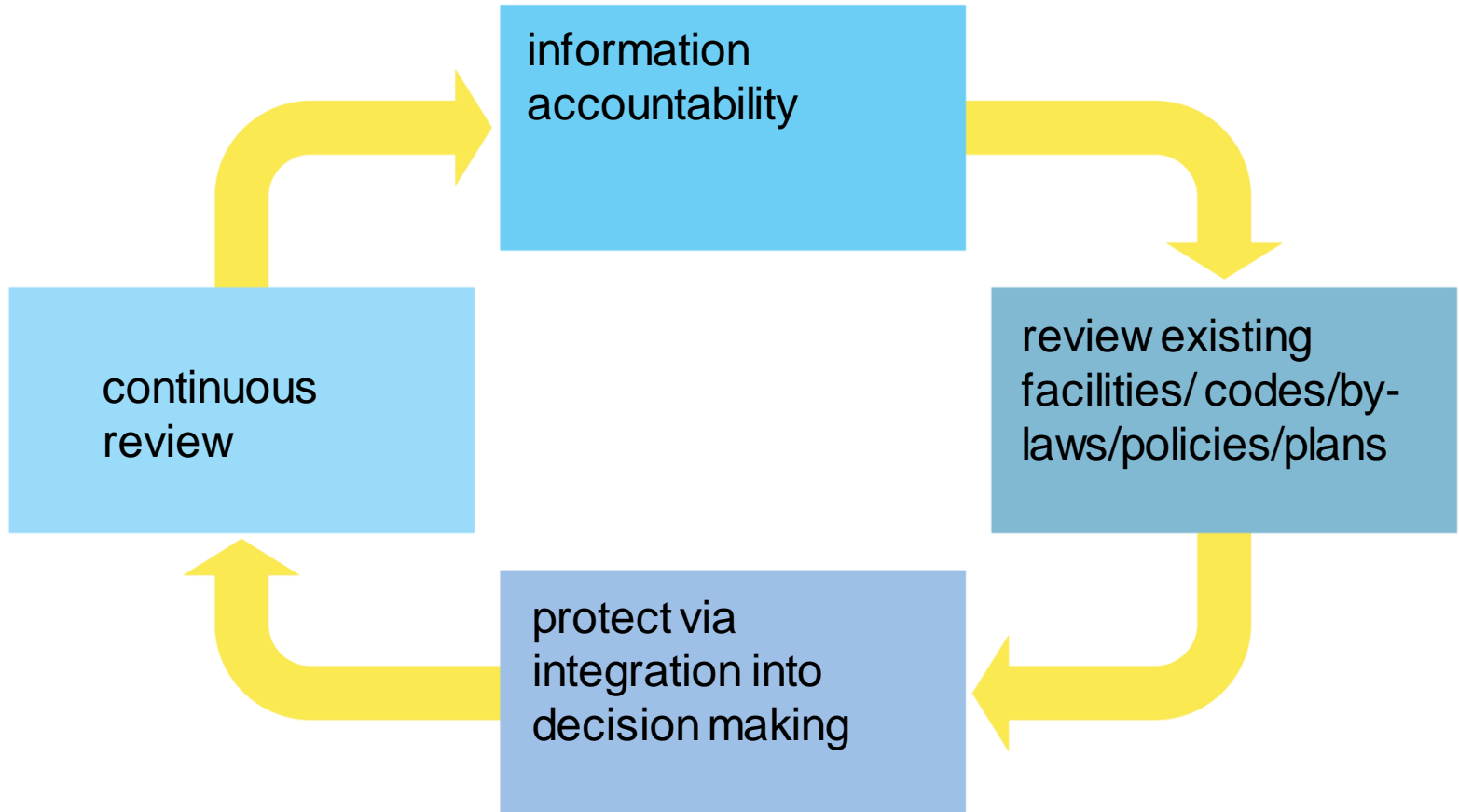
Class Actions

- 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

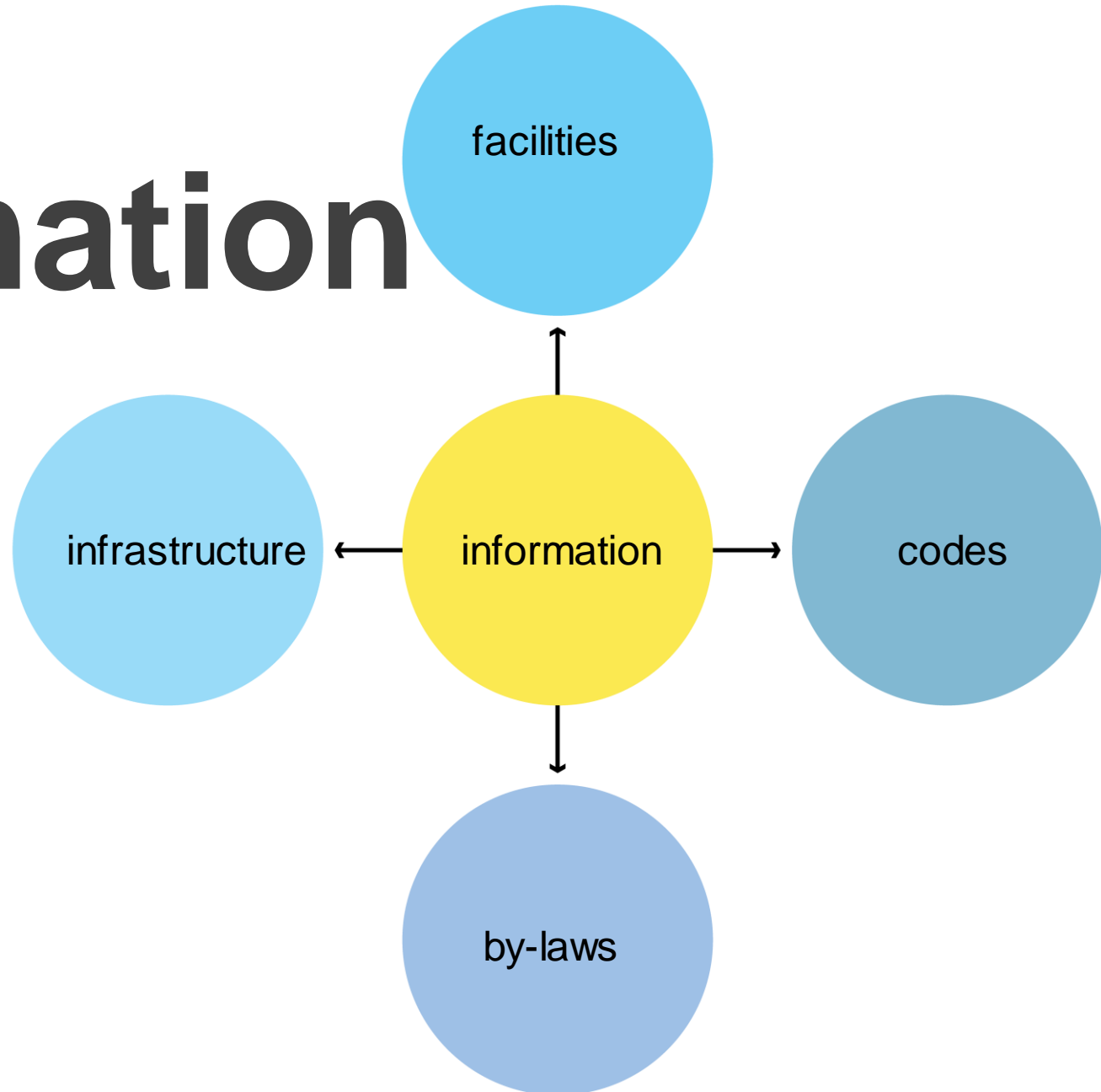
Settlement

- 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



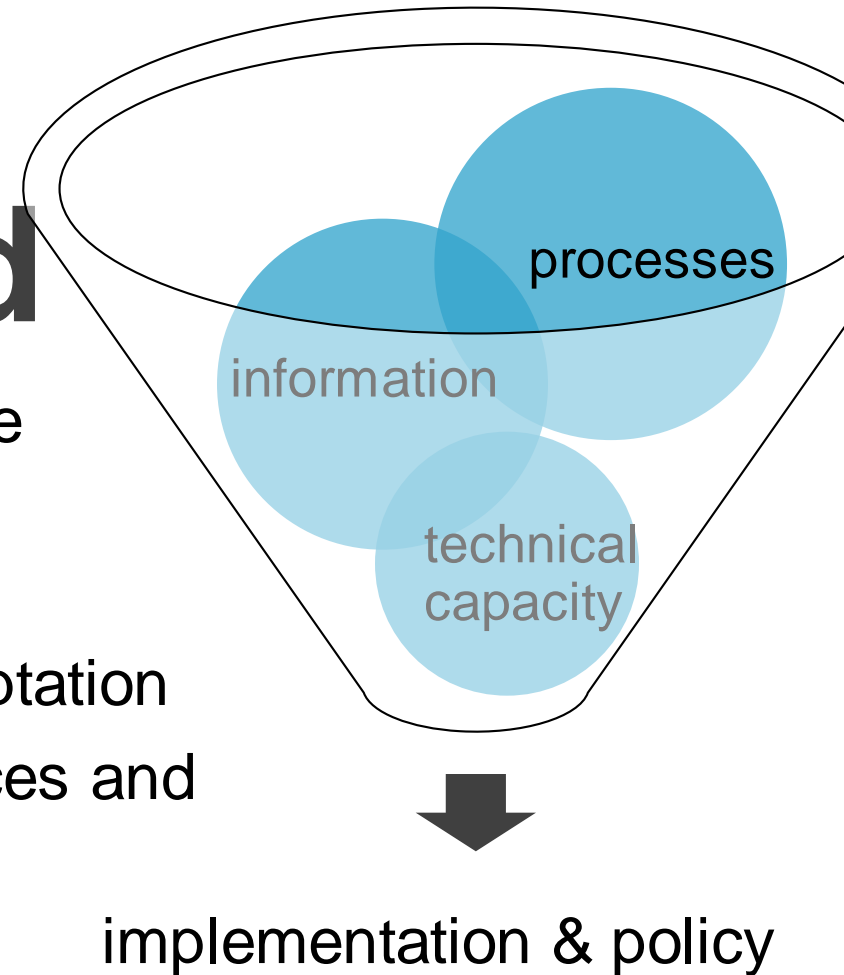
Protect: ongoing decision-making



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



implementation & policy

Thank you

www.zizzoallan.com

laura@zizzoallan.com

41-A Avenue Rd
Toronto
M5R 2G3

