

**COMMON LAW ASPECTS OF
WATERCOURSE MANAGEMENT
FOR PUBLIC BODIES**

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COMMON LAW ASPECTS OF WATERCOURSE MANAGEMENT FOR PUBLIC BODIES

INTRODUCTION

The theme of this paper is that it is important for public managers of lands and waters, and for public approval authorities to be aware of the common law in the area of riparian rights.

There are several common law actions that are important in riparian rights matters: particularly riparian rights, negligence, nuisance, Rylands v. Fletcher actions ("strict liability"), and trespass.

The issues that arise in these cases are legally complex, but extremely interesting, if you are involved in riparian management. What I have done today, is assemble a range of illustrative cases, mainly from the Ontario Courts over the past six decades. The cases that I propose to discuss are by no means comprehensive - there are many other relevant cases that I did not select. I have also focussed on the Ontario decisions, even though some of these cases were considered at the Supreme Court. You should know that the Supreme Court of Canada has issued dozens of cases in this area, especially at the turn of the last century, but continuing with reduced frequency to date. For a particular problem, you would of course want a legal opinion that considered the implications of those cases as well as cases from the other provinces.

The other thing that you should leave with today is an appreciation that despite the complex statutory system of distributing jurisdiction among municipalities, conservation authorities and provincial and federal agencies, the common law principles remain valid and highly relevant.

DEFINING RIPARIAN

One text¹ states that the word "riparian" is derived from the Latin word for "bank" and defines riparian water as "the water that flows in a defined channel having a source, bed and banks". This usually means water in lakes, ponds, rivers, streams, and creeks. However, when there are grey areas between riparian water and non-riparian surface or ground water, the courts may make a determination based on the specific case.

A riparian owner must own property that is bounded by riparian water.

¹Faita, M., Kohn, H., Kligman, R., Swaigen, J., Environmental Harm: Civil Actions and Compensation, Butterworths, 1996, p. 121

I will illustrate some of the interesting aspects of riparian management issues in public contexts through the selection of cases in point. Each of the cases raises diverse points and I will mention them as we go. We will therefore be considering some of the same torts in different contexts, which I think is helpful to you as well.

I've organized these cases chronologically, so we begin in 1945.

If you want the legal citations for any of these cases, I have left a copy of this paper with the organizers, or you can speak to me at the end of the session, or E-mail me at tmcclena@web.net.

JOHNSON V. TOWN OF DUNDAS [1945] O.R. 670-687, Mackay J. At Hamilton

The first of these cases was a 1945 case and involved the question of whether Municipalities can be liable for damages caused by municipal works like stormwater or drainage channels. The Court held that if the Municipality is going to artificially collect the rain and snow fall surface water, it must take due care through adequate means to prevent it from overflowing onto the premises of private owners. In this case, the Court found that there would have been flooding following an unusually heavy rain, regardless of the municipal works. But the municipality was still held liable because the works caused extra flooding, and its liability was for that excess.

McKIE V. THE K.V.P. COMPANY [1948] O.R. 398-419 McRuer C.J.H.C. at Sudbury and Toronto

This 1948 case remains good law for the common law riparian principles that it stated, although the specifics of the types of industries that can be held liable in nuisance must be considered in each case as a result of statutory provisions over the years since 1948.

The K.V.P. Company operated a pulp mill and discharged chemically contaminated woodfibre effluent to the Spanish River. A riparian owner, a tourist operator, brought an action in the Courts based on his riparian rights, and the Court affirmed the centuries old common law principle that an owner of riparian lands has a right because of that ownership, "to the flow of water through or by his land in its natural state".

If someone pollutes the stream or otherwise interferes with that right, the lower riparian owner may bring an action to Court for an injunction. It is especially interesting to note that the lower riparian owner does not need to prove damages in order to successfully bring an application for an injunction to the Court.

Judge McRuer also affirmed the principle that the fact that the defendant carries on a business (in this case a mill), important to the town, is immaterial to the plaintiff's right of action,

and similarly the economic effect on the defendant of the injunction is not relevant.²

There was also an action in nuisance because of smells in this case, since the smell interfered with the tourist business.

Although the common law principles in this case remain good law, and although I don't want to get into the statutory aspects too much, you should know about the government's response to this case, in 1950, when it passed *An Act respecting The KVP Company Limited*.³ That legislation amended the *Lakes and Rivers Improvement Act*, allowing a court to consider the public interest (like economic impact) before granting an injunction.

STEPHENS V. THE VILLAGE OF RICHMOND HILL [1956] O.R. 88-108 (Ont. C.A.), Laidlaw, MacKay and Gibson, JJ.A.

Once again, the statement of law in this case remains good law as common law. There will be a postscript again at the end of the discussion.

In this case, in 1955, on application by a riparian owner, the Ontario Court of Appeal held that the Village of Richmond Hill was not permitted to discharge effluent or storm overflow from its sewer system into the Don River. The Court relied on the principle that we saw above, that as a riparian owner, the plaintiff had a right to the water of the stream flow in their natural state, unpolluted. The Court therefore upheld a perpetual injunction that had been granted by the lower Court.

This case is of particular interest because the Court heard the defendants argue that they were entitled to a defence called "statutory authority". Their argument went that because two statutes - the Municipal Act and the Public Health Act - of the day both provided for the sewage works, the Village could not be held liable for a common law tort action arising out of the operation of those sewage works. There is such a defence as the defence of statutory authority, which remains valid today. However, in this case, the Court said that the municipality was not entitled to that defence for two reasons. The first was that the sections of the legislation that provided for the sewage works had not been complied with, and so they were not entitled to that defence. However, the Court went on to say that even if they had complied with those enabling statutes, the authority under those statutes did not empower the municipality to create a nuisance.

²There is a competing line of cases that do incorporate economic interests in the balance of convenience test that is applied before issuing an injunction. For a discussion of these cases, see Davidson, Peter, Private Remedies for Water Pollution in Ontario, 1991, Major Paper in fulfillment of degree requirements, York University, unpublished, (copy available at the Resource Library for the Environment and the Law, 517 College Street, Suite 401, Toronto)

³Brubaker, Elizabeth, Property Rights in the Defence of Nature, Environment Probe, Earthscan Publications, 1995, p. 72; Faieta et al, supra, footnote 1, p. 123.

Therefore, even if the statute authorized the sewage works and even if the statute was followed, the municipality was not allowed to carry out those sewage works in a way that would create a nuisance.

The postscript is that the government again passed a law specifically to deal with and counter this court ruling, in the *Act to Amend the Public Health Act* (1956) and *An Act to Establish the Ontario Water Resources Commission* (1956).⁴ The first one expressly dissolved the injunction against Richmond Hill and a similar injunction that had been granted the same year against the City of Woodstock. The Court also deemed any sewage project approved by the Department of Health (later the Ontario Water Resources Commission assumed this jurisdiction), to be “operated by statutory authority”. This effectively ended any possibility of bringing a riparian rights action against a municipality for sewage works, at least where they were approved by the OWRC.⁵

I should mention at this point, that the protection against the common law that some particular industries have held is subject to the ongoing provisions of the legislation that responded to the Courts’ findings. As soon as such legislation is repealed or altered so as to remove that protection, or as soon as the legislation becomes inapplicable for other reasons, then the common law principles would prevail.

I should also add that there would be many industries and activities that would not have the specific statutory protection that pulp mills and sewage works have had, and therefore would be subject to the Courts’ findings as to the applicability of riparian rights principles and the applicability (or not) of the defence of statutory authority.

RE WALKER AND ATTORNEY GENERAL FOR ONTARIO [1971] 1 O.R. p. 151-190
Ontario High Court of Justice, Stark, J.

The next case in my selected list, is an interesting boundaries case, and I thought I would include it for you. This was a Quieting of Titles application, and concerned the issue of what was the boundary of a riparian lot located at the edge of Lake Erie. The Crown patent stated that the “edge of Lake Erie” was the boundary of the lot, but the issue arose as to whether that should be interpreted to mean the water’s edge or the high water mark. The Court outlined the fact that in Ontario the common law rule has placed the boundary between land and water at the water’s lowest mark. This rule has been in effect almost continuously except for a short period of time arising out of the *Beds of Navigable Waters Act* 1960. Therefore, the only way that the Crown can claim that it owns the space between the lands granted and the water’s edge is if the original

⁴Brubacher, *supra*, footnote 2, p. 86; Faieta et al, *supra*, footnote 1, p. 125-6.

⁵Legislation in 1986 further modified the applicability of the defence of statutory authority to sewage works, in the *Environment Enforcement Statute Law Amendment Act*, S.O. 1986, c. 68.

grant expressly reserves, by description or survey, that space. Otherwise, the riparian owner owns the land to the low water mark.

Another interesting point to note arising in this case is that vacant Crown lands and beaches cannot be acquired by adverse possession because vacant Crown lands are exempted from the Limitations Act.

GAUTHIER V. NANEFF [1971] 1 O.R. 97-104, Ontario High Court of Justice, Dunlap, Co.Ct.J.

This case illustrates another aspect of the common law rights that riparian owners hold. The principle that a riparian owner "is entitled to the water of his stream in its natural flow without sensible alteration in its character or quality" was interpreted to allow a riparian owner to obtain an injunction against the officers of an unincorporated club (a Rotary Club) and against the City of Sudbury to prevent them from holding a speed-boat regatta. The injunction was based on a finding from the Court that there was a reasonable apprehension that the regatta would result in the diminution of the purity, wholesomeness and potability of water in the lake.

Once again, the Court illustrated in this case the principle that the economic interests of the defendant do not act to prevent the injunction. The balance of convenience test that the Courts apply when granting injunctions was not swayed by the fact that the Rotary Club and the municipality had financial commitments arising because of the regatta.

PUGLIESE V. NATIONAL CAPITAL COMMISSION ET AL; THIRD PARTIES V. REGIONAL MUNICIPALITY OF OTTAWA CARLETON (1977) 17 O.R. (2d) 129 (Ontario Court of Appeal), Arnup, Houlden, Howland, JJ.A. (Appeal to the Supreme Court of Canada dismissed February 20, 1979 at [1979] 2 S.C.R. 104)

I wanted to include this case in today's summary, since it is one of the most significant nuisance cases from the Courts, and remains a leading case in this area. This case involved subsurface water and permits to take water in a case of loss of support of water. The National Capital Commission was pumping subsurface water in order to keep the area dry enough to construct a collection sewer. Because the dewatering lowered the water table in the area, the soils were affected and settlement occurred causing cracking and faulting to the foundations of the affected homes. This case was to determine questions of law as to the causes of action that the facts did and did not support, before the matter actually proceeded to trial.

The Court held that the old common law rule that gives a land owner the absolute right to take or interfere with flow of underground water must be modified to be applied with reference to the modern law of negligence and nuisance. Therefore, where an owner takes underground water but that taking amounts to negligence or nuisance vis a vis a neighbour, the owner may be liable. The Court also held that risk to the neighbours in a situation like this one is foreseeable and so the

owner who is taking the water has a duty of care to the neighbours. The Court further held that an independent action in nuisance was available. In determining whether the water taking has constituted a nuisance, the Court stated that the issue was not merely whether the owner has made reasonable use of his own property, but whether that use is reasonable given that he has a neighbour. Reasonable care is not a defence to a nuisance action, so if the National Capital Commission and other defendants subjected the plaintiffs property to damage "beyond that which they could reasonably be expected to tolerate", the plaintiffs were entitled to proceed to Court based on nuisance.

It is also of interest to this audience to take note of the final finding of the Court, that is, that the plaintiffs did not have a right of action arising out of the breach of the terms and conditions of the water taking permit itself. The Ontario Water Resources Act did not provide a civil remedy and the duty of compliance with the permit was a duty owed to the public as a whole and so no right of action arose by the plaintiffs. (You should note that this aspect of the Court's finding would now be altered by the *Ontario Environmental Bill of Rights* which does allow for certain remedies in the face of a public nuisance.)

BUYSSE V. TOWN OF SHELBURNE (1984) 45 O.R. (2d) 501; 6 D.L.R. (4th) 734 (Ont. Div. Ct.), Osler, Craig and Montgomery JJ.

Public authorities should keep in mind that they are not immune to common law actions just because they are constructing works that are for the benefit of the community; nor because they have a mandate to construct such works. A typical case illustrating this principle is this one against the Town of Shelburne.

In this case, pumps at a municipal pumping station failed and sewage backed into the plaintiffs' houses. The municipality was held liable to the plaintiffs in nuisance. There was no negligence, but the lack of negligence, you will recall, does not prevent liability in nuisance.

The Court stated the two main tests as to when there is an actionable nuisance, i.e. a nuisance that a plaintiff can take to Court:

- when it produces "material injury to property", or
- where it produces a "sensible personal discomfort".

The Court nicely stated the difference between liability in negligence versus liability in nuisance in a case like this. It said that nuisance is concerned with the result, but negligence is concerned with the conduct of the party.

One of the other issues in the case was whether one incident of damage to property may constitute a nuisance. The Court found that there is no requirement that the nuisance be continuous nor continue for a substantial period of time in order to be actionable. One incident may found an action in nuisance.

It is also important to note that the Court reiterated that it is not a defence to a nuisance action that the work was of "general benefit to the community".

This was another case in which the Court considered the application of the defence of statutory authority. Because the sewage works are authorized by the *Ontario Water Resources Act*, the municipality was prima facie entitled to assert the defence, but it did not succeed in the end on that defence because the Town of Shelburne failed to prove that the nuisance was the "inevitable consequence" of the authorized undertaking. The failure of the pumping station was found by the Court not to be an inevitable consequence of construction and operation of the sewage works.

PAWELLA V. CITY OF WINNIPEG (1984) 29 Man. R. (2d) 265 (Manitoba Queen's Bench)

I've included this case because it involved both a municipal defendant and a Rivers and Streams Authority defendant, and because the cause of action alleged against them both was based on an argument that the municipality ought not to have issued a building permit to a riparian owner, and that the Streams Authority ought to have intervened to prevent the building of the home.

The facts were that a building permit was issued to an owner of a river lot in 1959. At that time, the house was over 150 feet from the river. Over subsequent years, large portions of the lot broke away into the river and by the time of the action, the house was only 20 feet from the river.

There were two reasons that the Streams Authority was held not liable. The first was that the house was just outside of its statutory authority at the time, which extended for 150 feet from the normal summer water mark of the river. The other reason was that the Court held that the Authority was concerned with the flow of water in the channel itself, not with the safety and suitability of activities bordering on the river in themselves. The Court held that the Authority did not owe a private law duty of care to these plaintiffs.

The Court found that the municipality might owe a private law duty of care to the plaintiffs if it knew or ought to have known that the property was not suitable for its intended purpose of building a home. Their duty then would have been to either deny the permit, or at least communicate this knowledge to the owner. However, on the facts, the court found that in 1959 the municipality had no reason to suspect that the riverbank's instability was so serious as to make the property unsuitable for a building located 150 feet from the river at that time.

SCARBORO GOLF & COUNTRY CLUB V. CITY OF SCARBOROUGH (1986) 55 O.R. (2d) 193; 28 D.L.R. (4th) 321, (Ontario High Court), Cromarty J. (Upheld on appeal but varied by Ontario Court of Appeal, (1988) 66 O.R. (2d) 257; 54 D.L.R. (4th) 1; 1 R.P.R. (2d) 255 (Ont. C.A.); leave to appeal to the Supreme Court of Canada refused (1989) 37 O.A.C. 91n (S.C.C.)

This is an interesting riparian rights case holding the Municipality liable but the Metropolitan Toronto Conservation Authority free of liability.

The plaintiff golf course had operated since 1912 with a creek, the Highland Creek, running through a portion of the course. Up to 1946, occasional flooding of the creek caused minimal damage since the area was primarily agricultural and absorption through the soil dealt with most of the rain and snow fall in the area. After 1946, the area was rapidly urbanized, resulting in most of the area being impervious to water absorption. Since then, most of the rain fall was drained through storm sewers into the creek which had been widened and channelized in several locations outside of the golf club property.

The City of Scarborough controlled most of the land in the creek valley above the club; the conservation authority below the club. The City's actions caused the creek to become twice as wide and twice as deep, eroded the banks, and resulted in flooding of large parts of the course during heavy rainfall events. The golf course had to shorten some holes and decrease the width of several fairways, as the Court put it, "in strategic areas". The course which had been a championship course became increasingly unplayable.

On the part of the conservation authority, it began acquiring flood plain lands along the creek. Although it did not acquire the golf course lands, it did adopt an erosion control project on those lands, paid for by the golf course. The conservation authority's policy was stated as being for protection of streams and erosion control where acquisition was not feasible, and where those projects resulted in improvements on private lands, their policy was to require substantial contributions to the costs from the private owners.

I have dwelt a bit on the specifics of the conservation authority's policy because it was the fact that they stated and followed their policy that in part exempted them from liability in negligence. An important distinction is that they were empowered, but not required, to carry out public works. In the former case, the adoption and consistent carrying out of a policy in terms of how it will exercise its power may provide a defence.

Before I leave the conservation authority's responsibility, I should add that the court did find the authority negligent in breaching its statutory duty of care for not enquiring into whether the approvals of the city's works would have adverse affects in terms of flood control, pollution or conservation. However, despite this negligence, the Court found that the Authority's breach of its duty of care had not been proven to be the effective cause of the flooding and erosion. Nevertheless, the Court's finding that the conservation authority was negligent in its approval process is of considerable interest.

Turning to the City of Scarborough, the court found it liable based on the riparian owner's right to the natural flow, quantity and quality of the water in the stream. The court confirmed that an upper riparian owner has the right to natural drainage into the water course and a lower

riparian owner is obliged to accept that drainage. However, the drainage by the upper riparian owner must be reasonable and must not increase the volume by “artificial means”. The court held that the means used by the City were not “natural” nor “reasonable”, and found as a fact that they substantially increased the volume of water and this increase caused damage to the plaintiff golf course.

The nuisance action succeeded because the golf course proved both material injury and sensible discomfort. Once again, we see that the utility of the city’s conduct and the “general benefit to the community” did not avail as a defence to the City. Similarly, the defence of statutory authority failed, because although the *Municipal Act* authorized the City to pass by-laws for construction and maintenance of drains and sewers, it did not authorize the City to create a private nuisance. The *Ontario Water Resources Act* authority was not considered at trial, but the Court of Appeal stated that whether it would have provided a defence of statutory authority would have depended on the evidence, law and argument. We have seen other cases today where the *Ontario Water Resources Act* approval did not provide a defence of statutory authority. This issue remains a question of fact and law in each case where it arises.

The City’s liability was also found in negligence. On the facts as proven, the City knew of the direct and specific consequences that its system would have on the plaintiff when planning and constructing its system, and it protected parts of the creek under its control to prevent flooding and erosion, but not that of the plaintiff.

It is of interest that the Court found in this case that the “water course” was the channel in which the water normally or usually runs and did not include the flood plains. Therefore, the fact that the city’s actions caused the flood plains to flood was an interference with the golf course’s riparian rights. The Court went on, however, to say that even if the flood plains formed part of the water course, the city’s means of drainage were unreasonable.

There are a few implications from this decision that I might note. One is that those making land use decisions for lands located in valleys should be extremely cautious about allowing uses into the valley lands, even on flood plains, and even where the uses are perceived as usually compatible with the function of the flood plain lands. The second point is that if in another case, a Court does consider the flood plain to form part of the water course, then use of the flood plain for drainage might not be considered an interference with the riparian rights of the land owner. This would, of course, require evidence before the Court explaining the function of a flood plain and testimony that experts in the field do consider a flood plain to be part of the water course. I would also suggest that this decision illustrates the consequences of land use planning decisions that restrict natural water absorption across the landscape and rely almost exclusively on storm drainage systems, and to the extent that the decision encourages more “natural” methods of handling storm water, it is to be lauded. Finally, this decision illustrates the importance of planning across ownership boundaries in stream and river valleys. Differing responsibility, ownership and jurisdiction will not prevent possible liability by a public authority that proceeds

with a system of works. The consequences of its system should be considered and if there will be impacts, discussions with other owners and jurisdictions would be called for.

RE WHITE AND CORPORATION OF THE VILLAGE OF ROSSEAU (1995) 24 O.R. (3d) 826 (Ontario Divisional Court), Southey, Boland and Taliano, JJ.

I have included this case to illustrate the principle of accretion in the law of riparian rights. The common law principle is that "land gained by accretion accrues to the benefit of the riparian owner". Lands had been accreted moving the shoreline of Lake Rosseau to the west. The Village held a road allowance which included the original 66 foot unopened shore road allowance plus a strip of land of varying width formed by accretion. In this case, the riparian owner was the Village of Rosseau, and the additional lands could be considered to be part of the road allowance.

RIDEAU FALLS GENERATING PARTNERSHIP V. OTTAWA (CITY) [1997] O.J. No. 2794 (Q.L.) (Ontario Court General Division), Morin, J., July 2, 1997.

This is a recent decision which illustrates the continued importance of the common law principles pertaining to riparian lands and watercourses. The plaintiff was the Rideau Falls Generating Partnership, and as its electrical power plant was located on riparian land, it was entitled to the riparian rights. The Court held that riparian rights are available to leasehold interests. As a riparian rights holder, the plaintiff was entitled to have the water flowing over the Rideau Falls flow into the Rideau River. The City interfered with that right in 1992 and 1996 by using dynamite to dislodge and remove significant amounts of ice. The City's purpose was to prevent flooding of the Rideau River. However, the result was a significant accumulation of ice at the bottom of the Falls and water entered the plant. The plaintiff claimed damages for loss of income and costs of repairs. Once again, the Court held that the City was not entitled to a defence because of the necessity of flood control measures.

The Court also upheld liability based in nuisance as the flooding to the plant constituted a nuisance. The City's deliberate course of conduct to alter the state of nature resulted in the flooding at the plant and there was a substantial and unreasonable interference with the plaintiff's enjoyment in its property. The Court stated that the plaintiff should not be put in the position of having its rights sacrificed for the benefit of other upstream interests.

As to the defence of statutory authority, we see again the Court's analysis that the provisions of the *Municipal Act* that allow for the actions of the City do not provide for the defence. First of all, the relevant provisions did not specifically or impliedly mandate the City to conduct the ice flushing program. Even if it did, the City did not prove that it was "practically impossible to avoid the nuisance" which, the Court said, would have been required to avail of a defence of statutory authority.

The Court did not find the City negligent, however, in the sense of having breached a duty

of care to the plaintiff. Therefore the liability rested on the riparian rights of the plaintiff and in nuisance. Damages were awarded to the plaintiff for costs of repairs and for lost income.

CONCLUSION:

From this selection of cases relevant to riparian owners and to watercourse management we have seen the application of some of the general principles of the common law. These include, in the order they arose in the above chronological review of cases, the following:

- Municipalities can be liable for damages caused by municipal works like stormwater or drainage channels.
- Municipalities can be liable where their works cause “extra” flooding, and their liability may be for that excess.
- It is a centuries old common law principle that an owner of riparian lands has a right because of that ownership, “to the flow of water through or by his land in its natural state”.
- Where an injunction to prevent a nuisance is sought, the economic effect on the defendant of the injunction may be held by the Courts not to be relevant.
- A riparian owner has a right to the water of the stream flow in its natural state, unpolluted.
- The boundary between land and water is at the water’s lowest mark according to the common law rule.
- An injunction may obtain where there is “a reasonable apprehension” that the action would result in the diminution of the purity, wholesomeness and potability of water in the lake or stream.
- The old common law rule that gives a land owner the absolute right to take or interfere with flow of underground water must be modified to be applied with reference to the modern law of negligence and nuisance.
- Reasonable care is not a defence to a nuisance action.
- The *Ontario Environmental Bill of Rights* which does allow for certain remedies for public nuisance modifies the common law rules about public nuisance.
- Public authorities should keep in mind that they are not immune to common law actions

just because they are constructing works that are for the benefit of the community; nor because they have a mandate to construct such works.

- The lack of negligence does not prevent liability in nuisance.
- Nuisance is concerned with the result, but negligence is concerned with the conduct of the party.
- There is no requirement that the nuisance be continuous nor continue for a substantial period of time in order to be actionable. One incident may found an action in nuisance.
- Where a body is empowered, but not required, to carry out public works, the adoption and consistent carrying out of a policy in terms of how it will exercise its power may provide a defence to the public body.
- A conservation authority may be found negligent in breaching its statutory duty of care where it issues a permit without enquiring into whether the approval works would have adverse affects in terms of flood control, pollution or conservation.
- An upper riparian owner has the right to natural drainage into the water course and a lower riparian owner is obliged to accept that drainage.
- However, the drainage by the upper riparian owner must be reasonable and must not increase the volume by “artificial means”.
- A City or other body may be liable negligence when it knows of the direct and specific consequences that its system would have on another riparian owner when planning and constructing its system.
- The “water course” was the channel in which the water normally or usually runs and did not include the flood plains in one case, but this issue must be determined as a matter of fact in each case.
- Land gained by accretion accrues to the benefit of the riparian owner.
- Riparian rights are available to leasehold interests.
- One riparian owner should not be put in the position of having its rights sacrificed for the benefit of other upstream interests.

An appreciation for the applicable common law principles, together with an understanding

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of the interplay of those principles with the relevant statutes is essential for all public land managers and approval agencies. It is also essential to recognize that with modifications to statutes, many common law principles may assume new or renewed importance when the statutes no longer apply in the same way.

March 1, 1999 Theresa McClenaghan, Counsel, Canadian Environmental Law Association

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Subject: stream corridors conference paper
Date: Tue, 16 Mar 1999 13:57:53 -0500

Theresa,

Thank you for your presentation at the stream corridors conference and for your participation in the panel session. Both were well received by all who attended. Your ability to express difficult legal concepts in simple language was well appreciated by the audience, if the amount of writing going on during your concurrent session was an indication of this.

Do you have a summary of the talk you gave in digital format? There have been a few of requests for this, and it would be an excellent addition to the proceedings.

If one does exist, please forward it to me via email.

Regards,
Patti Young

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