WELCOME

Added experience. Added clarity. Added value.
Environmental, Health and Safety Law for school Boards

PART ONE (today)
Why worry about Environmental and Health and Safety Laws?
Who should care?
Where do the ‘rules’ come from?
What are typical obligations and how to discharge them?
The concept of Due Diligence
Some recent convictions

PART TWO (next time)
Buying and selling properties and some other key obligations
What are we talking about?

Environmental laws and Health and Safety laws are laws designed to be protective of the public and the environment from the risks that may be created by human activity.

“Protection”, “safety”, “prevention of harm” to persons, organisms and the natural environment are common themes.
Why worry about Environmental and Health and Safety laws?

➢ “The protection of the environment has become one of the major challenges of our time”.


➢ “Protecting Environment Is ‘an Urgent Moral Imperative’”

UN Secretary-General Ban Ki-moon, 28 April 2015
Why worry about Environmental and Health and Safety laws?

“Ottawa Catholic School Board Fined $250,000 in Death of Maintenance Worker”

March 31, 2016 Ministry of Labour Press Release
Who should care?

- *Environmental Protection Act* imposes duties on all “persons having charge, management, care or control” of a “contaminant”

- *OHSA* imposes duties on Owners, Employers, Supervisors and Workers

Officers, Directors, Asset Managers, School Principals and even maintenance workers are included
Some sources of legal obligations

- Statutes
- Regulations
- Permits
  - Compliance Orders

Failure to comply with any obligation is usually an offence and subject to punitive sanctions
Some sources of legal obligations

- Environmental Protection Act
- Ontario Water Resources Act
- Occupational Health and Safety Act
  - Brownfield regulations
  - Waste management regulations
  - Asbestos regulations
  - Noise regulations
    - Environmental Compliance Approvals
    - Licenses
      - Compliance Orders
Scope of Liability

“Civil liability”

- Liability to occupiers, neighbours and other persons

“Regulatory Liability”

- Statutory and regulatory obligations
- Compliance Orders, fines after prosecution
Common types of Compliance Orders

- Stop work
- Hire consultant to create a report
  - On extent of contamination
  - Cause of an accident
- Conduct investigations
  - Onsite or even offsite
- Implement remediation work
What should you do?

- Board should have clear Environmental and Health and Safety policies
- Everyone should be aware of legal obligations
  - Certifications (eg. Employee training)
  - Registration (eg. dangerous substances)
  - Notification (accidents, spills)
- Record keeping is important to demonstrate reasonable efforts to comply (Due Diligence)
Due Diligence Defense

Almost all obligations under Environmental and health and Safety laws allow for a due diligence defense. ie:

Perfection is not required. Reasonable efforts to avoid the harm in question if accepted as such by the courts will constitute a defence.

Due Diligence does NOT remove responsibility to comply with any compliance orders. While many of these orders can be appealed on technical grounds, the obligation to comply can often continue even during the appeal process.
Ottawa case

School employee to replace safety cage in gymnasium

Van+trailer; portable elevating device; ramp

Ramp angle 8 degrees vs 5 in manual

Elevating device loaded with “heavy side down”

While unloading, device tipped
Facts supporting conviction

Employer “failed to take every precaution reasonable in the circumstance for the protection of the worker” because:

• The angle of the ramp was greater than 5 degrees
• Ramp and ground surface not free of ice and snow
• Device should have been offloaded with “heavy side uphill”
• Worker did not have another worker to assist
What could have helped?

- Instruction manual for device
  - Loading and unloading instructions
- Worker training
  - Certificates of training?
- Worker supervision
  - History of previous conduct?
  - Safety record?
Some typical MOECC fines

May 2016:

Belleville company fined $30,000 for failure to comply with Provincial Officer’s Orders

Windsor employees fined $10,000 for illegally discharging material into a watercourse

Kitchener private school fined $2,000 for failing to train persons using water treatment equipment

Property Owner fined $6,000 for transporting waste without approval
Next week

Some specific obligations and recommended best practices

Environmental Protection Act
  Main obligations: discharges, spills, notifications, “adverse effects”
  Buying, owning and selling land

Occupational Health and Safety Act
  Asbestos regulation
  Best Practices for ensuring ongoing compliance
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