



10. RIPARIAN RIGHTS

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Riparian Rights

Riparian Land

- All landowners, whose property fronts on a body of water are Riparian landowners, and thus have Riparian rights.

Riparian Rights

- to access for swimming, boating and fishing
- to use the water for domestic purposes
- to protect property from flooding, and land from erosion
- to the 'undiminished, unaltered natural flow and condition' of the water.

* Every Riparian landowner enjoys these rights to the same extent and degree.

* No Riparian landowner's rights are superior to the rights of adjacent Riparian landowners.



Riparian Duties

Riparian Land

- All landowners, whose property fronts on a body of water are Riparian landowners, and thus have Riparian rights.

Riparian have duties

- to pass on the flow of water without obstruction, pollution or diversion affecting the rights of others
- to maintain banks of the watercourse
- to not cause any obstructions - either temporary or permanent - that would prevent the free passage of fish



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Riparian Disputes

Riparian Land

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***There are many disputes between Riparian landowners, as Riparian rights are based on the principle of not impinging on others' rights.**



Legal Opinion of Riparian Rights

“Roxie Graystone, Graystone Environmental, and published in Canadian Water Treatment, December 2009”

Court Case # 1

- **Johnson versus Town of Dundas, 1945, Ontario Court**

Court Case # 2

- **Scarborough Golf & Country Club versus City of Scarborough, 1986**
- **Ontario High Court, Ontario Court of Appeal, 1988, and refused by Supreme Court of Canada to appeal, 1989.**



Roxie Graystone, Graystone Environmental

An article by Roxie Graystone, lawyer and consultant with Graystone Environmental, and published in Canadian Water Treatment, December 2009

- The common law approach to Riparian rights in Ontario continues to provide Riparian landowners with some of the broadest interest and protection.
- Riparian landowners have rights to customary flows of water entering and leaving their land.
- Even where an upstream project does not increase the flow of drainage, any concentration of flow into a narrow point or changes to the location of the flow that causes downstream flooding or erosion may increase liability.
- It is important for operators, proponents, and designers of projects to be aware of, and protect the rights of Riparian landowners.
- Importantly, any individual or corporation can be liable for interference with Riparian's rights.

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Court Case # 1

Johnson versus Town of Dundas, 1945, Ontario Court (ref #2)

- The question arose – whether municipalities can be held liable for damages caused by municipal works. 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.

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Court Case # 2

Scarborough Golf & Country Club versus City of Scarborough, 1986, Ontario High Court, Ontario Court of Appeal, 1988, and refused by Supreme Court of Canada to appeal, 1989 (ref #3)

- This case involved the flooding of a golf course, where the City of Scarborough controlled most of the land above the club, and the conservation authority below the club. The city actions caused flooding of large parts of the golf course during heavy rains.
- The Metropolitan Toronto Conservation Authority was found to be negligent in breaching its statutory duty of care for not inquiring into whether the approvals of the city's works would have adverse effects in terms of flood control, pollution or conservation. The courts finding that **the conservation authority was negligent in its approval process** is of considerable interest.
- The court **found the City of Scarborough liable** based on the Riparian landowner's right to natural flow, quality and quantity of water in the stream.

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Infringement

If you believe your Riparian rights have been infringed upon, what can you do?

- Nothing
- Meet with the person violating your Riparian rights, and attempt to resolve the issues
- Support the Mississippi RiverWatchers
- Consider legal action and/or be part of a class action

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RiverWatchers Role

- If you are a Riparian land owner, who is affected by fluctuating water levels or by the Enerdu project, we invite you to get in contact with the Mississippi RiverWatchers.
- ***This is not just about Riparian rights; it is also about protecting our community access to our Mississippi River; the “Jewel of Almonte”.***
- We are organizing and would like your help.