
Lisa (Elisabeth) DeMarco
Senior Partner & CEO
Resilient LLP

***Legal Risks & Liabilities for Municipalities
Related to Climate Change***

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Resilient LLP

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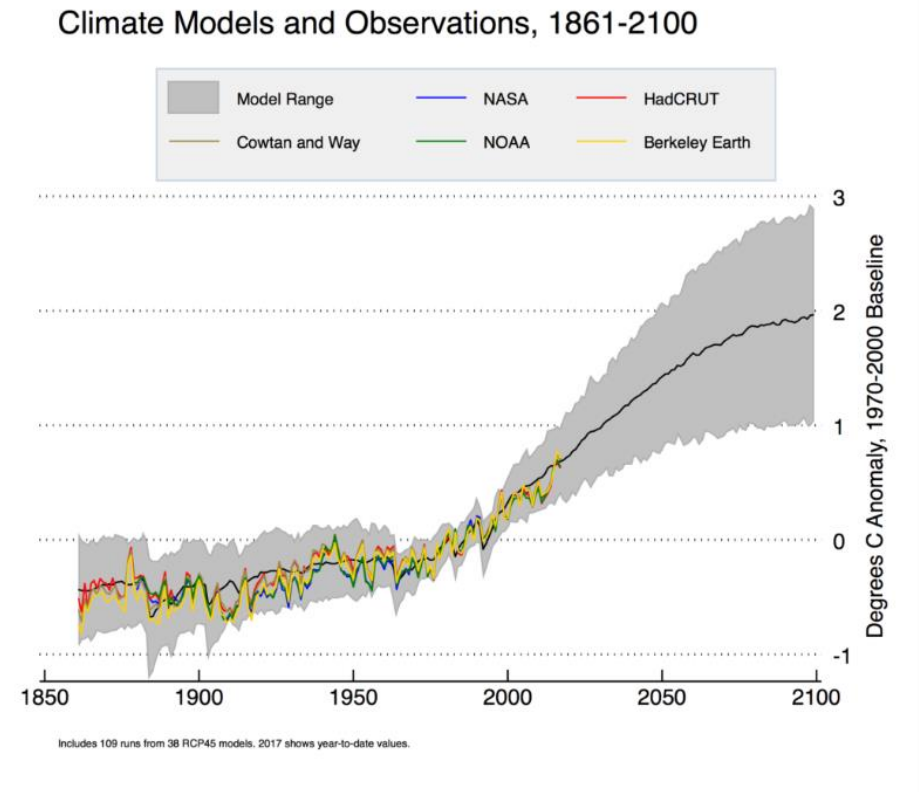
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A Changing Climate

- In past 60 years, average annual temperatures warming significantly
- Northern jurisdictions warming at twice the rate of the rest of the world.
- Further warming and disruptive climate events are **known** and **foreseeable**



RCP4.5 CMIP5 multimodel mean anomalies (in black), two-sigma model range (in grey), and observational temperature records from NASA, NOAA, HadCRUT, Cowtan and Way, and Berkeley Earth from 1861 to 2100. Model data uses blended land/ocean fields. NASA and NOAA data begins in 1880. A preliminary value for 2017 is based on temperature anomalies through the end of July. Chart by Carbon Brief.

Physical Risk and Transition Risk

- Physical Risks resulting from climate change can be event driven (acute) or longer-term shifts (chronic) in weather patterns.
- Acute physical risks are event driven, e.g., increased severity of extreme weather events, such as hurricanes or floods; or acute events from warming, e.g., increased severity, frequency of fires.
- Chronic physical risks include longer term shifts in weather patterns, such as sustained higher temperatures, that may cause sea level rise or chronic heat waves.
- Affects infrastructure design, construction, resilience, supply chains, Logistics
- Insurance Bureau of Canada: In 2020, insured damage for severe weather events across Canada \$2.4 billion
- Transition Risks shifting to a lower-carbon economy: policy, legal, technology (risk and opportunity) and market changes to address mitigation and adaptation related to climate change.

Climate Litigation is increasing across Canada (1/2)

Lho'imggin et al. v. Her Majesty the Queen (2020) FCA

- Plaintiff (two houses of the Wet'suwet'en indigenous community) complaint allege Charter violations as a result of Canada's failure to meet its international commitments to reduce greenhouse gases, the 2015 Paris Agreement. Plaintiffs further claim that Canada's Nationally Determined Contribution under the Paris Agreement is insufficient to meet its commitments to hold global warming below 2 degrees Celsius and pursue efforts to keep warming to 1.5 degrees.

Environnement Jeunesse c. Procureur général du Canada (2019) QCCS

- Plaintiffs applied for authorisation to proceed as class action. Claim based on government inaction or insufficient action with respect to climate change. Insufficient justification for the age limits (<35) of the class. In obiter remarks Morrison J.C.S. supported the applicability of the Charter and Quebec Charter and the justiciability of the issue of the impact of climate change on human rights.

Climate Litigation is increasing across Canada (2/2)

Mathur, et al. v. her majesty the queen in right of Ontario (2019)

- Plaintiffs (7 Ontario youth 12-24) argue that Ontario has failed to meet the challenge of avoiding catastrophic climate change, which must be done within eleven years according to the scientific community. They further claim that Canada is not on track to meet the goals laid out in the Paris Agreement, in large part due to Ontario's 2030 greenhouse gas reduction target of 30% below 2005 levels, set under CTCA

La Rose et al. v the Queen (2019) FC

- Fifteen children and youths have brought suit alleging that Canada emits and contributes to emitting greenhouse gases that are incompatible with a stable climate. The plaintiffs argue that Canada's actions have violated their rights under the Charter of Rights and Freedom, as well as the rights of present and future Canadian children. They seek declaratory relief and an order requiring the government to adopt a Climate Recovery Plan Title

Municipalities need to be thinking about climate change

- Climate change is an urgent global issue with clear scientific consensus on anthropogenic warming (Intergovernmental Panel on Climate Change), elevated impacts of acute events, and government policies.
- Saskatchewan Court of Appeal and Ontario Court of Appeal: “human-caused climate change poses an existential threat”.
- Federal government has committed to moving Canada to net zero carbon emissions by 2050.
- Climate change is systemic and interconnected and can act as a risk multiplier: thus, urgent need for Municipalities to be strategic in their deliberations as to how to reduce carbon footprint and enhance climate resilience.
- Increasing recognition that climate change is a material risk for municipalities (TCFD).
- Disclosing climate risk of municipalities is important:
 - 60% of all public infrastructure in Canada is municipally owned and operated. Municipal infrastructure needs renewal and expansion to address its age and condition, population growth in urban centres, climate change impacting and testing the design of critical assets.
 - 80% of Canadians live and work in cities and municipalities are the leading actors on climate change, but their powers and their revenue sources are limited.
 - Cities, like other companies, may have climate risk exposure in their investment portfolio and in the bonds they issue.

Climate Risks and Litigation involving Municipalities (1/2)

- **Maple Ridge Class Action:** Fifteen households filed a class action lawsuit against a developer and contractor, two engineering firms, and the City of Maple Ridge after a 2010 flood.
- **Anderson et al. v. Manitoba et al.:** \$950 M class action lawsuit was brought forward by 4,000 residents of four First Nations following severe flooding in the spring of 2011.
- **Dicaire v. Chambly:** Dismissed; however, court noted that current design standards might not protect municipalities in future lawsuits, in light of “recent climate phenomena” and other scientific advances.
- **McLaren v. Stratford:** Class action lawsuits for flooding in 2002 brought settlement for \$7.7 M against Stratford.

Climate Risks and Litigation involving Municipalities (2/2)

- ***Cerra et al. v. The City of Thunder Bay***: Class action lawsuit as a result of 2012 flooding seeking over **\$300 M** from City of Thunder Bay, alleging negligence in design, construction, repair of sewer and sewer treatment system.
- ***Burgess v Ontario Minister of Natural Resources and Forestry***: Muskoka property owners brought a **\$900 million** suit against MNRF for failing to control water levels in nearby rivers, causing extensive flooding. Discontinued.
- ***Panza et al v. City of Mississauga***: **\$200 million** claim as a result of flooding in Lisgar Flood Area.
- ***Lissack v Toronto***: Court found that the city breached its duty of care by failing to maintain and improve stormwater management.

Municipal Liability (1 / 2)

Municipal Liability:

- municipalities are subject to liability for tortious wrongs in **negligence, nuisance**, and actions for **breach of contract**
- Municipalities enjoy protection from liability, including immunity from liability for policy decisions in the case of negligence; however, a negligence analysis can be applied to the operational implementation of decision
- There is currently no recognized cause of action against a municipality for the breach of an obligation under a statute or a municipal by-law

To succeed in a claim of negligence against a municipality, a plaintiff must prove:

- the municipality **owed** that plaintiff a **duty of care**;
- the municipality **breached** that duty of care, by failing to meet the requisite **standard of care**;
- the breach caused **damage** to the plaintiff; and
- the damage was **reasonably foreseeable**, i.e., not “too remote.”

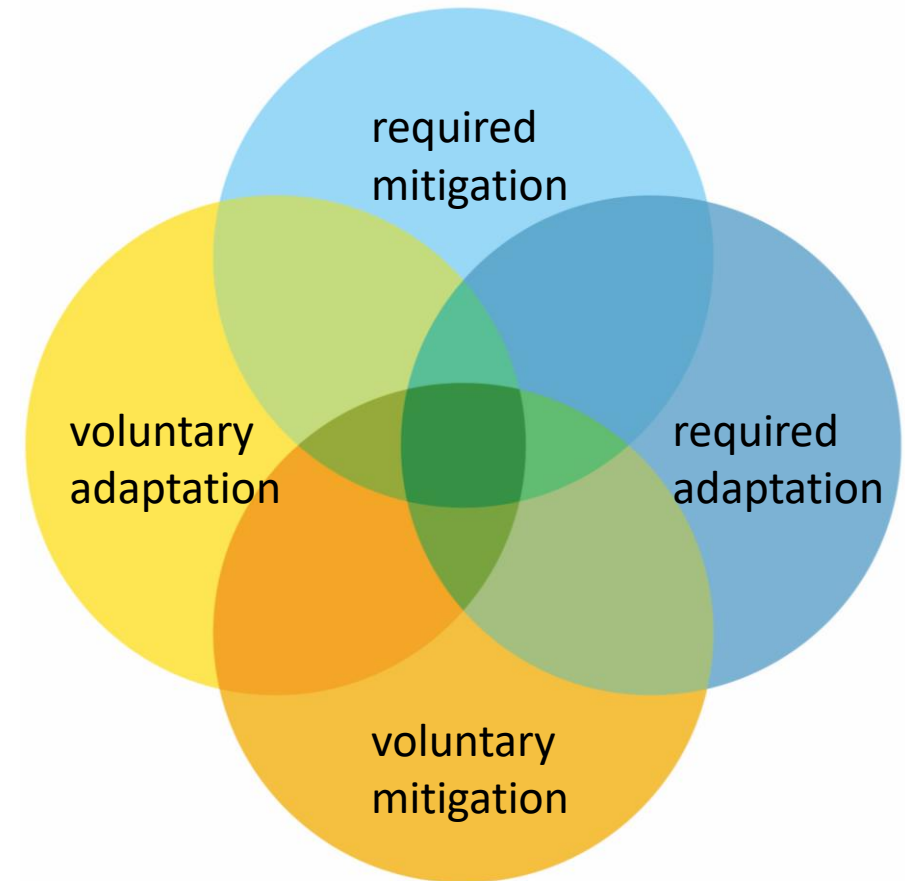
Municipal Liability (2 / 2)

Municipalities may be liable in negligence for:

- Failing to take reasonable care in inspecting, maintaining, and building infrastructure, having regard to the climate related risks;
- Inspecting and approving development and buildings within areas for which it is reasonably foreseeable that flooding or other risks will occur;
- Failing to respond to complaints in a reasonably timely manner;
- Failing to adhere to its policies with respect to inspection and maintenance; and
- Causing or contributing to losses in its response to emergencies.

Municipal Response to Climate Change

- Mitigation and Adaption
- What can and what must Municipalities do about climate change?
 - Urban tree cover
 - Resilient infrastructure (building to 1 in 50 years standard should now be 1 in 1000 years)
 - Update building codes, land use regulations, and zoning
 - *Land Use Planning / Provincial Environmental and Climate Change Plans / Legislation / Provincial Regulations / Municipal Climate Adaptation Plans*
 - CO₂e Emission Reductions
- Proactive planning approach reduces future risks and liabilities



Municipal leaders in Climate Resiliency, Mitigation, and Adaptation (1/2)

➤ Vancouver

- All new buildings in Vancouver are to be net-zero energy ready by 2032 (B.C. Energy Step Code) and zero emissions in Vancouver by 2030 (Zero Emissions Building Plan); these policies drive a \$3.3B market for high performance building products in Metro Vancouver

➤ Toronto

- TCFD Climate disclosure since 2018
- The Toronto Green Standard is a set of environmental performance measures that facilitates sustainable new development in Toronto.

➤ Calgary

- Climate adaption plan: Update design guidelines and practices across business units, including infrastructure design specifications, building code and other city guidelines

Municipal leaders in Climate Resiliency, Mitigation, and Adaptation (2/2)

➤ **Edmonton**

- conduct climate change impact assessments on existing assets, ongoing maintenance programs, planned retrofits, and new infrastructure developments

➤ **Montreal**

- TCFD climate disclosure since 2019
- Climate plan seeks to design, construct, renovate and maintain buildings, public and private sites and infrastructure with climate change in mind

➤ **Halifax**

- Climate adaption strategy includes plan to develop or update codes and design standards for new municipal and private infrastructure that reflect future climate impacts

TCFD Recommendations for Disclosure

Core Elements of Recommended Climate-Related Financial Disclosures



Governance

The organization's governance around climate-related risks and opportunities

Strategy

The actual and potential impacts of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning

Risk Management

The processes used by the organization to identify, assess, and manage climate-related risks

Metrics and Targets

The metrics and targets used to assess and manage relevant climate-related risks and opportunities

➤ TCFD recommendations suggest evaluating the potential financial impacts of climate change on a municipality's operations, budget / capital planning, and services. By quantifying the potential impacts, municipalities are better able to assess material climate-related risks and opportunities, target valuable investments in climate related initiatives, and report on outcomes to key stakeholders.

➤ [TCFD Guide for Cities](#)

Opportunities and Funding

➤ LC3 initiative

- The 2019 federal budget included \$350M for Low Carbon Cities Canada (LC3). Through the LC3 initiative, and in partnership with the Federation of Canadian Municipalities, \$183M has been earmarked to establish a network of low carbon innovation centres in seven cities across Canada:
 - Vancouver: Zero Emission Innovation Centre
 - Calgary and Edmonton: Climate Innovation Fund, host by the Alberts Ecotrust Foundation
 - GTHA: The Atmospheric Fund
 - Ottawa: Ottawa Community Foundation
 - Montreal: Greater Montreal Climate Fund
 - Halifax: Halifax Climate Investment Centre

➤ Federation of Canadian Municipalities' **Green Municipal Fund** helps local governments switch to sustainable practices through funding, resources and training such as:

- Community Efficiency Financing: \$300 million initiative helps municipalities deliver energy efficient financing programs for low-rise residential properties.
- Sustainable Affordable Housing: \$300 million offers support to local affordable housing providers to retrofit existing affordable housing units, or construct energy efficient new builds that emit lower GHG emissions.