



Session 33

Environmental Law

Sustainable development

According to the World Commission on Environment and Development, sustainable development refers to the development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.

This way to approach simultaneously the environment and society requires that one recognizes that certain actions are likely to harm the environment: one could therefore be talking about environmental tort (negative externality) that can be addressed through either individual actions or state actions.

The overarching concept for such actions is environmental stewardship

Environmental tort includes:

- Nuisance as the result of noise, air and water pollution, vibrations, smells, soil contamination and flooding.
- Strict liability for the escape of dangerous substances from another's person's land.
- Violation or riparian rights (i.e. the right not to have the flow of water or its quality interfered with by others).

ACTIVITY: read case *Gauthier v. Naneff* (2004: 363-364) to explain how different circumstances might have affected the court's decision.

A regatta could have been acceptable because of less nuisance and pollution – but not the car nuisance of the skippers!

State actions

There is an important body of environment-related legislation:

Environmental Protection Act creates a framework for preventing and controlling the discharge of pollutants while focuses on specific activities or pollutants where risk from a spill is high; covers private companies and government agencies alike (s. 14). Although its focus is on remedying environmental problems, it does not consider sustainability. An additional set of difficulties is that citizens cannot take action under the EPA and that the state is not held accountable for inaction.

State actions (cont)

Environmental Assessment Act sets out the principles and procedure for assessing the environmental impact of private and state projects and activities as it structures information gathering and evaluation. Its focus, therefore, is on sustainability as it seeks to balance out economic benefits and environmental costs.

More information:

- http://www.blakesfiles.com/Guides/2012_Blakes_Environmental_Law_in_Canada_EN.pdf
- <https://www.ec.gc.ca/default.asp?lang=En&n=FD9B0E51-1>

State actions (cont.)

ACTIVITY: read the information on the *Walkerton Tragedy* (2004: 374-376) to establish, by means of appropriate legislation the extent to which Stan Koebel could be held responsible for the catastrophe.

With the Ontario Environmental Protection Act, 1999, s 14, he should have been held liable; with the equivalent Canadian Environmental Protection Act this is not the case!