

**Please Reply to the Belleville Office**

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via email: tim.pidduck@crowevalley.com

November 20, 2024

**Crowe Valley Conservation Authority**

70 Hughes Lane P.O. Box 416  
Marmora, Ontario K0K 2M0

Attn: Tim Pidduck, General Manager

Dear Mr. Pidduck:

**Re: Liability Resulting from Damage Due to Beaver Dams  
Our File 63346**

We write further to your inquiries regarding legal responsibility resulting from damage caused by beaver dams. We are pleased to provide our opinion on the general liability principals related to this issue.

**Summary and Background**

Based on our review of case law relating to beaver dams, in our opinion it is unlikely that private property owners, including Crowe Valley Conservation Authority, would be liable for damage caused by flooding due to a collapsed beaver dam.

There have been very few cases where a court has been asked to consider who, if anyone, is responsible for damage resulting from the construction or collapse of beaver dams. A review of the limited case law indicates that liability is incurred only where there is a statutory duty to control beaver populations, and, at least potentially, where the property owner could be considered "substantially responsible" for the damage caused. It is also worth noting that interfering with beaver dams is a regulated activity, and can carry its own consequences.

**Case Studies**

In [Lynds v. Runge \(2002\)](#), a judge ruled that a private landowner was not responsible for damages caused to an adjacent property due to flooding caused by beaver dams, even when steps had previously been taken to address the issue. This case concerned an

informal agreement between the two parties to clear beaver dams on one property to allow farming on the property adjacent. When the agreement was ended due to a conflict, low-lying areas that had formerly been cultivated became flooded.

Despite the loss of the farming operation, the claim was dismissed. It was determined that there was no duty imposed on a landowner whose property contained a watercourse to alter it from its natural state – a state which included seasonal damming – even where it was known to negatively affect land downstream. The judge noted that if the reverse were true, it would “create havoc in a country like Canada where beavers abound.” While this case came before a court in British Columbia, its legal analysis is still informative, and it cites another Ontario case (discussed below) in its ruling.

Where liability has been acknowledged, as in *Nicholls v Hennion* (1989; copy enclosed for your reference), it has been because of a specific statutory obligation to proactively clear dams where they pose a threat to public safety. In this case, a vehicle traveling along a highway encountered a washout and was plunged into a chasm, causing serious injuries to both the driver and passenger. The chasm had been caused by the collapse of a beaver dam, which had sent a surge of water strong enough to overwhelm the culvert and flood the highway just minutes before the accident occurred.

Legal action was brought against two government departments: the Ministry of Transportation and Communications (MTC), as the agency managing highways, and the Ministry of Natural Resources (MNR), on whose land the dam was located. After accepting evidence that the existence of the beaver dams and the threat of flooding was well-known to both defendants, a judge ruled that while the MTC had the responsibility of maintaining highways in good repair under the *Public Transportation and Highway Improvement Act*, the MNR had the authority – but no specific legal obligation – to control beaver populations. As a result, the MTC was found liable while the MNR was not.

Notably, an attempt to show private law duty of care on the part of the MNR similarly failed. The plaintiff argued that a landowner whose properties abutted a highway was responsible for any source of danger originating on their lands. The judge disagreed, noting that in the case law being relied upon, the source of danger was the direct result of actions taken by the city, and not the normal activity of local fauna.

Similarly, in *270233 Ontario Ltd v Weall and Cullen Nurseries Ltd.*(1993; enclosed for your reference), it was action, rather than omission, that was considered when determining liability. The defendant in this case owned a tree nursery, the run-off from which brought flooding and large silt deposits to a neighbouring golf course. As a general rule, property owners cannot be held liable for watercourses that flow through their land

– a principle referred to as the “watercourse exception.” This defense was successfully argued in this case.

Nevertheless, the judge noted in the ruling that there could potentially be cases in which this principle *would not* hold, specifically: where the landowner’s conduct was directly responsible for the damage, where the potential for damage was well-known to said landowner, and if the damage would have been greater than what might be expected if the land had been vacant. While beaver dams did not factor into the particulars of this case, the final criteria using vacant lands as a basis for comparison makes it difficult to imagine how this criterion could be met in such cases.

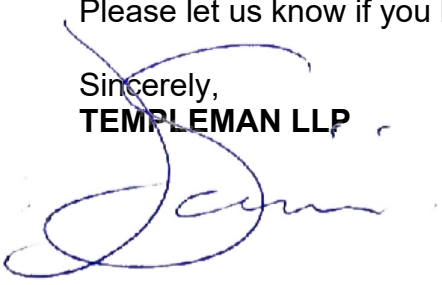
Finally, any interference with beaver dams is regulated, and damage resulting from clearing dams could potentially be easier to establish than damage caused by failing to remove them. The [Fish and Wildlife Conservation Act](#) (1997) states that no person can damage or destroy a beaver dam unless they hold a license to do so; this restriction may be waived to protect one’s own property. The Minister of Natural Resources can provide exemptions from any of the previous restrictions on a case-by-case basis.

In summary, in our opinion, in order to establish responsibility for damages, the active search for and removal of beaver dams would have to be clearly established, and based on a law or regulation, or potentially on a policy. As a private landowner, the possibility of being held legally responsible for damage resulting from a beaver dam exists in theory, but any successful legal action would be a departure from current case law.

With respect to Crowe Valley Conservation Authority specifically, the Conservation Authorities Act does not create a duty to regulate either beavers or the dams they create. Neither is there a policy which imposes a responsibility to inspect, maintain, or remove dams, and doing so would entail significant resources with no clear standard or objective. Furthermore, taking on this responsibility could have far-reaching implications, both environmental and legal. It is our opinion that the CVCA would likely be treated in a similar fashion as the MNR in the *Nicholls v Hennion* case, if legal action were ever commenced in relation to allegations of damages related to beaver dams.

Please let us know if you have any questions or concerns.

Sincerely,  
**TEMPLEMAN LLP**



**JENNIFER SAVINI**

JGS/jg



Certified by the Law Society of Ontario as a Specialist in Municipal Law (Local Government/Land Use Planning and Development)

Encls. as noted