

Climate Change Liability

**Emergency Management and Extreme
Weather Workshop**

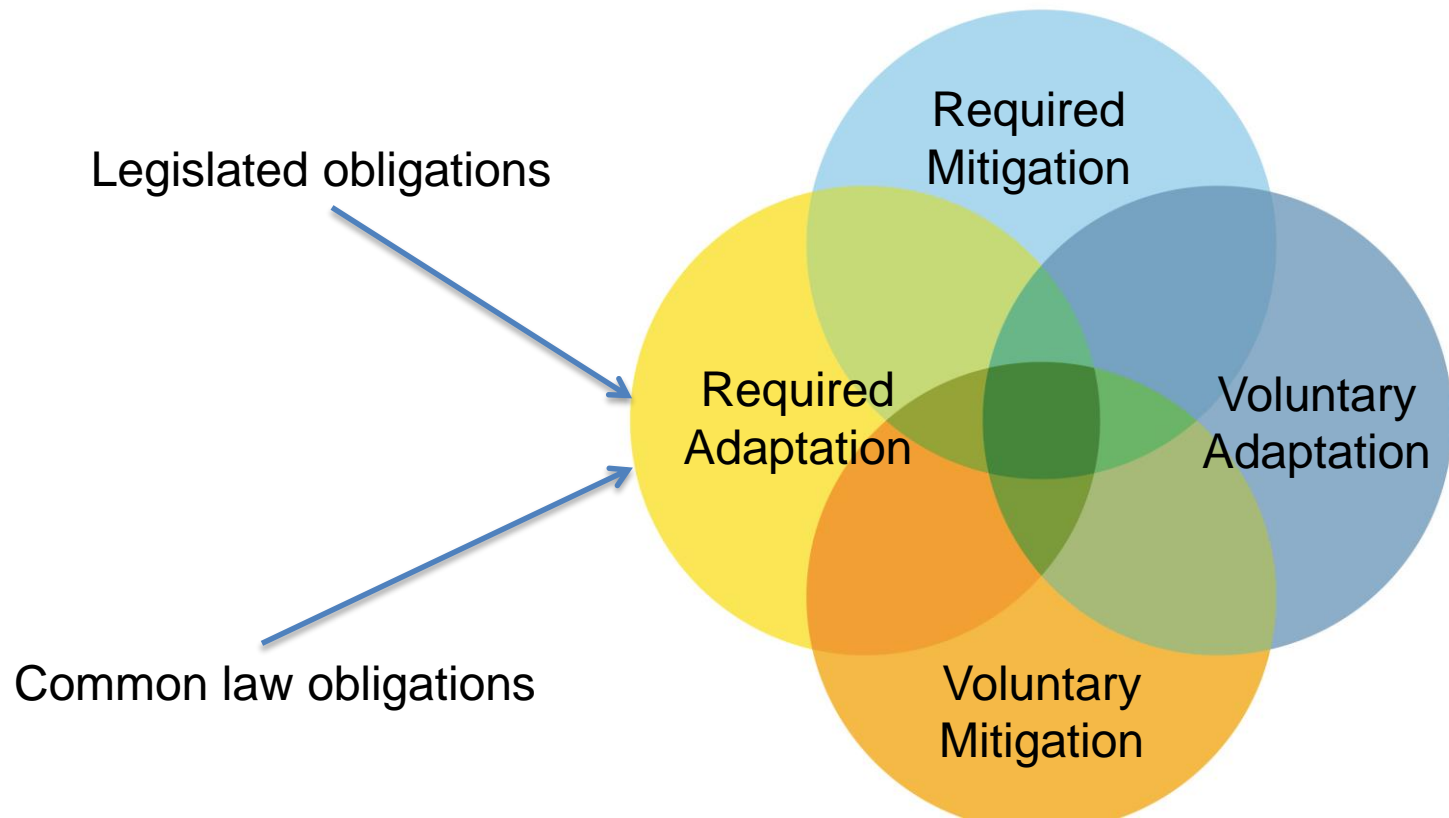
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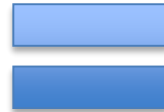
October 21, 2016

Organizations Respond to Climate Change



Potential Impacts

- Increasing precipitation
- Increased storm intensity
- More frequent severe freezing/thawing cycles
- More frequent intense summer heat days
- Water level fluctuations
- Water quality and availability changes



- Increased costs:
 - effects on physical assets
 - potential legal liability
 - significant driver to adapt

Finch Washout 2005



Photo courtesy of Jane-finch.com

Summer 2013 Floods

Toronto



Photo courtesy of Tom Ryaboi

Calgary



Photo courtesy of the Canadian Press

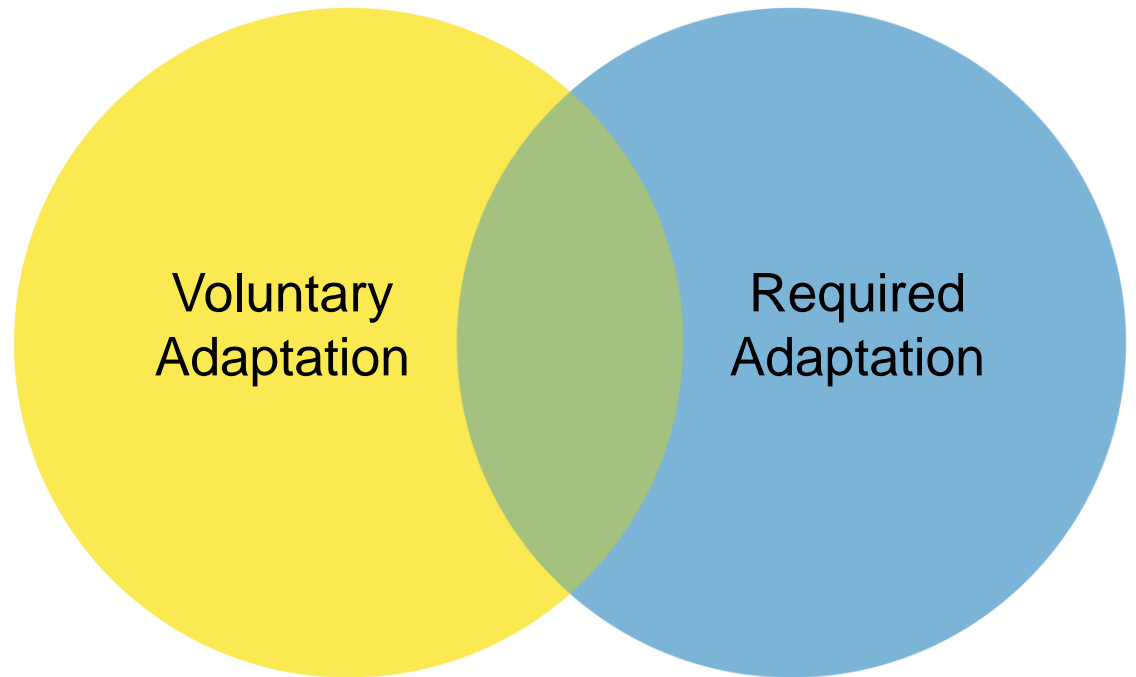
INSURABLE?

More to Come

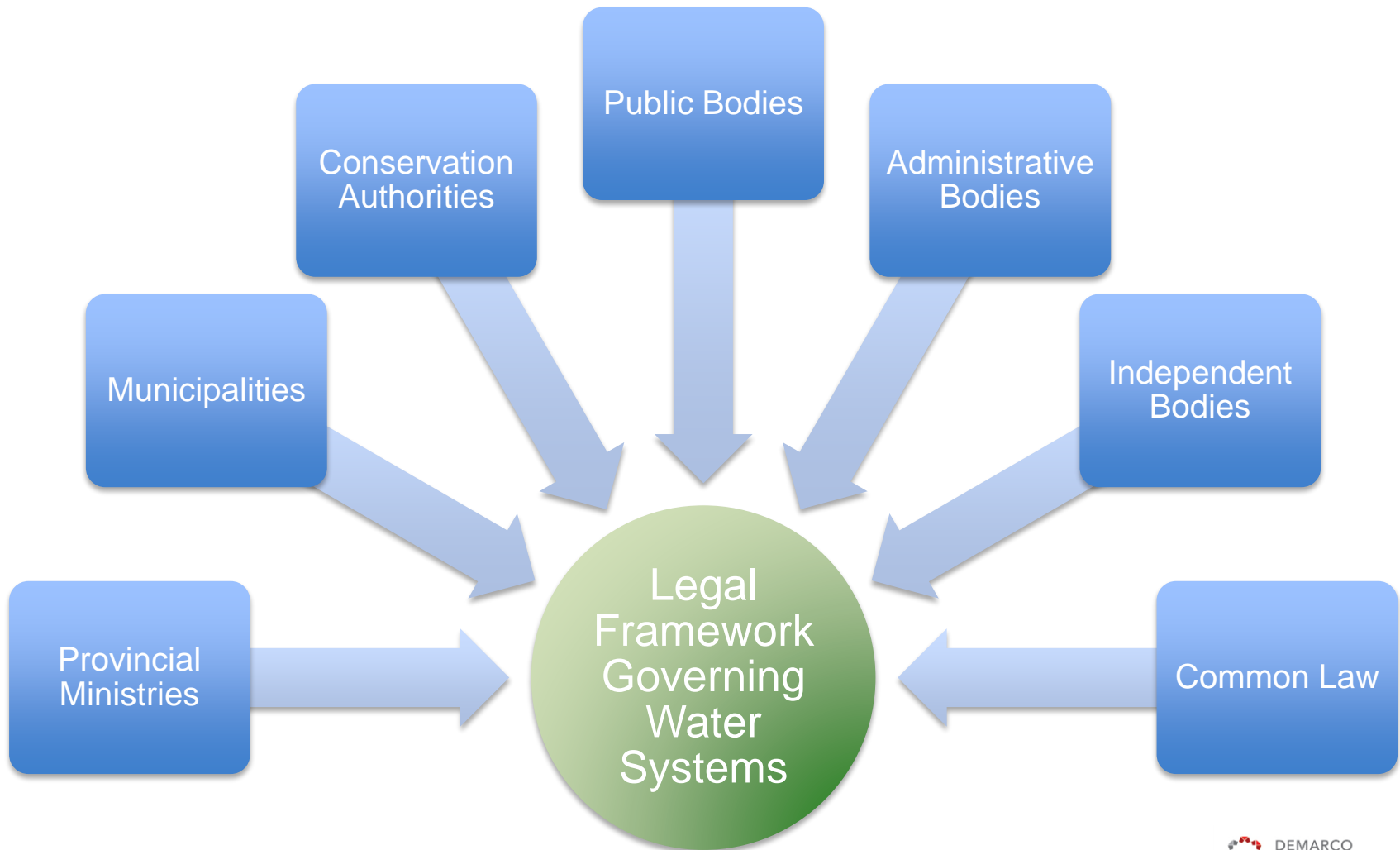
2013 IPCC Report indicated increase in extreme weather and heavy precipitation throughout the century.

Why Adapt?

- Cost control and prudent planning
- Resilience
- Liability (regulatory and common law)
- Insurance costs



Complex Legal Framework



Regulatory Liability

- Greater adaptation requirements in legislation
- Additional potential liability for decision makers
 - e.g. *Safe Drinking Water Act, 2002*
- Decision makers for municipal drinking water systems (owners, officers/directors, councilors) who fail to act reasonably to ensure protection and safety of the users - guilty of offense!
 - Fines: up to \$20k, 100k
 - Possible jail time



Negligence

- Injury to person(s) or property because another has failed to take reasonable care
 - Duty
 - Standard of Care
 - Causation, Foreseeability, Damages
- Possible Defendants:
 - Owner or occupier (including government)
 - Government entities
 - Engineers, architects and other design professionals
 - Contractors
- Special Test for Establishing Government Duty

Farmers Insurance Class Action

- Chicago-area April 2013 flood
- Insurance Companies subrogated claims
- Municipal & local public entity defendants
- Referenced Chicago Climate Change Action Plan
- Complaint withdrawn – issues remain valid

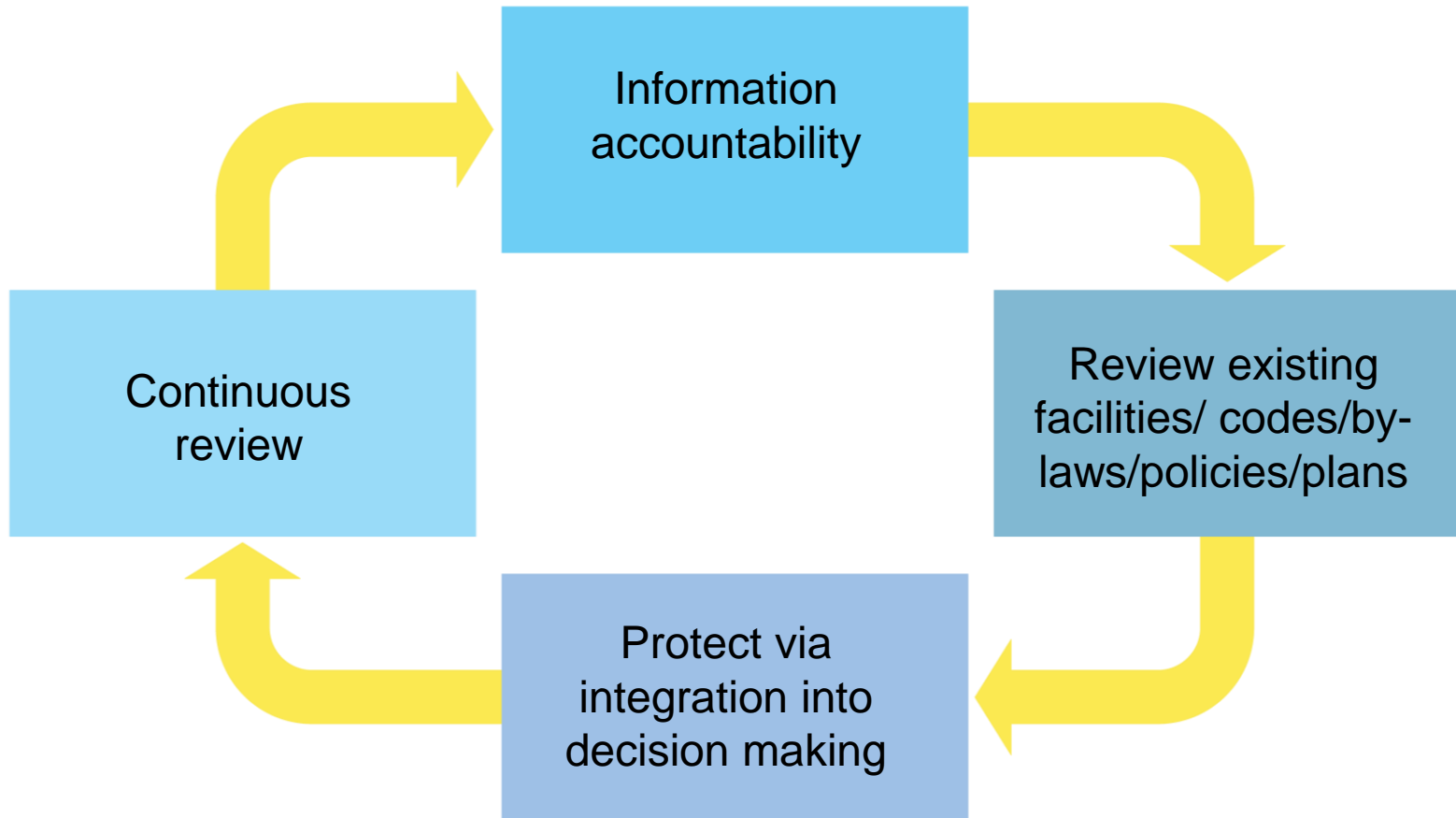


Photo courtesy of David Mixner

Shared Responsibility

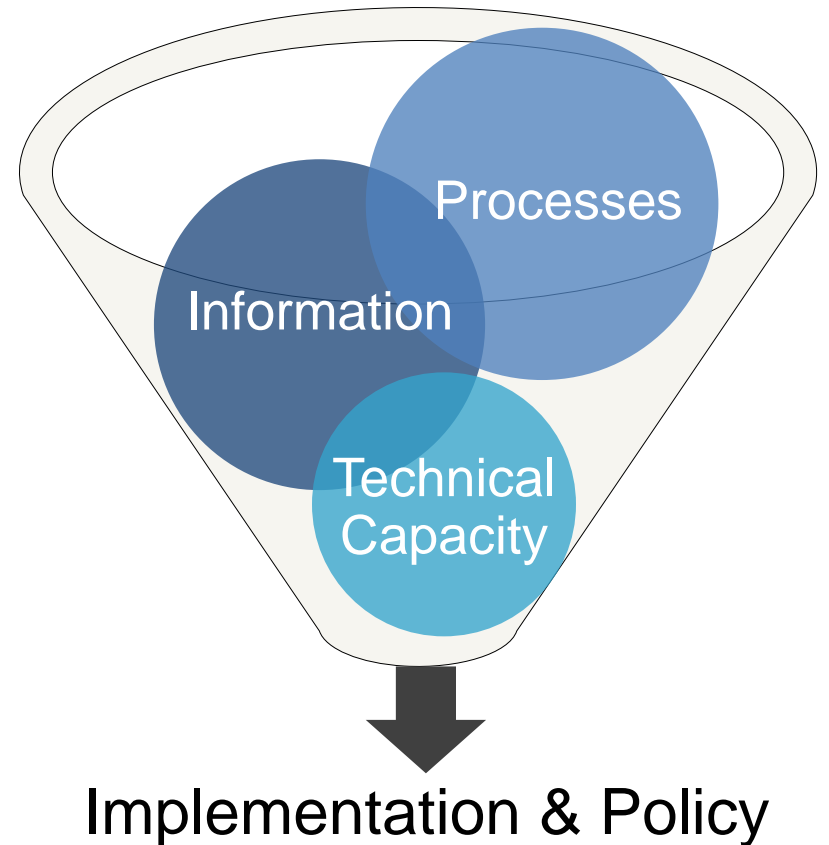
- Many actors involved in stormwater management and could be liable
 - Municipalities
 - Employees/contractors (can't delegate a duty)
 - Consultants/Professional advisors (need to use professional judgment and reasonable standard of care)
 - Community and individuals (may need to report and mitigate)
 - Other orders of government
- Working with insurers

Risk Minimization



Status Quo Has Changed

- Legislative delays ≠ irrelevance
- Business as usual is changing
- Infrastructure, planning and processes should include adaptation
- Processes should build defences and show diligence
- Consistency in approaches and communications



Thank you.

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