



# **Odour Regulation: The Legal Framework**

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**Ontario Section**  
**Kitchener/Waterloo and Area**  
**Breakfast Series**

**November 26, 2008**

# Roadmap

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- **Three Questions**
  - What is Odour?
  - How and When Does the Law Define and Regulate Odour?
  - When Will Courts Find Liability?

# What is Odour?

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- **Dictionary Definition of Odour**

- 1. the sensation that results when olfactory receptors in the nose are stimulated by particular chemicals in gaseous form; [syn: [smell](#)]
- 2. any property detected by the olfactory system [syn: [olfactory property](#)]

# What is Odour?

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- **Key Characteristics of Odour**
  - Frequency
  - Intensity
  - Duration
  - Offensiveness
  - Location
  - Sensitivity of Receptors

# How and When Does the Law Define and Regulate Odour?

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- **Provincial Regulatory Framework**
  - “Odour” is a “contaminant” under Ontario’s *Environmental Protection Act*
  - Approvals – EPA, s. 9
  - Prohibition – EPA, s. 6 “in excess of that prescribed”
  - Prohibition – EPA, s. 14 “adverse effect”
  - Industrial emissions regulated in O.Reg. 419/05, s. 33: Air Pollution – Local Air Quality prohibits
    - Discomfort to person
    - Loss of enjoyment of normal use of property
    - Interference with normal conduct of business
    - Damage to property

# How and When Does the Law Define and Regulate Odour?

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- **Provincial Odour Based Standards**
  - Odour Units in Certificates of Approval
  - 1 Odour Unit (1 OU) is the concentration at which 50% of a population will DETECT an odour
    - Detection is NOT recognition
    - Annoyance is usually in the range of 3 to 10 OU
    - Health effects - “#” OU?  
Nausea, headaches, stay indoors

## How and When Does the Law Define and Regulate Odour?

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- ***Municipal Act, 2001***
  - s. 10(2) – by-laws respecting health, safety and well-being of persons, and economic, social and environmental well-being
  - s. 128 – local municipalities may prohibit and regulate public nuisances
  - s. 129 – local municipalities may prohibit and regulate odour
  - S. 444 – a municipality may issue an Order to discontinue an activity that contravenes a by-law
  - s. 447.1 – municipalities may apply to the Court for an order to close premises causing a public nuisance

# How and When Does the Law Define and Regulate Odour?

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- **Land Use Planning**
- **Environmental Assessment**
- **Ministry Approvals Process**
- **Performance/Nuisance Based Complaints**
- **Standards Setting**
- **Enforcement**
  - Regulatory orders
  - Prosecutions
  - Civil lawsuits and injunctions (with stays)

# When Will Courts Find Liability?

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- ***R. v. Commander Business Furniture***
  - EPA prosecution
- ***Pyke v. Tri-Gro***
  - Private nuisance action
- ***Newmarket v. Halton Recycling***
  - *Municipal Act, 2001* public nuisance application

# The Latest Word From the Supreme Court of Canada

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- ***St. Lawrence Cement v. Barrette***
  - November 20, 2008
- **Quebec class action based on odour, dust and noise from cement plant operations**
- **Neighbours complained since late 1950s and ultimately launched a class action**
- **Plant was established under regulatory authority (special provincial statute in 1952)**

# The Latest Word From the Supreme Court of Canada

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- ***St. Lawrence Cement v. Barrette***
- **No-fault liability of company causing abnormal or unreasonable “annoyance” to neighbours**
- **Liability despite company’s statutory authorization to operate**
- **SCC held that Quebec law is consistent with the common law concept of nuisance**
  - Unreasonable interference with the use and enjoyment of property

# Statutory Protections

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- **Farming operations that comply with normal farm practices are protected from nuisance lawsuits**
  - *Farming and Food Production Protection Act, 1998, s. 2*
  - *EPA, s. 14(2)*
    - *O. Reg. 419/05, s. 20.3*

## Final Thoughts!

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- **Companies that impose environmental nuisances on their neighbours can be liable to prosecution and civil sanctions**
- **Liable even if not contravening C of A or other regulatory authorization**
- **Companies need to be proactive in:**
  - Getting to know their neighbours, knowing what their neighbours do now, knowing what their neighbours plan to do next
  - Assessing their own potential to cause impacts to their neighbours
  - Implementing strategies to reduce or mitigate impacts on those in their community
- **Complaints drive legal outcomes!**



## ***Contact Information***

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