



*Mitigating Environmental Risks And Liabilities For
Consultants And Contractors*



Marc McAree
Willms & Shier Environmental Lawyers LLP

SMART Remediation
Toronto, ON | January 25, 2018
Ottawa, ON | February 15, 2018

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**“Law Firm of the Year” for Environmental Law in
The Best Lawyers in Canada, 2017 Edition**

SMART Remediation Seminar Series 2018



Common Blunders

- 1. Misunderstands and Miscommunicates Scope of Retainer**
- 2. Gives an Opinion Outside of Area of Expertise**
- 3. Shares Findings with Regulators**
- 4. Performs Below the Standard of Care**
- 5. Misses Deadlines**
- 6. Underestimates Time and Resources Needed**
- 7. Extends Reliance**
- 8. Negotiates Unreasonable Liability Limits**



Blunder: Misunderstands and Miscommunicates Scope of Retainer

- **Seek, understand, clarify and document client's objectives and instructions**
- **Also, document non-instructions**
- **Onus is on consultant (not client) to communicate and document key communications**



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Blunder: Gives an Opinion Outside of Area of Expertise

- **Consultants and contractors are not qualified to give legal advice**
- **Going beyond your expertise puts your client, reputation and insurance policy at risk**
- **Team of experts (including environmental lawyer) sets client up for success**



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Blunder: Shares Findings with Regulators

- **Obligations are to their clients, not the regulator**
- **Consultants and contractors must**
 - maintain confidentiality
 - keep client apprised of any obligation to report or disclose findings (may well need legal input)
- **Disclosure can be prejudicial to the client**
- **Disclosure may be protected in law (EPA, CEPA, FOI) if specified**



Blunder: Performs Below the Standard of Care

- **Consultants and contractors sometimes do not**
 - review all applicable and available records
 - test for all applicable parameters
 - correctly interpret data
 - advise clients about limitations of sampling and data analysis
 - identify all APECs and COCs
 - clearly convey to clients the implications of APECs and COCs on the clients' objectives



Blunder: Misses Deadlines

- **Missing deadlines can drive up costs and lead to losses for the client**
- **Underestimating time is never a good strategy for winning the work**



Blunder: Underestimates Time and Resources Needed

- **Remediation and/or risk assessment can take considerable time**
- **Time to satisfy regulatory requirements is variable, and often out of consultant's, contractor's and client's control**
- **Client must understand realistic timing and risks associated with recommended remedial approach**



Blunder: Extends Reliance

- **Consultant and contractor must understand**
 - purpose for extending reliance
 - to whom reliance extends
 - scope of reliance
- **Ensure reports are based on recent and valid data before extending reliance**



Blunder: Negotiates Unreasonable Liability Limits

- **Client makes substantial investments on the strength of consultant's and contractor's work**
- **Client should be entitled to rely and have assurance should the work fall below the standard of care**
- **Doing excellent work is consultant's and contractor's best defence**
- **Maintaining applicable insurance (including high enough limits) is not optional for consultants and contractors**



Contact Information

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