



# PUBLICATIONS

9605

## RETENTION POND LIABILITY

*Reprinted from May 1996  
COWAN NEWS*

### ***Occupier owes duty of safety to persons while on premises.***

Our office receives numerous inquiries with regard to liabilities associated with water retention ponds. It is quite common today for new developments to include municipal parkland adjacent to new homes. Many of these parks include water retention ponds designed to alleviate flooding from storm water and the spring thaw.

Under the Occupiers' Liability Act, the occupier owes a duty to everyone entering onto their premise to do what is reasonable to see that each person is reasonably safe while on the premises.

The definition of "occupier" under this act includes:

- ◆ a person who is in physical possession of the premises, or
- ◆ a person who has responsibility for and control over the condition of the

premises or the activities there carried on, or control over persons allowed to enter the premises.

The courts tend to place an even higher level of care on occupiers: (a) who solicit business from the public; and (b) who have an allurement on their premises, which by its very nature attracts children.

As many parks contain both playgrounds and retention ponds it becomes important for municipalities to examine the hazard created by the ponds and to take reasonable steps to prevent water related injuries or drownings.

The most common question we receive with regard to these ponds is "Do we fence it or not"? To reach the best decision you must review some basic characteristics of each retention pond:

- ◆ Where is the pond?
- ◆ Is it located next to playground equipment or other allurements?

- ◆ How long will water remain in the pond?
- ◆ What is the slope of the banks?

In their book "Stormwater", authors Ben Urbonas and Peter Stahre recommend that banks be no steeper than a four unit to one ratio. They stress that three to one ratios should be avoided unless fenced.

If you do choose to fence the pond the fencing must then be properly maintained and inspected as a part of your routine maintenance program.

We have also seen some retention ponds where natural barriers (hedges, trees, bushes) have been used with great success to provide protection against access to the water and keep the integrity of the natural environment of the park.

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Signs should also be posted in conjunction with barriers or in their absence, warning the public of the dangers associated with these ponds and to prohibit specific activities (i.e. "No Swimming").

Water retention ponds provide much needed protection from flooding in many areas and our parks are certainly a valued part of every community. By following the guidelines outlined above we can

continue to enjoy the benefits of both and reduce the risk of accidents through their use. 

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