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# Regulatory Negligence of Public Authorities

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Society of Ontario Adjudicators and Regulators  
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# Overview

- Regulatory Negligence Trends
- Case Law Discussion
- UK Law Commission
- Reducing the Scope – Best Practices

# A state of lamentable confusion

- “The case law as to the duties and liabilities of a statutory body to members of the public is in a state of lamentable obscurity and confusion.”
  - McKinnon, L.J., *East Suffolk Rivers Catchment Board v. Kent*, [1940] 1 K.B. 319 at 322

# Duty of Care

- *Anns* – two stage analysis/duty of care
- First – does relationship have sufficient proximity to establish a prima facie duty of care
- Second – are there residual policy concerns that negate or limit that duty
- Historical – policy v. operational

# Public Authorities

- *Cooper v. Hobart* [2001] 3 S.C.R. 537, 2001 SCC 79
- *Edwards v. Law Society of Upper Canada*, [2001] 3 S.C.R. 562, 2001 SCC 80
- *Finney v. Barreau du Quebec*, 2004 SCC 36

# Public Authorities

- *Hill v. Hamilton-Wentworth Regional Police Services*, 2007 SCC 41
- *Sauer v. Canada (Attorney General)*, 2007 ONCA 454
- *Heaslip Estate v. Mansfield Ski Club*, 2009 ONCA 594

# Public Authorities

- *Street v. Ontario Racing Commission*, 2008 ONCA
- *Holland v. Saskatchewan*, 2008 SCC 42

# U.K. Law Commission

- The Law Commission, Consultation Paper No. 187, Administrative Redress: Public Bodies and the Citizen, June 17, 2008
- “The uncertain and unprincipled nature of negligence in relation to public bodies, coupled with the unpredictable expansion of liability over recent years, has led to a situation that serves neither claimants nor public bodies.”



# Best Practices

#1: Regulatory Negligence Audit

#2: Complaints/public contact (Finney)

#3: Assumption of Liability (Sauer)

#4: Investigations and inspections (Hill and Berendsen (Ont. Sup. Ct.)

#5: Policies, procedures and documentation

# Further Reference

“Regulatory Negligence of Public Authorities”, The Six Minute Administrative Lawyer, Law Society of Upper Canada Conference, February 24, 2009

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Thank you!

# Thank You

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