

# Doug Chapman

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- Criminal law defence
- Prosecutor with Ontario MOE
- Private Prosecutions with Eco Justice

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**Whose environment  
is it?**

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**IT'S OURS**

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# Who Owns It?

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**WE DO**



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# ***Climate Destabilization***

# *Climate Destabilization*

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- Importance of Dissolved Oxygen
- Warmer Climate Worsens Pollution Effects

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***Why We Can't Rely  
On the Government to  
Protect our Environment***

# *Current State of Affairs*

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The Particular Relationship between  
Corporate Polluters and Provincial  
and Federal Regulators

# *Current State of Affairs*

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- Money and Power
- Corporate Control of Government

# *Current State of Affairs*

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“Officially Induced Error”

# *Why Are Private Environmental Prosecutions Necessary?*

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Personal Experiences  
at Ontario MOE

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***Fisheries Act***  
**R.S.C. 1985, c. F-14**

# *Fisheries Act*

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To encourage public participation in the protection of community interests, the *Fisheries Act* General Regulation states one-half the fine must be given to the citizen who lays charge upon conviction of polluter

# *Fisheries Act*

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## Two Offences

- (a) Deposit deleterious substance in water frequented by fish
- (b) Carry on a work or undertaking that harmfully alters fish habitat

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# ***How to Start***

# *How to Start*

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## *Research pollution problems in your area*

- Who are the biggest problem polluters in the area?
- Municipalities are often big polluters
- Landfill sites are most important

# *How to Start*

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## *Research pollution problems in your area*

- Almost all manufacturing involves using fisheries water to cool their processes and to dump their waste.
- Problems proving air pollution cases



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# ***Gathering Evidence***

# *Gathering Evidence*

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To Trespass

or

Not To Trespass

# *Gathering Evidence*

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- Finding an accredited lab
- Total secrecy while investigating and in dealing with labs
- Necessity of a qualified biologist to advise and assist
- End of pipe test
- How to prove that receiving water is “water frequented by fish”

# Gathering Evidence

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- How to prove discharge is deleterious
- Personal safety
- Acute toxicity tests
  - Rainbow trout and daphnia magna
- Note-taking and its importance
- Location of discharge by GPS
- Chain of custody

# *Gathering Evidence*

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- Equipment for sampling
- Labelling samples
- Sampling liquid - the 3-rinse requirement
- Sampling sediments
- Care of samples (cooler)
- Lab analyses

# *Gathering Evidence*

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- Importance of the benthic community
- Upstream and downstream sampling
- Importance of sampling on more than one day – each day pollution occurs is a separate offence

# *Gathering Evidence*

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Negligence –  
Failure to Take Reasonable Care

# *Gathering Evidence*

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## Water and Sediment Quality Guidelines

# *Gathering Evidence*

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Photography  
/ Video

# *Gathering Evidence*

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FOI and ATI  
Applications

# *Gathering Evidence*

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- Identifying the accused
- Land Title searches
- Corporate Registry searches
  - Certificate of Status

# *Gathering Evidence*

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Dealing with the Polluter

# *Gathering Evidence*

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Dealing with the Regulator

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# ***The Prosecution Brief and Process Hearing***

# *The Prosecution Brief*

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- Information
- Synopsis
- Witness statements
- List of Exhibits
- Exhibits
- Five copies in 3-ring binders

# *Process Hearing*

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- Make appointment with provincial court administrator to set a date for process hearing
- Give notice of hearing and copy of brief to A.G.
- Give copy of brief to polluter

# *Process Hearing*

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- Held before provincial court judge or designated justice of the peace
- Private citizen (informant) testifies under oath regarding contents of brief – may be cross-examined by A.G.

# *Process Hearing*

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- Judge makes decision if process should be issued
- If process issues, accused polluter summoned to court to face trial

# Acronyms

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- MOE – Ministry of Environment
- GPS – Global Positioning System
- FOI – Freedom of Information
- ATI – Access to Information
- A.G. – Attorney General

# Thank You

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## Private Environmental Prosecutions

Doug Chapman, LL.B.  
Fraser Riverkeeper



**FRASER RIVERKEEPER®**

“Salmon Forever”