

Contaminated Lands Update How clean is "clean?"



In the past, answers to the question "how clean is clean?" have been confusing and unclear. While interested parties are becoming more familiar with the Ontario Ministry of the Environment's Guidelines, the applicability of said guidelines in all circumstances has been a matter of some concern. However, we recently obtained a pronouncement from the Ontario Court of Appeal on our trial decision in *Tridan v. Shell* (2000), 35 R.P.R. (3d) 141 (Ont. S.C.J.) that should help to clear up the confusion.

The results of this ruling are far reaching for those involved in a contaminated land scenario. This ruling is the first clear appellate authority on three crucial issues.

Innocent Third Parties Have Rights

In the past, an injured property owner has not been able to demand remediation beyond applicable MOE guidelines. Now it is clear that those guidelines do not necessarily apply to persons causing contamination to the lands of innocent third parties.

Innocent Third Parties Can Demand Full Remediation

Where reasonable, such innocent third parties have the right to have their lands cleaned up to "pristine levels," where evidence shows that the land was in that condition prior to the contamination.

Innocent Third Parties May Claim Damages for Resulting Stigma to Their Lands

Further damages over and above the cost of clean up can be levied where the land suffers a diminution in market value due to the stigma attached to a contaminated site.

Clear planning and guidance are now required when dealing with the resolution of contamination issues, particularly where third parties are involved.

The continuing refinement of environmental jurisprudence, demonstrated by this case, will include the careful analysis and

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assessment of all contamination claims. Many issues that have not been apparent in the past are now relevant when dealing with contaminated lands. Failure to consider all the relevant facts and issues will place you at a dramatic disadvantage in today's changing environmental field.

For more information on this topic please call us at (613) 241-3400



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