

# Navigating Through The Brownfields Remediation Process

**MICHAEL S. HEBERT**

*Partner*

***BEAMENT GREEN***

***[www.beament.com](http://www.beament.com)***

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# REMEDIATION ISSUES

## Federal Lands

- lack of standards
- problems when lands to be converted to private use
- is Federal Government really immune from Provincial Environmental laws?

# REMEDIATION ISSUES

- what strategies and technologies are to be employed where a third party is paying the bill?
- concept of reasonableness
- timing of remediation
- planning evidence

# LIMITATIONS

- short time periods in which to bring an action or be forever barred
- long time periods to delineate and remediate many sites
- standstill agreements

# CHANGING GENERIC CRITERIA

- at least two changes in the last ten years
- generally tolerance for permissible contamination levels is decreasing
- what happens when you remediate now but have to deal with the site later

# BROWNFIELDS ISSUES

- recoverable amounts
- no back dating of claims
- offsite migration

# THE BANKING INDUSTRY

- don't like uncertainty
- reactions
  - pass on the deal
  - higher interest rates
  - lower margins
- no universal approach
- decision makers often not sophisticated in environmental matters

# CLAIMS TO BE DEALT WITH

- one time only approach to legal claims
- need to have all claims potential, real and future dealt with at the same time
- cannot go back and re-open matters once it is settled or litigated
- all reasonable claims need to be included
  - stigma
  - future soils
  - costs
  - monitoring etc.



# INSOLVENCY PROCEEDINGS

- *Nortel Networks Corporation*, 2013 ONCA 599
- *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67
- who pays?

# DIRECTORS LIABILITY

- Baker case
- MOE looking for pockets
- fault becoming a remote consideration

# POLLUTER PAY

- genesis of principle
- wording of EPA
- statutory liability
- Kawartha Lakes

# RECORD OF SITE CONDITION

- to RSC or not to RSC
- time delays
- where mandatory
- where optional
- CPU's
- practical effects

# DEVELOPMENT OF STRATEGY TO DISPOSE OF LANDS

- marketing
- mortgaging
- re-selling

# TRANSFER OF LANDS/MANAGEMENT OF RISK

- mechanisms to transfer risk
- drafting beyond simple real estate considerations
- hundreds of issues
- description of measureable/verifiable results
- don't find out the hard way

# MOE ORDERS

- type of orders
- who made against
- watch for MOE orders being a bar to recovery of your remediation costs

# TAX CONSIDERATIONS

- remediation costs
- disclosure in financial statements
- need to include tax considerations in early plannings



# GENERIC/RISK ASSESSMENT BASED REMEDIATIONS

- practical consideration
- offsite migration issues
- various types of risk assessment
- what is the use of land?
- who is going to own it?

## Contact Information

### **Michael S. Hebert**

Tel: (613) 241-3400

mhebert@beament.com



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