WILLMS & SHIER ENVIRONMENTAL LAW MOOT COURT COMPETITION 2017

S.E.M.C.C. File Number: 03-04-2017

IN THE SUPREME ENVIRONMENTAL MOOT COURT OF CANADA

(ON APPEAL FROM THE ONTARIO COURT OF APPEAL)

B E T W E E N:

JOHN THORDARSON and THORCO CONTRACTING LIMITED

APPELLANTS
(Respondents)

- and -

MIDWEST PROPERTIES LTD.

RESPONDENT
(Appellant)

FACTUM OF THE APPELLANTS JOHN THORDARSON and THORCO CONTRACTING LIMITED

Pursuant to Rule 12 of the
Willms & Shier Environmental Law Moot Official Competition Rules 2017

TEAM # 2017-11

TO: **THE REGISTRAR OF THE**
SUPREME ENVIRONMENTAL MOOT COURT OF CANADA

AND TO: **ALL REGISTERED TEAMS**

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PART I -- OVERVIEW AND STATEMENT OF FACTS

1. This appeal concerns the increasing scope of damages that a landowner is now liable for under section 99(2) of the *Environmental Protection Act* ("*EPA*").

2. Following the decision of the Ontario Court of Appeal ("Court of Appeal"), landowners must now pay costs to remediate contamination discovered on another's property, regardless of whether there is evidence of damages suffered by that other party or whether the potential for double compensation exists. The question that this Court must answer is whether s. 99(2) damages *should* be awarded in light of a modern statutory interpretation of the provision, the existence of an impermissible risk of double recovery, and the absence of loss relative to the Respondent's interest in the property.

3. Thorco Contracting Limited and John Thordarson (the "Appellants") submit that the court below erred in awarding $1.328 million in damages to Midwest Properties Ltd. (the "Respondent") for a proposed plan to remediate petroleum hydrocarbon ("PHC") contamination discovered on the Respondent's property.

4. The Appellants advance the position that the Court of Appeal's decision is based on three misconstrued interpretations of s. 99(2) under Part X of the *EPA*. The Appellants further submit that each of these decisions should be overturned on appeal as landowners should not be burdened with indeterminate liability under s. 99(2) of the *EPA*, particularly where evidence of damages can not be produced and in light of the role of the courts in safeguarding against double compensation.

5. The Appellants respectfully request that the Supreme Environmental Moot Court of Canada ("SEMCC") overturn the ruling of the Court of Appeal in order to uphold modern statutory interpretation principles, maintain consistency with the established common law of torts, and avoid the judicial codification of an unfounded "polluter pays twice" principle within the *EPA*.

A. Statement of the facts

i. *After extensive revision and reintroduction of the bill, Part X of the Environmental Protection Act was enacted in 1979*

6. Part X of the *Environmental Protection Act* ("*EPA*") was initially introduced as Bill 209 on December 14, 1978. Following considerable response from industry, municipalities, and other concerned parties, Bill 209 was re-introduced on March 27, 1979 as revised Bill 24.

> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 31st Parl., 2nd Sess., Vol. 5, No. 151 (14 December 1978) at 6178 [*Hansard, First Reading of Bill 209*].
> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 31st Parl., 3rd Sess., Vol. 1, No. 8 (27 March 1979) at 255 [*Hansard, First Reading of Bill 24*].

7. The second and third readings of Bill 24 occurred on May 15, 1979 and December 11, 1979 respectively. Part X did not come into force until November 29, 1985, nearly six years after receiving royal assent on December 20, 1979.

> *Midwest v Thordarson*, 2015 ONCA 819 at para 44 [*Midwest*].
> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 31st Parl., 3rd Sess, Vol. 2, No. 38 (15 May 1979) at 1950 [*Hansard, Second Reading of Bill 24*].
> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 31st Parl., 3rd Sess., Vol. 5, No. 134 (11 December 1979) at 5375 [*Hansard, Third Reading of Bill 24*].
> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 31st Parl., 3rd Sess., Vol. 5, No. 147 (20 December 1979) at 5867 [*Hansard, Royal Assent*].

ii. *The Appellants' use of 1700 Midland Avenue*

8. The Appellants acquired 1700 Midland Avenue ("1700 Midland") in 1973. It was used for the business of lining tanks and servicing petroleum handling equipment until the winding down of the Appellants' activities in 2002. As part of the Appellants' operations, a portion of the property had been used as a PHC storage site since 1974.

> *Midwest, supra* para 7 at para 10.

9. The Appellants acknowledge that they were the subjects of a series of Ministry of Environment orders and investigations between 1988 to 2011 relating to 1700 Midland (note that the Ministry of Environment has since been renamed to the "Ministry of Environment and Climate Change," hereinafter referred to as "MOECC"). The Appellants received a number of contemporaneous orders that were the products of successive changes to an original MOECC field order.

> *Midwest, supra* para 7 at para 2.
> Factum of the Respondents in the Court of Appeal for Ontario, May 7, 2014 at para 27 [ONCA *Factum of the Respondents*].

iii. ***The Respondent purchased 285 Midwest without adequate investigation or assessment***

10. In December 2007, the Respondent purchased 285 Midwest, an industrial property located in Toronto. 285 Midwest is adjacent to 1700 Midland.

    Midwest, supra para 7 at paras 1, 9 [*Midwest*].

11. Prior to its purchase of 285 Midwest, the Respondent obtained a Phase I environmental assessment report from a hired consultant, TS Environmental Services. That Phase I report indicated the consultant's opinion that a Phase II environmental assessment was not required. Despite having knowledge about the industrial nature of 285 Midwest and the industrial uses of the adjacent property, Midwest chose not to conduct a Phase II environmental assessment or perform any supplementary soil and groundwater testing.

    Midwest, supra para 7 at para 9.
    Midwest v Thordarson, 2013 ONSC 775 at para 7 [*Midwest* Trial].

12. After its purchase of 285 Midwest, the Respondent discovered elevated levels of PHCs in its soil and groundwater samples which exceeded certain MOECC standards. Despite the presence of PHCs, the Respondent experienced no disruption to its business operations at 285 Midwest, which continued as usual.

    Midwest, supra para 7 at paras 3, 24.
    Midwest Trial, *supra* para 11 at paras 12, 23.

iv. ***Lack of evidence at trial to prove damages***

13. The Appellants acknowledge the trial judge's findings that there were elevated levels of PHC on 1700 Midland and that contaminants likely flowed from 1700 Midland at some point in time during a 40-year period.

    ONCA *Factum of the Respondents*, *supra* para 9 at para 6.

14. The Respondent did not adduce evidence at trial to show when the contamination on the Respondent's property occurred or what level of PHC was present at the time of 285 Midwest's acquisition. As a result, there is no evidence indicating whether or to what degree the contamination had changed since the property's purchase in December 2007.

    Midwest, supra para 7 at paras 3, 24.
    Midwest Trial, *supra* para 11 at paras 7, 8, 23.

15. The trial judge held that the Respondent failed to produce *any* evidence of business losses, including any actual loss in the property's value, or any disruption to the Respondent's ability to use or operate its business on 285 Midwest. There was also no evidence to show that Midwest had incurred any remediation costs at the time of the trial and subsequent appeal.

    Midwest Trial, *supra* para 11 at paras 7, 8, 23.
    Midwest, supra para 7 at paras 11, 36.

16. The Respondent adduced testimony from two expert witnesses at trial. Despite the fact that neither witness was qualified as an expert in mortgage lending, property valuation, or property appraisals, these witnesses purported to give some testimony relating to a potential negative financial impact from the PHC.

    Midwest, supra para 7 at paras 27-29, 31.

17. The MOECC issued a remedial order on January 19, 2012 ("the Order"). The Order required the Appellants to investigate and remediate the extent of its PHC contamination on 1700 Midland. At the time of the Respondent's claim, the Order was already in effect.

    Midwest, supra para 7 at paras 32, 35.

v. ***The Trial Court's decision***

18. At trial, the Respondent claimed damages under nuisance, negligence, and s. 99(2) of the *EPA.* For the Ontario Superior Court, Justice Pollack rejected each of the Respondent's claims, holding that it had failed to prove the requisite damages required to establish nuisance, negligence, or a claim under s. 99(2). She emphasized the fact that the Respondent continued to use 285 Midwest for its clothing manufacturing and that the business operated as usual irrespective of the contamination.

    Midwest Trial, *supra* para 11 at paras 2, 23, 31, 34.

19. Justice Pollack further rejected the Respondent's s. 99(2) claim on three additional grounds: first, that the Order precluded damages under s. 99(2); second, that the Respondent failed to provide evidence that it was entitled to compensation for an immediate remediation strategy; and third, that the potential for double recovery precluded damages under s. 99(2).

    Midwest Trial, *supra* para 11 at paras 20, 21, 22.

vi. ***The Court of Appeal's decision***

20. Despite the fact that the Respondent had not suffered any change in its use of 285 Midwest, any interference with its manufacturing business, or any loss of sales resulting from the presence of PHCs, the Court of Appeal overturned each of the trial court's findings on the s. 99(2), nuisance, and negligence claims. In its finding for the Respondent, the Court of Appeal awarded damages on the basis of the costs for remediation rather than a diminution in the property's value. Further, it was dismissive of Justice Pollack's concerns about the potential for double recovery created by the MOECC Remedial Order.

Midwest, supra para 7 at paras 80, 112.

PART II -- QUESTIONS IN ISSUE

21. The three issues before this Honourable Court are as follows:

> **Issue 1:** Did the Court of Appeal err in finding that liability under s. 99(2) is not dependent on establishing an actionable nuisance at common law?
>
> **Issue 2:** Did the Court of Appeal err in finding that damages are not precluded under s. 99(2) where the MOECC had ordered the defendant to remediate the plaintiff's property?
>
> **Issue 3:** Did the Court of Appeal err in finding that the appropriate measure of damages under s. 99(2) was the cost of remediation of the plaintiff's property as opposed to diminution in value?
>
> Official Problem for the 2017 Willms & Shier Environmental Law Moot at 1-2.

A. The applicable standard of review for all three issues is correctness

22. In *Housen v Nikolaisen*, the Supreme Court of Canada set out two applicable standards of review for issues on appeal. Questions of law are reviewed on a standard of correctness, allowing this Court to replace a lower court's judgment with its own. Conversely, questions of fact warrant a standard of deference and a trial judge's decision is not to be overruled unless there is a palpable and overriding error.

> *Housen v Nikolaisen*, 2002 SCC 33 at paras 1, 7-10, 21, 36 [*Housen*].

23. The issues before this Court relate to questions of law and the application of legal standards. Therefore, they turn on whether or not the Court of Appeal was correct in its analysis and determination of the law. The Appellants submit that the Court of Appeal erred in its application of the law and all three questions should be answered in the affirmative.

PART III -- ARGUMENT

A. Liability under s. 99(2) is dependent on establishing an actionable nuisance at common law

24. Part X of the *EPA* was enacted to complement the common law. The Appellants submit that, in creating Part X, the Legislature never intended to allow parties to circumvent the need to establish a cause of action or the need to prove damages. A proper statutory analysis demonstrates that Part X was intended to supplement, rather than supplant, the established traditions of the common law.

i. *The Court of Appeal erred in its statutory interpretation of s. 99*

25. The Appellants submit that the Court of Appeal failed to correctly apply the modern approach to statutory interpretation by focusing on a selective view of the provision's purpose and by neglecting to undertake proper textual and contextual analyses.

26. In its analysis of s. 99(2), the Court of Appeal focused on the purpose of the Act. The court below determined Part X of the *EPA* to be a statutory codification of the "polluter pays" principle. In doing so, it relies almost solely on commentator opinions on the proposed interpretation of the *EPA* and cites the former Minister of the Environment ("Minister") on his introductory reading of Bill 209's objectives.

Midwest, supra para 7 at paras 43-47, 68.

27. However, the Court of Appeal neglected other portions of the modern approach to statutory interpretation in analyzing Part X of the *EPA*. In addition to looking at the object and intention (purpose) of the Act, one must give consideration to the "entire context" of the Act, including its place within the larger statutory scheme and existing common law, as well as a thorough analysis of the text itself. Taken together with the Legislature's intention, these aspects are meant to be interpreted in a manner so as to produce harmony across the law.

28. The modern approach to statutory interpretation holds that:

> […] the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> *Rizzo & Rizzo Shoes Ltd. (Re),* [1998] 1 SCR 27 at para 21 [*Rizzo*].
> *Bell ExpressVu Ltd. Partnership v Rex,* 2002 SCC 42 at para 26 [*ExpressVu*].

(a) The Court failed to consider the immediate context of the related provisions

29. The requirement to analyze a statute's "entire context" highlights the importance of going beyond the initial impression one might obtain by reading the text of the provision at issue. However, the Court of Appeal failed to consider any context beyond the proposed purpose of the Act, most notably by ignoring the definitions provided in s. 99(1).

30. "Loss or damage", as stated in s. 99(1), mirrors the forms of damages established at common law. Subsection 99(1) outlines the types of loss or damage for which one may seek compensation under s. 99(2):

> […] 'loss or damage' includes personal injury, loss of life, *loss of use or enjoyment of property* and pecuniary loss, including loss of income. [Emphasis added]
>
> *Ontario Environmental Protection Act*, RSO 1990, c E-19, s. 99(1) [*EPA*].

31. Of the types of "loss or damage" listed in s. 99(1), the only one relevant to this case is loss of use or enjoyment of property. The Respondent has not, and could not on the evidence, claim damages for personal injury, loss of life, or pecuniary loss.

> *Midwest, supra* para 7 at paras 11, 36.

32. This language in s. 99(1) demonstrates the Legislature's intention that s. 99(2) would complement the existing law of nuisance. The particular phrasing of "loss of use or enjoyment of property" is the same as that used in the common law to describe "actionable nuisance". When s. 99(2) refers to "loss or damage" where the only alleged harm is to property, as in this case, the phrase is analogous to "as conceived in the law of nuisance".

(b) The Court of Appeal failed to consider several relevant presumptions of interpretation

33. The Appellants submit that the Court of Appeal failed to consider the presumption of consistent expression, the presumption against changing the common law, and the presumption of resort to the common law. In undertaking a textual analysis of a statute, the interpreter draws inferences based on the grammatical, conventional and logical relations of the disputed word or phrase and the rest of the text. Of particular importance in this case are a number of conventions and presumptions as they relate to the initial drafting and wording of the text.

34. Consistent expression is an important presumption used in analyzing legislation. As explained by Professor Ruth Sullivan, legislatures are presumed to avoid stylistic variation. Or, as put by the Supreme Court of Canada in *Thomson v Canada,* legislatures intend for the same words to have the same meanings.

> Ruth Sullivan and Elmer A Driedger, *Sullivan on the Construction of Statutes*, 6th ed (Markham, Ontario: LexisNexis Canada, 2014) at 217 [Sullivan On the Construction of Statutes].
> *Thomson v Canada (Deputy Minister of Agriculture)*, [1992] SCR 385 at 243-44 [*Thomson*].

35. While *Thomson* only considered consistent expression within the context of one Act, the presumption also applies when there are related statutes and analogous provisions. This is exemplified in the decision of *Maurice v Priel*, wherein the Supreme Court of Canada relied on provisions within the *Judges Act*, the *Legal Profession Act*, and the Rules of the Law Society of Saskatchewan. Although none of the provisions expressly precluded judges from being members of the provincial Law Society, the intention of the drafters was clear when one considered all of the provisions together.

> *Maurice v Priel*, [1989] 1 SCR 1023 at 1030 -1033.

36. In the case at hand, nuisance is defined as the "use and enjoyment of property" in several provisions within the Ontario statute book. The clearest example is within the *Municipal Act*, where s. 447.1(1)(b) states, in part, that:

> […] the public nuisance has a detrimental impact on the use and enjoyment of property in the vicinity of the premises.
> *Municipal Act*, SO 2001, c 25, s 447.1(1)(b) [*Municipal Act*].

37. The Appellants submit that the use of the phrase "use and enjoyment of property" in a definition of nuisance within the Ontario statute book undeniably presents such an example of consistent expression.

38. The definition of public nuisance within the *Municipal Act* outlines interferences with the use and enjoyment of property not normally captured by the common law of nuisance. However, the Appellants submit that this is only further proof that the common law definition should be applied. If the Legislature intended for "loss of use or enjoyment of property" to mean something different in s. 99 of the EPA than the common law definition, it would have either used different phrasing or provided further clarifying definitions within the statute itself.

EPA, *supra* para 30, s. 99.
Municipal Act, *supra* para 36, s 447.1(1)(b).

39. In addition to the presumption of consistent expression, there is also a presumption against changing the common law. As explained by the Supreme Court of Canada, there is the presumption that the legislature does not intend to change existing common law rules or principles in the absence of a very clear intention to the contrary.

Parry Sound (District) Social Services Administration Board v Ontario Public Service Employees Union, 2003 SCC 42 at para 39.

40. As Professor Sullivan explains:

> These presumptions permit the courts to insist on precise and explicit direction from the legislature before accepting any change. The common law is thus shielded from inadvertent legislative encroachment.
> Sullivan on the Construction of Statutes, *supra* note 34 at 539.

41. The Appellants submit that it is contrary to modern statutory interpretation to presume that the *EPA* was enacted to displace the common law absent clear statutory language expressing such an intention. Without the express intention of the Legislature to oust the jurisdiction of the common law, Part X cannot be seen as entirely displacing the traditional tort causes of action.

42. Instead, the Appellants submit that the Legislature's intention in enacting Part X should be seen as one of modification. Where the common law is modified, the resulting legislation is integrated into the evolving common law. Through modification, the legislation complements the common law, altering requirements so as to ensure its effectiveness in a given context. For example, by lowering the threshold by eliminating the need to establish fault in the context of spills under s. 99(6).

43. Another presumption of statutory interpretation arises where the Legislation offers an inadequate solution or is silent on a particular term. In such instances, the courts may resort to the common law. *Di Pietro v R* illustrates this reliance on the common law. In *Di Pietro*, the Supreme Court of Canada held that the common law had, for a long time, recognized the act of wagering as an essential element of gaming, and that to extend the law to acts not involving wagering would capture actions Parliament did not intend to criminalize.

Di Pietro v R, 1986 1 SCR 250 at paras 15-16 [*Di Pietro*].

44. The Appellants submit that the circumstances in this case are comparable to the ones in *Di Pietro*. The Legislature had already provided a definition of "loss or damage" under s. 99(1) of the *EPA*. To further define what is meant by "use and enjoyment of property" within the *Act* would lead to excessive wording within the statute, especially when definitions such as loss of use or enjoyment of property are well established under the common law.

(c) The Court of Appeal did not consider all of the relevant legislative history in its statutory interpretation

45. The Appellants submit that the Court of Appeal's decision selectively quoted from early legislative debates and ignoring the more relevant debates held later. The Court of Appeal relied on Ministerial speeches concerning Bill 209, which never actually came to pass. In fact, the Legislature ultimately enacted a revised version of Bill 209, which was its successor, Bill 24. The Court of Appeal proceeded to cite excerpts from Hansard debates held on the December 14, 1978 and March 27, 1979 debates, which regard the introduction of Bill 209 and first reading of Bill 24 respectively.

Midwest, supra para 7 at paras 45 and 47.

46. However, the bill had changed substantially between the time of Bill 209's first reading, which the Court of Appeal relied on, and the third reading of Bill 24. Indeed, the changes to the bill were so significant that at the third reading of Bill 24 on December 11, 1979, Ms. Bryden of the New Democratic Party, who sat on the committee for Bill 24, questioned whether its initial purpose or functions remained intact, stating:

> Mr. Speaker, during the past eight months since the bill was introduced and referred to the resources development committee it has been radically changed. The minister has brought in many amendments and this has prolonged the process of dealing with the bill greatly […] some of the changes give rise to considerable worry about the strength of the bill and whether the principle that the polluter must pay has been departed from.
> *Hansard, Third Reading of Bill 24*, supra note 7 at 5376.

47. The Appellants submit that the Court of Appeal failed to consider whether the bill properly achieved the objective of incorporating the polluter pays principle into the Legislation. Other purposes or interests may have precluded the objective between the first reading of Bill 209 and the final enactment of Bill 24. It is not prudent to infer that the polluter pays principle is the sole consideration in all decisions relating to spills, especially in light of such concerns at third reading.

ii. ***The Court of Appeal failed to apply Hollick correctly and mischaracterized nuisance***

48. The Appellants submit that the Court of Appeal misconstrued a leading authority on nuisance as it applies to s. 99 of the EPA. Consequently, it failed to appreciate the way in which s. 99 complements rather than supplants a private action in nuisance.

49. Nuisance is a well-understood and long-settled tort. The Supreme Court of Canada has confirmed the two elements of nuisance, stating that it encompasses both a *substantial* and *unreasonable* interference with the owner's use or enjoyment of land.

> *Antrim Truck Centre Ltd. v Ontario (Ministry of Transportation),* [2013] 1 SCR 594 at paras 19-21 [*Antrim*].

50. Similarly, the parties in the present case agreed at trial on the definition of actionable nuisance as:

> …causing physical injury to land or substantially interfering with the use or enjoyment of land or an interest in land, where, in light of all the surrounding circumstances, this injury or interference is held to be unreasonable.
> *Midwest* Trial, *supra* para 11 at para 24.

51. The Appellants submit that the definition in *Antrim* was the definition properly contemplated by the Court of Appeal in *Hollick v Metropolitan Toronto (Municipality),* where Justice Carthy held:

> The statement of claim alleges negligence, nuisance, a claim based on *Rylands v. Fletcher* and s. 99 of the *Environmental Protection Act* (for a spill of a pollutant). *Not one of these claims can be established unless a nuisance is proved* and thus the search for a common issue can be confined to the claim of nuisance [citations removed; emphasis added].
> *Hollick v Metropolitan Toronto* (1999), 46 OR (3d) 257 (CA) at para 18 [*Hollick*].

52. However, in the case at bar, Justice Hourigan of Court of Appeal disagreed with a plain reading of the *Hollick* decision, holding instead that Justice Carthy was merely referring to a nuisance in the "colloquial sense".

> *Midwest, supra* para 7 at paras 73-75.

53. The Appellants submit that Justice Hourigan misconstrued the precedent set in *Hollick* that a claim under s. 99 of the *EPA* requires nuisance to be proved. "Nuisance" was not intended in the colloquial sense. Justice Carthy situates the term nuisance in a sentence alongside other related torts pleaded in that case. To say that the Court of Appeal in *Hollick* was referring to a need to establish a mere inconvenience or bother is unfounded, especially when such forms of nuisance themselves are not sufficient to establish a claim under the common law torts referenced.

iii. ***The Respondent has not established actionable nuisance as required by s. 99 of the Environmental Protection Act***

54. In accordance with the reasons set out above, the Appellants submit that liability under s. 99(2) of the *EPA* is dependent on establishing actionable nuisance under the common law. Establishing actionable nuisance requires proof of physical injury to the land or substantial interference with the use or enjoyment of the property in order to claim damages.

55. It is these elements of nuisance that the Respondent has failed to prove. Much of the contamination is believed to have occurred prior to the acquisition of the property by the Respondent. The Respondent declined to provide any evidence of the condition of the property when it was acquired. It is, therefore, unclear as to what actual damages the Respondent has incurred. The Respondent should be required to prove that there has been an increase in the level of contamination on the property since it was purchased, in accordance with the common law standards for actionable nuisance.

Midwest Trial, *supra* para 11 at paras 27-28.

56. The decision by the Ontario Court of Appeal in *Smith v Inco* provides a recent example of the standards required to establish nuisance. Specifically, it held that evidence of the existence of nickel particles in the soil, which generated health risk concerns, did not amount to evidence that such presence caused actual, substantial harm or damage to the property.

Smith v Inco Ltd., 2011 ONCA 628 at para 67 [*Smith v Inco*].

57. The Appellants maintain that there is no legal basis for the Respondent to claim damages. Not only did the Respondent fail to lead evidence of physical harm to the property since its purchase, but there was also no evidence indicating any other type of harm.

58. The Respondent has provided no evidence of any impairment of the use of its property. Midwest currently uses the property for the commercial manufacture and distribution of clothing. There has been no evidence adduced to prove that the PHC levels of the property's soil have interfered with the normal conduct of the Respondent's business at their property.

Midwest, supra para 7 at paras 96.

iv. ***Granting compensation in the absence of real damages establishes a dangerous precedent.***

59. In addition to the reasons stated above, the Appellants submit that there are important policy reasons for the need to find an actionable nuisance before awarding damages under s. 99. Allowing s. 99(2) claims based solely on the property being affected by PHC migration, without any evidence of adverse effects on a defendant's use or enjoyment of its property, would set a poor precedent.

60. Under the law set out by the Court of Appeal, litigation could increase dramatically. Parties will be able to negotiate the purchase of a property, and later bring legal action through s. 99(2) against the original "owner of the pollutant" or "person having control of a pollutant" as defined in s. 91(1) despite having suffered no actual loss or damage.

EPA, *supra* para 30, ss. 91(1), 99(2).

61. The Appellants submit that the Court of Appeal's decision undermines the doctrine of *caveat emptor* by allowing the Respondent to recover the cost of remediation on a property that was already contaminated prior to its purchase. *Caveat emptor* remains a long-held doctrine within Canadian law. Purchasers of industrial land are expected to be diligent in their decisions and seek further guarantees and insurances where desired. It would simply be unfair to hold others responsible for the risks that certain individuals choose to take.

Winnipeg Condominium Corporation No 36 v Bird Construction Co, [1995] 1 SCR 85 at para 45.

62. The Respondent could have been more thorough in assessing the property before purchasing 285 Midwest Road. However, it failed to conduct the proper due diligence. The Court of Appeal's decision stands in support of this lack of diligence and encourages future purchasers to follow suit.

B. An issued MOECC remedial order precludes damages under s. 99(2)

63. The Court of Appeal's decision creates a strong risk of double recovery against the owners of contaminated land. In doing so, the Appellants submit that the Court of Appeal erred in its decision by summarily dismissing the risk of double recovery. Further, the Appellants submit that the court below failed to consider that neither the *EPA* generally nor the MOE's assurance in this case specifically provides any protection against double recovery.

i. ***The Court of Appeal erred in its dismissal of the general rule against double recovery***

64. The principle of recovery is widely accepted in tort law. It ensures that compensation is provided to injured parties for losses that they have suffered. However, as held by Justice Cory for the majority and Justice McLachlin for the dissent in *Cunningham v. Wheeler*, plaintiffs are generally not entitled to double recovery. This means that injured parties may not "double-dip" for damages resulting from the same injury.

> *Cunningham v. Wheeler; Cooper v Miller, Shanks v. McNee*, [1994] 1 SCR 359 at 368-369, 396-397 [*Cunningham*].

65. It follows from *Cunningham* that courts must refrain from overcompensating plaintiffs in damages unless their case falls within an exception to the general rule against double recovery. As stated by Justice McLachlin, established exceptions include the private insurance exception or the charitable gifts exception, neither of which are applicable in this instance.

> *Cunningham, supra* para 64 at 369-370.

66. The Supreme Court has precluded double recovery in cases where the interpretation of a statutory regime results in overcompensation. In *Teal Cedar Products Ltd.* v. *British Columbia (Ministry of Forests)*, Justice Rothstein held that an award of compound interest under the interaction of three separate statutes would result in double recovery, leading to an "untenable result".

> *Teal Cedar Products Ltd. v British Columbia (Ministry of Forests)*, 2013 SCC 51 at para 20 [*Teal Cedar*].

67. The Court's role in preventing double recovery was also iterated in *Multiple Access Ltd. v. McCutcheon*, wherein Justice Dickson, writing for the majority, states:

> [t]he courts are well able to prevent double recovery in the theoretical and unlikely event of plaintiffs trying to obtain relief under both sets of provisions. ... [t]he Court at the final stage of finding and quantifying liability could prevent double recovery if in fact compensation and an accounting had already been made by a defendant. No court would permit double recovery.
> *Multiple Access v McCutcheon,* [1982] 2 SCR 161 at 191.

68. Notwithstanding the well-established prohibition against double recovery, in this case the court below held that:

> ...the *possibility of double recovery should not prevent an order for damages* for the remediation of contaminated property under s. 99(2) where the MOE[CC] has already ordered the remediation of the property. [Emphasis added]
> *Midwest, supra* para 7 at para 55.

69. The Appellants submit that the Court of Appeal's holding defies the common law rule against double recovery, and resulted in the Court's failure to uphold the established precedent and rule precluding overcompensation.

ii. ***The risk of double recovery is not eliminated by the MOECC's offer to revoke its order***

70. The Court of Appeal's decision creates a very strong risk of double recovery. In the case at hand, the Appellant's legal obligation to remediate and the Respondent's recovery of the court-awarded damages result in an impermissible risk of double compensation.

71. Neither the law nor the evidence in this case suggests that the MOECC's assurance can adequately serve to preclude the risk of double recovery. Although it was stated that the MOECC would be forced to redirect its Order, thereby eliminating overcompensation, there are no legislative provisions in the *EPA* to convert this assurance into anything legally-binding. Subsection 97(4) of the *EPA allows* the Minister to amend or revoke an order made under Part X, but it does not *oblige* the Minister to revoke its Order to guarantee preclusion of double recovery. Furthermore, the Court of Appeal did not award its judgment contingent upon the MOECC's confirmation of the Order's revocation. The risk of double recovery continues to exist.

> *Midwest, supra* para 7 at para 55.
> *EPA, supra* para 30, s. 97(4).

72. There are also no legal obligations on the Respondent to undertake remediation of the property with the awarded costs. At trial, there was no evidence to show that the Respondent had taken *any* steps towards remediation, such as entering into a legally-binding contract for remediation activities. Moreover, the Court of Appeal's judgment was not contingent upon proof of the Respondent undertaking or committing to the proposed remediation plan.

    Midwest Trial, *supra* para 11 at paras 12, 21-23.

73. The Appellants submit that the absence of these legal safeguards pose significant remedial problems and the continued risk of double recovery following the Court of Appeal's decision. Respectfully, this Honourable Court must therefore interpret s. 99 and Part X so as to prevent double recovery, by holding that s.99 damages are precluded where an MOECC remedial order has already been issued.

C. Diminution in value to the plaintiff's property is the correct measure for which to award damages

74. The Appellants submit that the Court of Appeal erred in finding that remediation costs were the appropriate measure of damages. In doing so, the Court of Appeal mischaracterized the state of the law, disregarded the absence of loss to property value, and misinterpreted the EPA.

75. *Livingstone* articulates that the general rule of damages is to place the injured party in the position they would have been in had the injury not occurred. It follows, as held in *Sevidal*, that the assessment of damages in property starts with "the difference between the actual value and the price paid."

    Livingstone v Rawyards Coal Co. (1880), 5 App. Cas. 25 at 39 [Livingstone].
    Sevidal v Chopra (1987), 64 OR (2d) 169 (HCJ) at 143 [*Sevidal*].

76. If the loss claimed is *more* than the diminution in value, the injured party has the burden to satisfy the reasonableness test articulated in *James Street*. Under the test, damages are limited to diminution in value unless the necessity of the case demands reinstatement.

    James Street Hardware & Furniture Co. v Spizziri (1987), 62 OR (2d) 385 (CA) at 55, 57 [*James Street*].

i. ***Remediation costs are unreasonable***

77. The facts of this case do not satisfy the reasonableness test for two reasons. First, there is no special value or attachment to the land. In *Scaffidi*, the court held that remediation costs in excess of diminution of value were inappropriate unless there is "no substitute" or "reasonable alternative" available. Nothing in the evidence provided by the Respondent indicates any special value in 285 Midwest. It is industrially zoned and only recently acquired by the Respondent.

Scaffidi-Argentina v Tega Homes Developments Inc., 2016 ONSC 5448 at 45-47 [*Scaffidi*].
Midwest, supra para 7 at para 9.

78. Second, the disparity in costs between the two approaches is unreasonable. That is, the cost of remediation far outweighs what might reasonably be inferred to be any diminution in value of the property. As confirmed in *Safe Step*, courts have limited damages to the diminution in value if remediation costs exceed the value and where any increase in value as a result of remediation is disproportionate to the cost. Here, remediation costs are not reasonable as it results in an excessive windfall recovery for the Respondent at a disproportionate cost to the Appellants.

Safe Step Building Treatments Inc. v 1382680 Ontario Inc. (2004), 134 ACWS (3d) 235 (Ont Sup Ct J) at 60, 68-69 [*Safe Step*].
Midwest supra para 7 at paras *9, 30.*

ii. ***There is no trend in the case law towards awarding the cost of remediation***

79. Case law does not support the Court of Appeal's determination of a trend favouring remediation to the exclusion of diminution in value. The Court of Appeal only cited two decisions to evidence this "trend." However, with respect, the Court of Appeal took these two decisions entirely out of their proper context. When read closely, these decisions do not support the propositions claimed by the Court of Appeal.

Midwest, supra para 7 at paras 61, 64.

80. First, Justice Hourigan relied on the court's earlier decision in *Tridan Developments Ltd. v Shell Canada Products Ltd.* However, he failed to acknowledge that the court's reason for awarding the remediation costs in *Tridan* was because it was less expensive than the property's diminution in value. The court explicitly justified the remedy in *Tridan* for the

reason that it was the "more economical route." Further, the court held that while damages are based on costs of remediation, they "are the equivalent of a diminution in property value." Thus, rather than supporting any broader trend of remediation damages, *Tridan*, in fact, only supports the narrow proposition that remediation is appropriate where it is less expensive or equivalent to the diminution in property value.

Tridan Developments Ltd v Shell Canada Products Ltd. (2002), 57 OR (3d) 503 (CA) at para 19 [*Tridan*].

81. Second, the Court of Appeal erroneously relied on *Canadian Tire* to establish a trend towards preferring a remediation approach. However, determining the correct approach to damages was not at issue in *Canadian Tire*. As noted in the reasons: "Canadian Tire did not pursue a claim for loss in value or loss of enjoyment of the Canadian Tire Property." Both parties proceeded on the basis that remediation was an appropriate remedy in the circumstances. The court in *Canadian Tire* did not consider a preference between the two approaches. As such, there is no foundation for Justice Hourigan's proposition in this case of any "trend" favouring remediation costs.

Canadian Tire Real Estate Ltd. v Huron Concrete, 2014 ONSC 288 at para 6 [*Canadian Tire*].

iii. ***The Respondent is not entitled to remediation costs under s. 99***

82. The Respondent is not entitled to damages for losses that it did not incur. Nothing in s. 99 suggests a legislative intention to award claimants damages in excess of loss. Yet, by awarding remediation costs to the Respondent, the Court of Appeal imputed this intention.

83. The *EPA*'s objectives do not justify damages for remediation costs. Justice Hourigan awarded remediation costs on the basis of reasoning that such damages would be consistent with the objectives of s. 99, which he characterized as being "environmental protection and remediation." However, the damages awarded do not in any way guarantee the restoration of land. In this respect, the better approach is that taken by in *Tridan.* There, in awarding remediation costs, the Court of Appeal clarified that environmental restoration was not the ultimate goal of the court, noting that the plaintiff may never use the award to remediate.

Midwest, supra para 7 at para 67.
Tridan, supra para 80 at para 19.

84. In the case at hand, Court of Appeal's focus on the Appellant unduly detracted from the damage assessment. As held by the Supreme Court of Canada in *British Columbia v Canadian Forest Products Ltd.*, the assessment of damages for environmental harm must not focus on:

> […]punishment of the wrongdoer (which is the domain of regulatory offences) or imputing losses based on little more than a generalized desire to mete out rough justice to a tortfeasor.
> *British Columbia v Canadian Forest Products Ltd*., 2004 SCC 38 at para 59.

85. Under the *EPA*, the MOECC has the authority to determine when remediation is appropriate and make orders. The MOECC has monitored the environmental situation in question and was aware of breaches as early as 1996. If the level of urgency justified action, the MOECC could simply undertake the remediation and seek recovery of costs under the authority of the *EPA*.

> *Midwest, supra* para 7 at para 13.
> *EPA, supra* para 30, ss. 99.1, 101.1.

86. The court in *National Hard Chrome* understood that the purpose of cost-recovery provisions was to allow the Director to enforce against any non-compliance with orders. *National Hard Chrome* dismissed a claim under the *EPA* where proceedings were deemed unnecessary asking:

> what the court proceedings would accomplish beyond that already provided for in the legislation.
> *Ontario (Ministry of the Environment) v National Hard Chrome Plating Co.* (1993), 11 CELR (NS) 73 at paras 25, 40 and additional reasons at p 82 at para 7, (Ont Ct J (Gen Div)) [*National Hard Chrome*].

87. The legislature did not create a scheme where the Respondent was obliged or expected to remediate absent an order. It is incorrect to interpret, as the Court of Appeal did, that the legislature intended to create a scheme which nonetheless entitles the Respondent to remediation costs.

88. The Appellant submits diminution in value is the appropriate measure of damages as there are no reasonable grounds on the facts, the common law or in s. 99 that would necessitate an award based on the costs of remediation.

PART IV -- SUBMISSIONS IN SUPPORT OF COSTS

89. The Appellants request costs incurred for the appeal here and in the two courts below.

PART V -- ORDER SOUGHT

90. The Appellants respectfully request, for the reasons above, that this Honourable Court overturn the Court of Appeal's decision and reinstate a decision on the first two issues, in favour of the Appellants.

91. Should this Court find in favour of the Respondent on the first two issues, the Appellants respectfully request that the appropriate award of damages be determined on the basis of diminution of property value.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of January, 2017.

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Caroline Jacobson

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Wendy Ngai

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Darcy Whittaker

Counsel for the Appellants

John Thordarson and Thorco Contracting Limited

PART VI -- TABLE OF AUTHORITIES

A. JURISPRUDENCE	**PARAGRAPHS CITED**
Antrim Truck Centre Ltd. v Ontario (Ministry of Transportation), 2013 SCC 13.	49
Bell ExpressVu Ltd. Partnership v Rex, 2002 SCC 42.	28
British Columbia v Canadian Forest Products Ltd., 2004 SCC 38.	84
Canadian Tire Real Estate Ltd. v Huron Concrete Supply Ltd., 2014 ONSC 288.	81
Cunningham v Wheeler; Cooper v Miller; Shanks v McNee, [1994] 1 SCR 359.	64, 65,
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Hollick v Metropolitan Toronto (1999), 46 OR (3d) 257 (CA), aff'd 2001 SCC 68.	51
Housen v Nikolaisen, 2002 SCC 33.	22,
James Street Hardware & Furniture Co. v Spizziri (1987), 62 OR (2d) 325 (CA).	76
Livingstone v Rawyards Coal Co. (1880), 5 App. Cas. 25.	75
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Multiple Access v McCutcheon, [1982] 2 SCR 161.	67
Ontario (Ministry of the Environment) v National Hard Chrome Plating Co., [1993] 11 CELR NS 73 (Ont Gen Div).	86

B. SECONDARY SOURCES

C. HANSARD

D. OTHER SOURCES

PART VII -- LEGISLATION AT ISSUE

***Environmental Protection Act*, RSO 1990, c E19, ss 91.(1), 97.(1), 99, 99.1(1), 101.(1)**

Interpretation and application, Part X

91. (1) In this Part,

"municipality" means an upper-tier municipality, a lower-tier municipality or a single-tier municipality; ("municipalité")

"owner of the pollutant" means the owner of the pollutant immediately before the first discharge of the pollutant, whether into the natural environment or not, in a quantity or with a quality abnormal at the location where the discharge occurs, and "owner of a pollutant" has a corresponding meaning; ("propriétaire du polluant", "propriétaire d'un polluant")

"person having control of a pollutant" means the person and the person's employee or agent, if any, having the charge, management or control of a pollutant immediately before the first discharge of the pollutant, whether into the natural environment or not, in a quantity or with a quality abnormal at the location where the discharge occurs, and "person having control of the pollutant" has a corresponding meaning; ("personne qui exerce un contrôle sur un polluant", "personne qui exerce un contrôle sur le polluant")

"pollutant" means a contaminant other than heat, sound, vibration or radiation, and includes any substance from which a pollutant is derived; ("polluant")

"practicable" means capable of being effected or accomplished; ("réalisable")

"restore the natural environment", when used with reference to a spill of a pollutant, means restore all forms of life, physical conditions, the natural environment and things existing immediately before the spill of the pollutant that are affected or that may reasonably be expected to be affected by the pollutant, and "restoration of the natural environment", when used with reference to a spill of a pollutant, has a corresponding meaning; ("reconstituer l'environnement naturel", "reconstitution de l'environnement naturel")

"spill", when used with reference to a pollutant, means a discharge,

(a) into the natural environment,

(b) from or out of a structure, vehicle or other container, and

(c) that is abnormal in quality or quantity in light of all the circumstances of the discharge,

and when used as a verb has a corresponding meaning; ("déversement", "déverser")

"substance" means any solid, liquid or gas, or any combination of any of them. ("substance")

Orders by Minister, spills

97. (1) Where a pollutant is spilled and the Minister is of the opinion that there is or is likely to be an adverse effect and that it is in the best interest of the public to make an order under this section, the Minister may make an order directed to one or more of the following:

1. The owner of the pollutant.
2. The person having control of the pollutant.
3. The owner or the person having the charge, management or control of any real property or personal property that is affected or that may reasonably be expected to be affected by the pollutant.

4. The municipality within whose boundaries the spill occurred.
5. Any municipality contiguous to the municipality within whose boundaries the spill occurred.
6. Any municipality that is affected or that may reasonably be expected to be affected by the spill of the pollutant.
7. Any public authority.
8. Any person who is or may be adversely affected by the pollutant or whose assistance is necessary, in the opinion of the Minister, to prevent, eliminate or ameliorate the adverse effects or to restore the natural environment. R.S.O. 1990, c. E.19, s. 97 (1); 2002, c. 17, Sched. F, Table.

Compensation, spills

99. (1) In this section,

"loss or damage" includes personal injury, loss of life, loss of use or enjoyment of property and pecuniary loss, including loss of income.

Right to compensation

(2) Her Majesty in right of Ontario or in right of Canada or any other person has the right to compensation,

(a) for loss or damage incurred as a direct result of,
  (i) the spill of a pollutant that causes or is likely to cause an adverse effect,
  (ii) the exercise of any authority under subsection 100 (1) or the carrying out of or attempting to carry out a duty imposed or an order or direction made under this Part, or
  (iii) neglect or default in carrying out a duty imposed or an order or direction made under this Part;
(b) for all reasonable cost and expense incurred in respect of carrying out or attempting to carry out an order or direction under this Part,

from the owner of the pollutant and the person having control of the pollutant.

Exception

(3) An owner of a pollutant or a person having control of a pollutant is not liable under subsection (2) if they establish that they took all reasonable steps to prevent the spill of the pollutant or if they establish that the spill of the pollutant was wholly caused by,

(a) an act of war, civil war, insurrection, an act of terrorism or an act of hostility by the government of a foreign country;
(b) a natural phenomenon of an exceptional, inevitable and irresistible character; or
(c) an act or omission with intent to cause harm by a person other than a person for whose wrongful act or omission the owner of the pollutant or the person having control of the pollutant is by law responsible,or any combination thereof. R.S.O. 1990, c. E.19, s. 99 (3).

Qualification

(4) Subsection (3) does not relieve the owner of the pollutant or the person having control of the pollutant,

(a) from liability for loss or damage that is a direct result of neglect or default of the owner of the pollutant or the person having control of the pollutant in carrying out a duty imposed or an order or direction made under this Part; or
(b) from liability, under clause (2) (a), for cost and expense incurred or, under clause (2) (b), for all reasonable cost and expense incurred,
(i) to do everything practicable to prevent, eliminate and ameliorate the adverse effect, or
(ii) to do everything practicable to restore the natural environment,
or both. R.S.O. 1990, c. E.19, s. 99 (4).

Enforcement of right
(5) The right to compensation under subsection (2) may be enforced by action in a court of competent jurisdiction. R.S.O. 1990, c. E.19, s. 99 (5).

Liability
(6) Liability under subsection (2) does not depend upon fault or negligence. R.S.O. 1990, c. E.19, s. 99 (6).

Contribution
(7) In an action under this section,

(a) where the plaintiff is an owner of the pollutant or a person having control of the pollutant, the court shall determine the degree, if any, in which the plaintiff would be liable to make contribution or indemnification under subsection (8) if the plaintiff were a defendant; and

(b) where the plaintiff is not an owner or a person having control referred to in clause (a), the court shall determine the degree, if any, in which the plaintiff caused or contributed to the loss, damage, cost or expense by fault or negligence,

and the court shall reduce the compensation by the degree, if any, so determined. R.S.O. 1990, c. E.19, s. 99 (7).

Extent of liability
(8) Where two or more persons are liable to pay compensation under this section, they are jointly and severally liable to the person suffering the loss, damage, cost or expense but as between themselves, in the absence of an express or implied contract, each is liable to make contribution to and indemnify the other in accordance with the following principles:

1. Where two or more persons are liable to pay compensation under this section and one or more of them caused or contributed to the loss, damage, cost or expense by fault or negligence, such one or more of them shall make contribution to and indemnify,

i. where one person is found at fault or negligent, any other person liable to pay compensation under this section, and

ii. where two or more persons are found at fault or negligent, each other and any other person liable to pay compensation under this section in the degree in which each of such two or more persons caused or contributed to the loss, damage, cost or expense by fault or negligence.

2. For the purpose of subparagraph ii of paragraph 1, if it is not practicable to determine the respective degrees in which the fault or negligence of two or more persons liable to

pay compensation under this section caused or contributed to the loss, damage, cost or expense, such two or more persons shall be deemed to be equally at fault or negligent.

3. Where no person liable to pay compensation under this section caused or contributed to the loss, damage, cost or expense by fault or negligence, each of the persons liable to pay compensation is liable to make contribution to and indemnify each other in such degree as is determined to be just and equitable in the circumstances. R.S.O. 1990, c. E.19, s. 99 (8).

Enforcement of contribution

(9) The right to contribution or indemnification under subsection (8) may be enforced by action in a court of competent jurisdiction. R.S.O. 1990, c. E.19, s. 99 (9).

Adding parties

(10) Wherever it appears that a person not already a party to an action under this section may be liable in respect of the loss, damage, cost or expense for which compensation is claimed, the person may be added as a party defendant to the action upon such terms as are considered just or may be made a third party to the action in the manner prescribed by the rules of practice for adding third parties. R.S.O. 1990, c. E.19, s. 99 (10).

Settlement and recovery between persons liable

(11) A person liable to pay compensation under this section may recover contribution or indemnity from any other person liable to pay compensation under this section in respect of the loss, damage, cost or expense for which the compensation is claimed by settling with the person suffering the loss, damage, cost or expense and continuing the action or commencing an action against such other person. R.S.O. 1990, c. E.19, s. 99 (11).

Amount of settlement

(12) A person who has settled a claim and continued or commenced an action as mentioned in subsection (11) must satisfy the court that the amount of the settlement was reasonable, and, if the court finds the amount was excessive, the court may fix the amount at which the claim should have been settled. R.S.O. 1990, c. E.19, s. 99 (12).

(13), (14) Repealed: 2002, c. 24, Sched. B, s. 25.

Director's order for costs and expenses

99.1 (1) If a pollutant is spilled, the Director may issue an order requiring the owner of the pollutant or the person having control of the pollutant to pay to the Minister of Finance any reasonable costs or expenses incurred by Her Majesty in right of Ontario for the following purposes:

1. To prevent, eliminate or ameliorate any adverse effects or to restore the natural environment.
2. To prevent or reduce the risk of future discharges into the natural environment of any pollutant owned by or under the charge, management or control of the person against whom the order is made. 2005, c. 12, s. 1 (19).

Right to compensation from Crown
101. (1) A person, other than a person referred to in subsection (2), entitled under clause 99 (2) (b) to compensation for reasonable cost and expense has the right, subject to the conditions prescribed by the regulations, to payment of such compensation from Her Majesty in right of Ontario.

***Municipal Act,* SO 2001, c 25, s 447.1(1)(b)**

Closing premises, public nuisance
447.1 (1) Upon application of a municipality, the Superior Court of Justice may make an order requiring that all or part of a premises within the municipality be closed to any use for a period not exceeding two years if, on the balance of probabilities, the court is satisfied that,

(a) activities or circumstances on or in the premises constitute a public nuisance or cause or contribute to activities or circumstances constituting a public nuisance in the vicinity of the premises;

(b) the public nuisance has a detrimental impact on the use and enjoyment of property in the vicinity of the premises including, but not limited to, impacts such as,

(i) trespass to property,

(ii) interference with the use of highways and other public places,

(iii) an increase in garbage, noise or traffic or the creation of unusual traffic patterns,

(iv) activities that have a significant impact on property values,

(v) an increase in harassment or intimidation, or

(vi) the presence of graffiti; and

(c) the owner or occupants of the premises or part of the premises knew or ought to have known that the activities or circumstances constituting the public nuisance were taking place or existed and did not take adequate steps to eliminate the public nuisance. 2006, c. 32, Sched. A, s. 184.

JOHN THORDARSON and
THORCO CONTRACTING LIMIED
APPELLANTS
(Respondents)

-and-

MIDWEST PROPERTIES LTD.

RESPONDENT
(Appellant)

S.E.M.C.C. File Number: 03-04-2017

SUPREME ENVIRONMENTAL MOOT
COURT OF CANADA

FACTUM OF THE APPELLANTS JOHN THORDARSON and THORCO CONTRACTING LIMITED

TEAM # 2017-11

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