
BIG BILLS FOR BIG SPILLS: ASSESSING DAMAGES WHERE REMEDIATION COSTS FAR OUTSTRIP THE VALUE OF THE LAND TO BE ADDRESSED BY S.C.C.

Reported Case:	Cousins v. McColl-Frontenac Inc.
Citation:	2007 NBCA 83
At Issue:	What is the basis for assessing damages in cases of site contamination where the remediation costs greatly exceed the value of the land?
The Court:	New Brunswick Court of Appeal
Judgment Rendered:	October 18, 2007
Factual Summary:	Plaintiff purchased former Texaco gas station property on “as is” basis and knew of leaks from underground gasoline storage tanks. Plaintiff subsequently purchased two adjoining parcels of land and intended to develop commercial property. Oil contamination from original site had migrated onto adjoining properties. Value of adjoining properties approximately \$100,000. Cost to remediate all properties upwards of \$1 million. Plaintiff’s claim against Texaco dismissed because original contaminated property purchased “as is” and there was no misrepresentation or fraud. Claim against defendant with respect to the adjoining properties granted, but damages based on value of land, not on cost of remediation.
Disposition By Lower Court:	Reasonable measure of damages for the contamination to the adjoining parcels is on a pro-rata basis of the net investment and carrying charges of the entire property over the years with a reasonable allowance for interest. Damages of approximately \$136,000 awarded.
Appellate Decision:	Appeal dismissed; leave to appeal to S.C.C. granted April 3, 2008