Contaminated Sites: New Law and Emerging Issues

Co-Chaired by

Richard Bereti
Harper Grey LLP

Una Radoja
Harper Grey LLP

November 26th, 2014 • UBC Robson Square • Vancouver, BC

Live Webinar also available!
Co-Chairs

Richard Bereti, Managing Partner, Harper Grey LLP, Vancouver, BC. Richard Bereti is Chair of Harper Grey’s Environmental Group. He is Adjunct Professor of Law at the University of British Columbia, and author of British Columbia Environmental Management Legislation & Commentary, 2008. Richard is a member and former Director of the British Columbia Environmental Industry Association, and recurring chair and presenter at environmental conferences. His practice focuses on environmental advice to business and industry, and he handles litigation, administrative appeals and mediation when disputes arise. He negotiates extensively with regulators, defends environmental charges and has acted in landmark environmental cases, including Morguard (EAB), Gehring, Beazler and BC Hydro (Oak Bay). Richard has been described by the Globe and Mail as a “Leading Practitioner” in the area of Environmental Law.

Una Radioja, Associate, Harper Grey LLP, Vancouver, BC. Una is the co-chair of Harper Grey’s Environmental Group. She is a commercial litigator with a specific focus on contaminated sites litigation and risk management. She is an executive member of the Environmental Law Subsection of the Canadian Bar Association (BC Branch) and a frequent guest lecturer for the Pacific Business and Law Institute, BC Environmental Industry Association, the Environmental Managers Association and the BC Continuing Legal Education Society. A significant component of Una’s contaminated sites practice involves litigation related to recovery of remediation costs pursuant to the Environmental Management Act and common law, and appeals before the Environmental Appeal Board. Una acted for the successful party in Morguard v. Director before the Environmental Appeal Board (July 2013). Una regularly advises property owners, developers and other businesses respecting environmental risk arising from contaminated land. She also represents clients in their dealings with the regulator in relation to applications for orders, controls and other instruments, including approvals in principle and certificates of compliance.

FACULTY

Christopher Hirst, Partner, Alexander Holburn Beaudin + Lang LLP, Vancouver, BC. Chris is the leader of his firm’s Construction and Engineering Practice, as well as a member of the firm’s environmental and insurance teams. His practice is focused on assisting construction industry clients in the management of procurement issues, the negotiation and drafting of contracts, and the resolution of builders’ liens and other construction based litigation. Chris also provides environmental advice to clients including a major Canadian oil and gas company. He is recognized for his expertise in complex commercial disputes, resource disputes, Aboriginal litigation and all levels of court in British Columbia. He has extensive experience with complex commercial disputes, resource disputes, Aboriginal litigation and all facets of environmental litigation. He brings to his litigation practice an understanding of scientific principles from his previous career as a mining exploration geologist. Mr. Hughes regularly represents clients in their dealings with the Ministry of Environment (MOE) and before the Environmental Appeal Board. He has represented clients in respect of many of the most significant contaminated sites identified in British Columbia and has been involved in litigation touching virtually every aspect of the liability regime for contaminated real estate. Mr. Hughes is the co-author of the Annotated Builders Lien Act, 2007 – 2008 (3rd ed) published by the Continuing Legal Education Society of British Columbia (CLEBC) and a contributing author to the Builders Lien Practice Manual also published by the CLEBC.

Nicholas Hughes, Partner, McCarthy Tétrault LLP, Vancouver, BC. Mr. Hughes is a seasoned commercial litigator, with experience before all levels of court in British Columbia. He has extensive experience with complex commercial disputes, resource disputes, Aboriginal litigation and all facets of environmental litigation. He brings to his litigation practice an understanding of scientific principles from his previous career as a mining exploration geologist. Mr. Hughes regularly represents clients in their dealings with the Ministry of Environment (MOE) and before the Environmental Appeal Board. He has represented clients in respect of many of the most significant contaminated sites identified in British Columbia and has been involved in litigation touching virtually every aspect of the liability regime for contaminated real estate. Mr. Hughes is the co-author of the Annotated Builders Lien Act, 2007 – 2008 (3rd ed) published by the Continuing Legal Education Society of British Columbia (CLEBC) and a contributing author to the Builders Lien Practice Manual also published by the CLEBC.

Owen J. James, Partner, Dentons Canada LLP, Vancouver, BC. Owen practises in the area of litigation and dispute resolution, with an emphasis on general commercial and environmental matters. Owen has appeared as counsel before all levels of court, including the British Columbia Supreme Court, the British Columbia Court of Appeal and the Supreme Court of Canada. He has also appeared as counsel before a number of administrative bodies in British Columbia, including the Forest Appeals Commission and Safety Standards Appeal Board. Owen’s administrative law experience also extends to acting for clients before more informal government decision makers, tasked with overseeing hearings concerning environmental and resource related issues. Prior to joining Dentons as an articling student, Owen clerked at the British Columbia Supreme Court.

Jana McLean, Associate, Bull, Houser & Tupper LLP, Vancouver, BC. Jana practises environmental and Aboriginal law. In her environmental law practice, Jana advises and interacts with industrial clients and government on all stages of project development. Jana’s focus includes contaminated sites, environmental assessments, fisheries and water law. She has made appearances before the Environmental Appeal Board and the BC Supreme Court, and was recently counsel to the successful party in J.I. Properties Inc. v. PPC, Architectural Coatings Asians Ltd. - Jana’s Aboriginal clients are a mix of non-Aboriginal industries and Aboriginal rights and title. Prior to joining Bull Houser, Jana clerked at the BC Court of Appeal, worked for a number of years at another full-service law firm in Vancouver, and advised public interest NGOs in South Africa. Jana possesses a Masters of Law from the University of Cambridge, UK. Her degree was granted First Class (academic distinction), with an international law specialization.

Clifford G. Proudfoot, Partner, Lawson Lundell LLP, Vancouver, BC. Mr. Proudfoot is a member of his firm’s Executive Committee with a practice focused on environmental and Aboriginal litigation. His clients include companies in forestry, manufacturing, mining, real estate development, and hydro-electric power generation. Mr. Proudfoot has represented his clients in environmental prosecutions, administrative actions, permit appeals and environmental assessments. He advises clients respecting compliance with environmental laws and regulations, due diligence and environmental auditing. He also assists clients in developing corporate environmental policies, contingency plans, operating manuals, and standard operating procedures. Mr. Proudfoot advises clients faced with a variety of issues surrounding contaminated sites. He has successfully defended clients against numerous regulatory and environmental prosecutions and has appeared as counsel in BC, Ontario, Alberta, Saskatchewan and Manitoba and before the Supreme Court of Canada. Additionally, he has conducted administrative hearings before numerous boards. Mr. Proudfoot has been recognized for Environmental law in the Best Lawyers in Canada. He is a current member of the BC Oil and Gas Commission, Statutory Advisory Committee.

Dionysios Rossi, Partner, Borden Ladner Gervais LLP, Vancouver, BC. Dionysios practises in the area of civil litigation, with a focus on transportation and maritime law, oil and gas law, and environmental law. Prior to joining BLG, Dionysios served as a judicial law clerk to several justices of the British Columbia Supreme Court. Dionysios frequently speaks and publishes on the subject of environmental law, and is the author of the Environmental Law chapter of the Continuing Legal Education Society Annual Review of Law and Practice. Dionysios has represented clients before the Federal Court and the Federal Court of Appeal, all levels of court in British Columbia, and before a number of administrative tribunals. He presently serves as the Vice-President (Communications) and as a Director of the Environmental Managers Association.
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Wednesday, November 26th, 2014

9:00 Welcome and Introduction
Richard Bereti
Harper Grey LLP

Una Radoja
Harper Grey LLP

9:10 Overview of the Statutory Framework
Clifford G. Proudfoot
Lawson Lundell LLP

- Structure of the statutory regime
- A review of key statutes
- How liability falls into place

9:45 Questions and Discussion

9:55 Case Law Update
Dionysios Rossi
Borden Ladner Gervais LLP

Owen J. James
Dentons Canada LLP

- Castonguay Blasting Ltd., 2013 SCC 52
- Ernst v. Encana Corp., 2013 ABQB 53
- Windsor v. Canadian Pacific Railway Ltd., 2014 ABCA 108
- Yaiguaje v. Chevron Corporation, 2013 ONCA 758
- Recent decisions of the Environmental Appeal Board in Morguard, Domtar, and Halme’s Auto Service

10:35 J.I. Properties – Behind the Scenes
Jana McLean
Bull, Housser & Tupper LLP

10:55 Questions and Discussion

11:05 Refreshment Adjournment

11:20 Limitation Period Issues
Christopher Hirst
Alexander Holburn Beaudin + Lang LLP

- What is the cause of action?
- Which limitation period applies?
- When does the limitation period begin to run?

11:50 Questions and Discussion

12:00 Networking Luncheon

1:00 J.I. Properties – The “Polluter Pays” Principle Revisited – Part I: Liability
Richard Bereti
Harper Grey LLP

Una Radoja
Harper Grey LLP

Jana McLean
Nicholas Hughes
Bull, Housser & Tupper LLP

- Remediation costs – Quantum – “Rough but fair discount” and “grey areas”
- Remediation costs – Reasonableness (purpose of remediation, remedial standard, methodology and reliance on experts)
- Allocation – Polluter pays vs. windfall/betterment argument – What is fair and just allocation?

1:50 Questions and Discussion

2:00 J.I. Properties – The “Polluter Pays” Principle Revisited – Part II: Statutory Exemptions
Richard Bereti
Harper Grey LLP

Una Radoja
Harper Grey LLP

Jana McLean
Nicholas Hughes
Bull, Housser & Tupper LLP

- Certificate of compliance exemption and “comfort letters”
- Innocent acquisition exemption and “knowledge” of the purchaser

2:50 Questions and Discussion

3:00 Refreshment Adjournment

3:15 Ministerial Update

- Compliance certificates
- Investigation orders
- Remediation orders
- Enforcement
- Changes coming

3:55 Questions and Discussion

4:05 Faculty Roundtable

4:45 Questions and Discussion

4:55 Chairs’ Closing Remarks

5:00 Program Concludes
Information

Four Ways to Register:
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