

MILLER THOMSON LLP

Barristers & Solicitors, Patent & Trade-Mark Agents

ENVIRONOTES!

November 2004

*Environmental Solutions
for Business*

Inside

Green Commodities: The OSC
and the Future of Emissions
Trading

New Enforcement Legislation
in Ontario

Environmental Assessment in
the Yukon - A Time in
Transition: Part 2 of YESSA in
Operation, Nov. 13, 2004

Ontario's Brownfield
Amendments Take Effect

The Supreme Court of Canada
Decides on the Question of
Compensation for
Environmental Damage

Environmental Contamination
and Property Taxes

Land Disposal Restrictions
Proposed in Ontario

New B.C. *Environmental
Management Act* - What Does
it Mean for You?

Around Miller Thomson

GREEN COMMODITIES: THE OSC AND THE FUTURE OF EMISSIONS TRADING

*Tamara Farber
Toronto
416.595.8520
tfarber@millerthomson.ca*

*Rebecca Hartley
Student-at-Law
416.597.4391
rhartley@millerthomson.ca*



At the Earth Summit in Rio de Janeiro in 1992, world leaders began discussions with respect to global climate change. Five years later in Kyoto, the issue of greenhouse gases was brought to the fore and resulted in the Kyoto Protocol - an international agreement which set demanding emissions reduction targets for most developed countries and countries in transition. In 2002, Canada ratified the Kyoto Protocol, committing itself to reducing greenhouse gas emissions by 6 percent below the country's 1990 emissions during the period 2008 to 2012.

The ratification of the agreement by Russia, with a 17.4% contribution to global greenhouse gas emissions, would take the total of ratified countries to about 59% of total global emissions. Russia's cabinet approved the ratification of the Kyoto Protocol on September 30, 2004, making that country's final ratification of the treaty and global implementation almost certain.

Emissions Trading

Emissions trading can be used to help achieve the environmental targets required under the Kyoto Protocol. Emissions trading refers to a market where parties can buy or sell allowances or permits for emissions, or credits for reductions in emissions of specified pollutants. This system is premised on an inherently capitalist model.

An example of its success is Alberta's TransAlta Corp. TransAlta Corp., which operates several coal-burning generating plants, purchased 1.75 million tonnes of greenhouse gas credits from Chilean food company Agrosuper. The cost of the credits was not revealed, however it is clear that the Canadian company is facing serious challenges under the Kyoto Protocol, and must therefore purchase emissions credits to sustain their current level of emissions.

Many Canadian companies have been participating in national pilot programs, designed to develop the fundamentals of a credit system. These suggest that the credits must be:

- Real - that is, there must be an actual reduction in the emission rate rather than simply a reduction from a change in the activity level;
- Quantifiable - the amount of the reduction must be determinable and calculable in a reliable and replicable manner;

- Surplus - the credits must result from activity not required by an existing regulation or otherwise committed to voluntarily;
- Verifiable - other parties must be able to audit and confirm the source data; and
- Unique - the credits must be created and registered only once from a specific reduction activity at a specific time.

Emissions credits evidently have the potential to be desirable commodities if guidelines permit them to be harnessed efficiently. It is in this context that the Ontario Securities Commission (OSC) has recently proposed a change to its regulatory structure - a new Rule 14-502, which proposes to designate additional commodities under the *Commodity Futures Act*, R.S.O. 1990, c. C-20. It is important to note that this is a proposed change only and is therefore not yet binding. The OSC is currently seeking comments.

Summary of the Proposed Rule

The proposed Rule updates and clarifies the current list of commodities found in section 2 of the Regulation and proposes to designate, among others, the following new commodities:

- Energy and fuel, including gas, oil, electricity and energy-related products whether in their original or processed state;
- Weather, including temperatures, precipitation levels, hours of sunshine, or humidity or any other natural occurrence;
- A product based on environmental quality, including emissions or emissions credits; and
- Water.

As commodities, items such as emissions and emissions credits would be governed by the *Commodity Futures Act*.

The early evidence gleaned from the first emissions market trading initiatives in other jurisdictions has shown that the system can be effective and successful. In the United States, the trade system was based on the buying and selling of sulphur dioxide (SO₂) and nitrogen oxides credits (the two gases primarily responsible for acid rain). In 1990, 263 of the largest power plants in the country were emitting 8.7 million tons of SO₂. After the trading of SO₂ credits began in 1995, that figure dropped by almost half, to 4.5 million tons, despite the fact that power generation, the historic mass-emitter of SO₂, continued to increase.

Conclusion

The OSC Proposed Rule would appear to give a provincial regulatory framework to the growing field of emissions credit trading. It is a step towards aligning the goals of environmentally conscious corporate citizens, innovators and market traders.

NEW ENFORCEMENT LEGISLATION IN ONTARIO

Bruce McMeekin
 Markham
 905.415.6791
 bmcmeekin@millerthomson.ca



On October 27, 2004, Ontario Minister of the Environment Dombrowsky tabled Bill 133: "An Act to Amend the *Environmental Protection Act* and the *Ontario Water Resources Act* in Respect of Enforcement and Other Matters". The introduction of this legislation follows Premier McGuinty's October 8 announcement that the Government would introduce new legislation to follow through on a number of recommendations made by the Industrial Pollution Action Team established by the Minister of the Environment in the summer of 2004 to review the application and enforcement of provincial environmental legislation.

The Bill is shockingly aggressive in its content. The proposed amendments include:

- a rewording of the substantive pollution offence (Section 14 of the *Environmental Protection Act* ("EPA")) in a manner that creates an offence to discharge anything that *may* cause an adverse effect, as opposed to the current wording which prohibits discharges that *cause or are likely to cause* an adverse effect;
- the same rewording will dramatically increase the number of reportable discharges to the Ministry;
- widening the order making power of provincial officers and the list of requirements that can be included in orders; and
- changing the directors' and officers' provisions in both the EPA and the *Ontario Water Resources Act* ("OWRA") to, despite the constitutionally enshrined presumption of innocence, place the onus of directors and officers in a prosecution to prove that they took all reasonable care to ensure that the corporation would not offend the statutes or their regulations.

This latter amendment is so wide that it effectively means that directors and officers are *presumed* to be in breach of Ontario's environmental statutes the moment they agree to a corporate appointment.

Perhaps the most aggressive amendments go to the establishment of the Environmental Penalties ("EPs") regime. Under the Conservative Government, plans had been made to introduce a comparable regime entitled "Administrative Monetary Penalties" or "AMPs". Although legislation was introduced in 1999 to bring AMPs into play, the legislation was never proclaimed into force.

The EPs regime is roughly comparable to AMPs in that it will empower provincial officers to issue "on the spot" notices to corporations requiring the payment of penalties if an inspection or investigation reveals a contravention of the EPA or OWRA. Regulations (not yet available in draft) will likely set out the formula the officer must follow in setting out the size of the penalty. The legislation will provide for a right of initial appeal to the Officer's superior within the Ministry as well as a further appeal to the Environmental Review Tribunal. Parties can appeal the decisions from the Environmental Review Tribunal, on a question of law, to the Ontario Superior Court. On questions of fact, they can appeal to the Minister.

There are some major differences between the AMPs regime and the proposed EPs. First, Bill 133 specifically includes a provision that does not permit individuals and corporations assessed with penalties to defend themselves before the Environmental Review Tribunal on the basis that they took all reasonable care to prevent the commission of the contravention. Essentially, offenders will be in the position of being caught by something akin to "photo radar" in that their only defence will be that they did not commit the alleged wrongful act or omission. The proposed legislation, however, does not stop there. In the case of a breach of Section 14, for example, it will be up to the offender to prove that the substance discharged was not a contaminant. Moreover, even though an offender has been penalized by an EP, the Ministry can still commence a court-based prosecution as a result of the very same alleged breach. The potential size of EPs will also be much greater: maximums of \$20,000.00 for individuals and \$100,000.00 for companies for each day the contravention continues or occurs.

The Bill includes other proposed amendments: for example, introducing the concept of "deemed impairment" to circumscribe difficulty the Ministry was encountering in prosecuting contraventions of section 30, the OWRA's substantive pollution offence. It also increases the potential exposure to imprisonment of officers and directors convicted of a breach of Section 14 (EPA) or Section 30 (OWRA) and other specific offences to five years (less a day) in both the EPA and the OWRA.

Copies of the Bill can be found at http://www.ontla.on.ca/documents/Bills/38_Parliament/Session1/b133.pdf. The Bill will now move to the Committee phase. We will keep you advised on its progress.

ENVIRONMENTAL ASSESSMENT IN THE YUKON - A TIME OF TRANSITION: PART 2 OF YESSA IN OPERATION, NOV. 13, 2004



Tony Crossman
Vancouver
604.643.1244
tcrossman@millerthomson.ca



Rosanne Kyle
Vancouver
604.643.1235
rkyle@millerthomson.ca



Peter Macdonald
Vancouver
604.643.1231
pmacdonald@millerthomson.ca

Environmental assessment in the Yukon is in a state of transition.

Before Devolution (the transfer of responsibility for public lands, water, forestry, mineral resources from the Federal government to the Yukon Territorial government (YTG)), the federal *Canadian Environmental Assessment Act* (CEAA) applied to projects proposed in the Yukon. Upon Devolution, YTG created "mirror" CEAA legislation called the *Yukon Environmental Assessment Act* (YEAA).

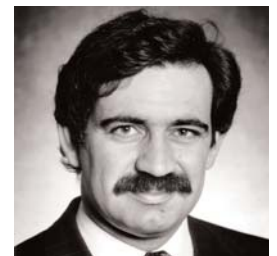
A Yukon environmental assessment process has been developing for some time, arising out of Chapter 12 of the Yukon's *Umbrella Final Agreement*. The new legislation, the Yukon Environmental and Socio-economic Assessment Act (YESSA), is coming into operation over time. Part 1 is now in effect, and Part 2 is scheduled to come into operation on November 13, 2004. However, assessments under YESSA will not begin until about April 2005.

What does this mean in practice? Environmental assessments under CEAA that began before Devolution and YEAA have been transferred to YEAA assessments. In this interim period, projects will be assessed under CEAA and YEAA.

In anticipation of the new regime commencing April 2005, which will require a greater degree of involvement and decision-making by First Nations, assessments are now being conducted as if under YESSA. YESSA requires consultation with First Nations that may be affected by a project. Proponents are being encouraged to work closely with First Nations on projects, particularly as regards design and mitigation.

ONTARIO'S BROWNFIELD AMENDMENTS TAKE EFFECT

Bryan J. Buttigieg
Toronto
416.595.8172
bbuttigieg@millerthomson.ca



Amendments to the Ontario *Environmental Protection Act* and a new regulation (O.Reg 153/04) designed to encourage the development of Brownfield sites came into effect on October 1, 2004. Although the changes have received a lot of attention amongst lawyers and consultants practicing in the area, only time will tell whether the new changes will result in any substantive lessening of the development chill that has plagued Brownfields sites.

What is a Brownfield site?

A Brownfield site is one that has some level of contamination usually resulting from past industrial use. While it may have been cleaned up to some extent, contamination remains. Even though the Ministry of the Environment had clean up Guidelines, these did not have the force of law. There was a growing perception that more was needed.

The MOE solution

The Brownfields amendments provide a limited form of immunity from Ministry orders to persons who create a "Record of Site Condition" (RSC) signed by the owner and his consultant (who must be accepted as a "Qualified Person" by the Ministry). The RSC is to be kept on a publicly accessible Registry maintained by the Ministry of the Environment. In addition to the requirements set out in the Act and the Regulation, technical documents accessible through the Ministry website provide additional information on the mechanics of creating a registrable RSC.

Once registered, the RSC will afford immunity from Ministry orders to the registering owner, all future owners, occupants and anyone else who would have previously had sufficient interest in the land so as to be subjected to the risk of the broad order making powers of the Ministry.

In order to give effect to the new provisions, the former clean up "Guidelines" have now been incorporated into standards prescribed by the new regulations. The new standards now have the force of law and, with a few exemptions in the petroleum hydrocarbon category, are virtually identical to the former Guidelines.

The Protection is Limited

Other than one very limited instance, the protection does not extend to prior owners. Nor will it apply if the RSC is deemed to have contained "false" or "misleading" information. It will not take effect if contamination moves offsite after the registration. Persons otherwise protected could still be subject to some orders in the event of an emergency.

Liability from Civil Actions

The amendments provide that they "are not to be construed as affecting any cause of action that a person would have in the absence of this part". As a result, a person claiming damages from an owner or past owner can still sue even if that owner falls under the protection of a RSC.

However, an owner protected by a RSC may well have some defences available to such an action as a result of the RSC being publicly available on the Registry. For the first time, an owner has the ability to effectively communicate "across time" information about the environmental state of the property to persons who may acquire an interest in the site years later. As a result, a plaintiff may be precluded from claiming he was taken by surprise by the discovery of contamination, if the information necessary to discover the contamination was available in the form of a registered RSC. If the information is on the Registry long enough, a plaintiff's action may even be extinguished as a result of operation of the *Ontario Limitations Act*.

The Practice

There will be costs to registering an RSC. Owners will be required to sign a fairly onerous declaration as part of the registration process. Consultants will likely have to engage in substantial work in order to meet their obligations as a "Qualified Person" whose name will also appear on the RSC. Transactions that depend on registration of an RSC may take more time to complete.

The Registry will only be useful as a tool if in fact it becomes a repository of information on a significant number of sites. While the process is new and still somewhat voluntary, it may well be that only a few RSCs will be registered. But if financial institutions and municipalities start to require registration of an RSC as a condition to financing or development, and if (as expected) the Act will be further amended to bring into force the requirement that an RSC must be registered whenever there is a change in use of a property to a more sensitive use, the number of RSCs on the registry will increase rapidly. In time, using the Registry may well become an accepted part of any land transaction and owners of Brownfields sites might realise the development potential that the new changes have been designed to encourage.

THE SUPREME COURT OF CANADA DECIDES ON THE QUESTION OF COMPENSATION FOR ENVIRONMENTAL DAMAGE

Michelle Fernando
Markham
905.415.6716
mfernando@millerthomson.ca



The Supreme Court of Canada released its decision in *British Columbia v. Canadian Forest Products Ltd.* on June 11, 2004. Canadian Forest Products Ltd. (Canfor) was largely responsible for a 1992 fire that damaged nearly 1500 hectares of forest available for licensees to log in the interior of British Columbia. The Crown claimed damages against Canfor for three categories of loss:

1. expenditures for suppression of the fire and restoration of the burned-over areas;
2. loss of stumpage revenue from harvestable trees; and
3. loss of non-harvestable trees set aside for environmental reasons in sensitive areas as established by the Crown.

In 1987, British Columbia adopted a stumpage "target rate" as well as a Comparative Value Pricing (CVP) system to ensure that Provincial revenues are not affected by low timber values in any particular area. The Province's regulatory system was devised to ensure that if the stumpage rate in one area was reduced, then the stumpage rates in other areas were adjusted in the following quarter to compensate. This was known as the "waterbed effect".

The trial judge awarded the Province \$3,575,000 under the first category of loss but otherwise dismissed the claim on the basis that the Crown had failed to prove a compensable loss with respect to either harvestable or non-harvestable trees. The Court of Appeal dismissed the Crown's appeal on damages with respect to the harvestable trees but awarded compensation for diminution of the value of the non-harvestable trees at a figure equivalent to one-third of their commercial value.

The majority of the Supreme Court of Canada allowed the appeal and dismissed the cross-appeal - the decision of the trial judge was restored. On the first issue, whether the Crown is prevented from suing in its capacity as an ordinary landowner, the Court held that "there is no legal barrier to the Crown suing for compensation as well as injunctive relief... on account of public nuisance, or negligence causing environmental damage to public lands, and perhaps other torts such as trespass..." The Court decided, however, that it would proceed on the basis that the Crown's entitlement is limited to entitlement in the role the Crown adopted in its statement of claim, that of the landowner of a tract of forest.

On the second issue, whether the Crown is entitled to the "auction value" of the harvestable timber, the Court held that it was not open to the Crown to ignore the regulatory system in effect in 1992 in British Columbia. In making a claim for lost revenue the Crown is bound by the regulatory regime under the *Forest Act* and this regime does not contemplate the use of the "auction value" approach to establish the value of the harvestable timber.

On the third issue, whether the CVP system provides an irrelevant source of income which cannot properly be taken into account to reduce the Province's compensation, the Court held in favour of Canfor. The Court found that the CVP system provides a relevant source of income to the Province which can properly be taken into account to determine if it has suffered a loss. The trial judge's analysis of the regulatory system was correct and it was open to him to conclude that the Province had defined the British Columbia Interior Region, and not the Stone Creek area itself, as the appropriate frame of reference for revenue purposes. The Crown's attempt to isolate the Stone Creek area from the regulatory region of which it forms a part, was rejected by the Court as an attempt to construct a financial loss that was not in fact suffered.

On the fourth issue, whether the Crown is entitled to the commercial value of the non-harvestable trees, plus a premium for their environmental value, the Court declined to accept the Crown's argument.

Commercial logging of the steep, sensitive slopes would be very costly and would not have produced additional revenue for the Province. Commercial logging of the riparian areas would have produced additional revenue, but the loss of this revenue was more than offset by the receipt of accelerated payments for the immediate harvest of salvaged timber. As a result, there was no commercial loss in respect of the non-harvestable trees. The Crown's claim to an environmental premium with respect to the non-harvestable trees was not grounded in the pleadings nor the evidence.

The decision of the Supreme Court of Canada confirms an important point. When a claim is restricted to a projected revenue stream, the injured party can be compensated only for the amount of his loss and no more. Because the Crown framed its claim in terms of a commercial loss and not in terms of other torts, such as negligence, nuisance or trespass, the Crown was required to prove that it had in fact incurred a financial loss as a result of the fire. The CVP system in British Columbia, which regulates the monies charged by the Province for harvested timber, protected Provincial revenues from fluctuation. As a result, the Crown was unsuccessful in demonstrating that it had in fact incurred a commercial loss.

ENVIRONMENTAL CONTAMINATION AND PROPERTY TAXES

J. Scott Galajda
Waterloo-Wellington
519.822.4680 ext. 274
sgalajda@millerthomson.ca



Impact on Current Value

In theory, it seems a trite proposition that environmental contamination reduces the value of the property, and thus should reduce the amount of property taxes exigible. The predominant valuation method used by assessors working for the Municipal Property Assessment Corporation (MPAC) is the sales comparison approach. The current value is estimated by adjusting the sale prices of comparable properties to account for the differences between the comparable properties and the subject property, such as physical characteristics. It would seem that environmental contamination, and specifically the "cost-to-cure" such contamination, could be argued as a warranted downward adjustment. Similarly, the stigma attached to a property known to be contaminated could be argued as an adjustment.

These arguments encounter resistance from assessors, who oppose such downward adjustments on both policy and practical grounds. The policy argument is that a reduction in taxes rewards polluters at the expense of innocent taxpayers, and contaminated properties have the same demands on municipal services as uncontaminated properties. The practical argument is that there are so many uncertainties in quantifying the "cost-to-cure" the contamination in advance, such as hydrogeological uncertainties, changing regulatory standards, etc. that it is impossible to apply a downward adjustment. The taxpayer is therefore left to prove its case for a downward adjustment in front of the Assessment Review Board.

New Tax Relief - Brownfields Legislation

If the contamination cannot reduce the tax bill through a reduction in the assessed value of the property, can the landowner receive some tax relief from a municipality interested in the rehabilitation of contaminated sites? The *Municipal Act, 2001* prohibits the granting of direct or indirect assistance to commercial enterprises, including tax relief. There are two exceptions to this general prohibition relevant to brownfields sites.

The first exception comes from the *Planning Act*. Where a municipality has adopted a Community Improvement Project Plan for a designated Community Improvement Project Area, it can make grants or loans to the owners or tenants to pay for the cost, in whole or in part, of rehabilitating contaminated lands. Some municipalities have adopted such Plans, and have based the quantum of the grants on the increase in municipal taxes resulting from the rehabilitation.

The second exception arises from the recent *Brownfields Statute Law Amendment Act, 2001* which came in force upon its proclamation on October 1st, 2004. This statute amends the *Municipal Act, 2001* to allow a municipality to pass a bylaw cancelling all or some of the taxes levied on a property as it is being rehabilitated or developed. To qualify for relief, the property must meet certain requirements. A phase two

environmental assessment must have been conducted on the property, the property must be included in a Community Improvement Project Area, and the property must not meet the standards required to permit the filing of a record of site condition under the *Environmental Protection Act*. The time period for the relief is finite, expiring at the earliest of eighteen months, the date a record of site condition is filed, or the date upon which the amount of tax relief granted equals the sum of the costs of any action taken to remediate the property to a standard that would allow the filing of a record of site condition.

Rehabilitation of environmentally contaminated properties has become a priority for many municipalities. The costs which will inform a rehabilitating developer's investment decision come from a variety of sources. Recently passed "brownfields" legislation provides municipalities with a tool to influence this investment decision through the reduction of property taxes for sites known to be contaminated. As can be seen, this relief is only of benefit to those land-owners who are rehabilitating contaminated sites. It provides no relief to those land-owners who own a developed site with environmental clean-up issues - these land-owners must still prove a reduction in value in order to obtain any property tax relief.

LAND DISPOSAL RESTRICTIONS PROPOSED IN ONTARIO

John R. Tidball
Markham
905.415.6710
jtiddball@millertthomson.ca



The Ontario Ministry of the Environment has taken the next step towards implementing land disposal restrictions (LDRs) in Ontario. On September 28, 2004, the Ministry posted for comment on the Environmental Registry a draft regulation that would adopt the US EPA pre-treatment requirements for hazardous waste prior to disposal in landfill. Under the proposed regulation, hazardous wastes would be banned from disposal in landfills unless the waste meets specific treatment standards. The Ministry first proposed to implement LDRs in 2001.

If adopted, LDRs will result in higher waste disposal costs. The Ministry estimates the cost to Ontario hazardous waste generators of \$30 to \$50 million per year.

Ontario currently lacks the waste pre-treatment infrastructure necessary to impose LDRs. The Ministry is proposing a 5-year implementation period to allow for hazardous waste processing facilities to be approved and built.

The proposal is open for comment until November 27, 2004. Details are available through the Environmental Registry under EBR Registry Number RA04E0016.

NEW B.C. ENVIRONMENTAL MANAGEMENT ACT - WHAT DOES IT MEAN FOR YOU?

Tony Crossman
Vancouver
604.643.1244
tcrossman@millertthomson.ca



Most of the new *Environmental Management Act* (EMA) came into force in July of 2004. This Act repeals and combines the provisions of the *Waste Management Act* and the *Environment Management Act*.

The EMA deals with environmental management (through prohibitions, authorizations and codes of practice), contaminated sites (including mineral exploration sites and mines), clean air and the powers of government to manage the environment (orders, charges, etc.).

Some of the changes are:

The Act implements a new enforcement technique called **Administrative Penalties** (APs), details of which will be provided by regulation. Some examples of violations which may be subject to this enforcement, in lieu of criminal prosecutions, are: failure to submit required reports, perform required emissions monitoring or pay permit fees. In lieu of monetary penalties, the offender may negotiate with the Ministry to carry out projects that benefit both the community and the environment. The monetary penalty only becomes due if

the agreement is not fulfilled.

The Act enables the use of **economic instruments** as incentives that promote environmentally-responsible behaviour. Such instruments, which will be brought into force by regulation, include: modified fee structures based on environmental performance, discharge trading systems, relief from regulatory requirements and recognition of industry-led certification systems.

Area-based management is a new technique enabled by this Act to address the environmental circumstances of a particular geographic area within the province. Once an area is designated as an *environment management zone*, a plan will be developed and approved. In all future decisions regarding the Zone, the minister will be required to consider the Plan.

The **risk-based approach** focuses on classifying businesses and activities according to the risk they pose to the environment. Unlike the *Waste Management Act* that prohibited all discharges of waste in the course of conducting an industry, trade or business unless authorized by government, the new Act implements increasingly stringent requirements upon businesses depending on their level of environmental risk.

Under this system, businesses and their activities will be classified as low, moderate or high-risk. **No permit** will be required for the low risk category; adhering to a **code of practice** will be required for the moderate risk category; and **permits** will be required for high-risk.

Contaminated Sites: Some of the changes include: elimination of conditional certificates of compliance, elimination of the ability for the Ministry to re-open certificates of compliance when environmental standards change, consolidation of decision-making to the director level, provisions to enable the government to use the services of approved professionals, new environmental quality criteria and standards and delegation to the minister to set and modify numerical environmental quality standards in the Contaminated Sites Regulation.

The changes to the **Contaminated Sites Regulation** are intended to reduce the backlog and cut the cost for contaminated sites applications. Effective November 1, 2004, all applications for low to moderate risk sites must be submitted as roster submissions by approved professionals.

WHAT'S HAPPENING AROUND MILLER THOMSON LLP

Bryan Buttigieg spoke about the scope and limits of the new Brownfields liability protection at a Law Society of Upper Canada Continuing Legal Education Programme on Ontario's New Brownfields Laws held in Toronto on October 14, 2004. He co-authored a paper on the same topic for the programme.

Tony Crossman, Rosanne Kyle, Dan Kiselbach, Brian Evans, Bryan Kickham, Mike Bailey, Scott Hammel, John Tidball, Bryan Buttigieg, Bruce McMeekin, Tamara Farber, and Michelle Fernando have presented client seminars on "Contaminated Sites: Knowing Your Options and Managing Your Risks" in Whitehorse, Vancouver, Calgary, Edmonton and Toronto.

Tamara Farber was referenced in a follow up article by *Lexpert* for "Canada's Top Forty under Forty Lawyers" in their September 2004 publication, having been named one of "Canada's Top Forty under Forty Lawyers" in 2002.

Andrew Roman, John Tidball and **Erin Tully** recently successfully judicially reviewed the Minister's decision in a federal environmental assessment matter involving a substantially completed soil decontamination facility in New Brunswick.

John Tidball was appointed Chair, Environmental Law Speciality Committee at the *Law Society of Upper Canada*.

Bruce McMeekin and **Michelle Fernando** have a paper coming out soon in *Corporate Liability* entitled "Destroyed or Missing Evidence: Establishing a Charter Violation and Selecting an Appropriate Remedy."

After a lengthy trial, **Bruce McMeekin** and **Michelle Fernando** successfully established a due diligence defence for a company charged with having caused an odour discharge contrary to section 14 of the *Environmental Protection Act*. The company was acquitted of the charge.

Miller Thomson LLP will be co-hosting a seminar soon on **Toxic Mould** with Conestoga-Rovers & Associates in Waterloo. Information will be available on Miller Thomson LLP's website (www.millerthomson.com).

MILLER THOMSON LLP ENVIRONMENTAL LAW PRACTICE GROUP

Markham

Rod M. McLeod, Q.C. (Chair) 905.415.6707
rmcleod@millerthomson.ca
John R. Tidball 905.415.6710
jtiddball@millerthomson.ca
J. Bruce McMeekin (Co-Chair) 905.415.6791
bmcmeekin@millerthomson.ca
Michelle Fernando 905.415.6716
mfernando@millerthomson.ca

Toronto

Franklin T. Richmond 416.595.8180
frichmond@millerthomson.ca
Bryan J. Buttigieg 416.595.8172
bbuttigieg@millerthomson.ca
Derek J. Ferris 416.595.8619
dferris@millerthomson.ca
Tamara Farber 416.595.8520
tfarber@millerthomson.ca
Erin M. Tully 416.595.8651
etully@millerthomson.ca

Vancouver and Whitehorse

Tony Crossman 604.643.1244
tcrossman@millerthomson.ca
Wendy A. Baker 604.643.1285
wbaker@millerthomson.ca
Daniel L. Kiselbach 604.643.1263
dkiselbach@millerthomson.ca
Rosanne Kyle 604.643.1235
rkyle@millerthomson.ca
Katherine Xilinas 604.643.1233
kxilinas@millerthomson.ca

Calgary

Brian J. Evans, Q.C. 403.298.2454
bevans@millerthomson.ca
Wade D. Clark 403.298.2432
wclark@millerthomson.ca
Heidi A. Telstad 403.298.2456
htelstad@millerthomson.ca
Craig J. Tomalty 403.298.2428
ctomalty@millerthomson.ca

Edmonton

Kent H. Davidson 780.429.9790
kdavidson@millerthomson.ca
Mark R. Gollnick 780.429.9712
mgollnick@millerthomson.ca
Bryan J. Kickham 780.429.9713
bkickham@millerthomson.ca

Waterloo-Wellington

F. Stephen Finch, Q.C. 519.579.3600 x.310
sfinch@millerthomson.ca
Richard J. Trafford 519.579.3660 x.330
rtrafford@millerthomson.ca

Washington, D.C.

Joseph Hoover, Jr. 202.204.3071
jhoover@millerthomson.com

Our Associate Counsel

Prof. Alastair R. Lucas 403.220.7111
alucas@ucalgary.ca

Note:

This newsletter is provided as an information service to our clients and is a summary of current legal issues. These articles are not meant as legal opinions and readers are cautioned not to act on information provided in this newsletter without seeking specific legal advice with respect to their unique circumstances. Miller Thomson LLP uses your contact information to send you information on legal topics that may be of interest to you. It does not share your personal information outside the firm, except with subcontractors who have agreed to abide by our privacy policy and other rules. Your comments and suggestions are most welcome and should be directed to bmcmeekin@millerthomson.ca.

www.millerthomson.com