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Neighbourhood Disturbances: The Supreme Court of Canada Rules

On November 20, 2008, the Supreme Court of Canada issued a much-awaited judgment in the case of *St. Lawrence Cement Inc. ("St. Lawrence")*. This judgment brings an end to a class action instituted by its neighbours against St. Lawrence for wrongful operation of its cement plant in Beauport and the ensuing disturbances to the neighbourhood.

This decision is important in more than one way but, for the time being, we will address only the question of neighbourhood disturbances and the scope to be given to Article 976 of the *Civil Code of Québec*.

Judge Julie Dutil of the Superior Court had rendered judgment on the class action on May 9, 2003. She had allowed the action and ordered St. Lawrence to pay significant amounts to the residents living in the areas surrounding the Beauport plant.

St. Lawrence appealed that judgment. On October 31, 2006, the Court of Appeal rendered its decision. Again, St. Lawrence was ordered to pay damages to members of the same group although the Court reduced the amount of the damages.

However, in finding against St. Lawrence as they did, the Superior Court and the Court of Appeal chose different legal routes.

The main question at the heart of the dispute was the following: when a business has acted in accordance with the authorizations granted to it but, in so doing, it is the source of neighbourhood disturbances and annoyances, can it be ordered to pay damages even though it has not committed any fault within the civil meaning of this term? In short, does Article 976 C.C.Q., which codifies the law of neighbourhood disturbances, open the door to no-fault liability?

Judge Dutil answered this question in the affirmative. The Court of Appeal, in its ruling penned by Judge Pelletier, concluded otherwise.

The trial judge ruled on this question of law after having noted that, in her view, St. Lawrence had not committed any fault in that it had complied with all the statutory and regulatory provisions that applied to its plant. As for the Court of Appeal, it instead concluded that St. Lawrence had committed a fault by failing to comply with Section 12 of the *Regulation respecting the application of the Environment Quality Act* as well as Section 5 of a special statute governing its activities in Beauport.

This morning's judgment rendered by the Supreme Court of Canada has answered this question by recognizing the existence of a no-fault civil liability regime relating to neighbourhood disturbances where the annoyances suffered are excessive.

Consequently, the Supreme Court dismissed St. Lawrence's appeal and reinstated the damages awarded by Judge Dutil.

After having reviewed the history of the cement plant in Beauport and the evolution of the annoyances caused to the neighbourhood from the time the plant started operations in 1955 until it closed down in 1997, the Court set out the legal nature of the civil liability regime relating to neighbourhood disturbances in Quebec law.

In the reasoning it developed, the Supreme Court made a distinction between abuse of rights and abnormal neighbourhood disturbances. Judges LeBel and Deschamps, speaking on behalf of the Court, wrote as follows in this respect:

> "An owner who causes abnormal annoyances without either intent to injure or excessive and unreasonable conduct "does not abuse his or her rights because he or she cannot be accused of wrongful conduct". (…). The word "abuse" implies blame and "is ill-suited to an attitude that may in itself be beyond reproach" (…)".

In plain language, this means that abnormal neighbourhood annoyances are not enough to establish the commission of a fault, even though a fault might be committed, even if the disturbances do not reach the level of abnormal annoyances under Article 976 C.C.Q. In short, this article does not guarantee immunity against the consequences of a civil fault but rather allows for a person who causes abnormal annoyances to his or her neighbours to be held liable without having committed any civil fault.

In concluding as it did that, in Quebec, the law allows for the identification of excessive harm, the cause of which is not malicious intent or wrongful conduct, the Supreme Court recognizes the existence of an objective limit on the right of ownership that relates not to the owner's conduct but rather to the consequences of the owner's use of his or her property.

The Court wrapped up its analysis on the question of no-fault liability based on Article 976 of the C.C.Q. in the following words:

> "Even though it appears to be absolute, the right of ownership has limits. Article 976 *C.C.Q.* establishes one such limit in prohibiting owners of land from forcing their neighbours to suffer abnormal or excessive annoyances. This limit relates to the *result* of the owner's act rather than to the owner's *conduct*. It can therefore be said that in Quebec civil law, there is, in respect of neighbourhood disturbances, a no-fault liability regime based on art. 976 *C.C.Q.*, which does not require recourse to the concept of abuse of rights or to the general rules of civil liability. With this form of liability, a fair balance is struck between the rights of owners or occupants of neighbouring lands."

The Court then reviewed the specific situation of the cement plant in Beauport to conclude, as the trial judge did, that St. Lawrence did not commit any fault in operating its plant. Like Judge Dutil, the Court also concluded that the annoyances caused nonetheless to the neighbourhood exceeded the limits of tolerance that neighbours owe one another. Therefore, St. Lawrence was held liable for these annoyances under Article 976 C.C.Q.

The Supreme Court drew some other interesting conclusions about the concept of "neighbours" and prescription, as well as others specific to the institution of class actions and the awarding of damages to the members of a group. We will no doubt have an opportunity to address these issues at a later date.

For now, we simply wished to brief you on this decisive judgment that has put an end to a debate that has lasted several years.

This is a milestone in environmental law matters. This judgment requires a plant operator to not only ensure compliance with statutory and regulatory provisions and the conditions of its certificates of authorization but to also ensure that the fallout from its activities does not exceed the tolerance which neighbours owe one another depending on the location of their properties or local customs.

Of course, it is too soon to fully gauge the numerous consequences of this crucial decision but we can from now on surmise that holders of authorization certificates issued pursuant to the *Environment Quality Act* will need to demonstrate increased vigilance. The lack of guidelines for determining disturbances that are deemed abnormal and for restricting the limits of tolerance is an indication that the Supreme Court's ruling will be the focus of many specific judgments in the coming years.