



Fundamentals of Remediation Agreements



Presented by Olga Rivkin
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- Back to basics – elements of agreement
- Learning by example – examples of remediation agreements

- A contract is a promise that the law will enforce

Waddams, The Law of Contracts

- Mutual assent: offer and acceptance
- Consideration: something of value in exchange for the promise sought
- Privity: the parties and the non-parties

Drafting principles

- Indefinite terms
- Who does what when (and how)
- Subject conditions - consequences

Remediation agreement – basic principles

- Context:
 - Sale/purchase
 - Lease
 - Settlement of a dispute
- Legal principles:
 - *Environmental Management Act, Land Title Act, Local Government Act, Vancouver Charter...*
 - Court cases, such as:
 - > *Jl Properties Inc. v. PPG Architectural Coatings Canada Inc.)*
 - > *Imperial Oil Ltd. v. McAfee*
 - > *Dolinsky v. Wingfield*

Contamination of a roadway (settlement with a municipality)

- Investigation/remediation methods
- Impact on traffic
- Impact on municipal employees
- Use of municipal infrastructure as part of remediation (dewatering)

Land exchange followed by development of both sites (no money changing hands)

- Sequence of events
- What are the contaminants
- Standard of remediation
- Intended development
- Disposal of contaminated soil
- Role of environmental consultants

Contamination caused by old landfill (settlement agreement)

- Clear responsibility
- BUT, owner wishing to develop lands
- Agreement contemplated
 - Right of way to remediate
 - Municipality pay for and facilitate subdivision and rezoning
- Consider: *PNI v. Victoria City* (limits to local government authority to contract)

Remediation by departing tenant

- Baseline contaminants
- Disruption of other tenants
- Notice to other tenants
- Responsibility for business losses
- Reliance letter
- Security

Remediation agreement between an owner and a municipality

- Off-site migration of contaminants
- Road contamination
- Different standards
- Use of covenants and statutory rights of way
- Consider: *Imperial Oil Ltd. v. McAfee* (remediation as a condition of development permit)

Sale of land where purchaser undertakes remediation

- Cost allocation
- Environmental release and indemnity
- Cooperation by vendor
- Consider: *Victory Motors (Abbotsford) Ltd. v. British Columbia (Assessor of Area No. 15 – Fraser Valley)* (property assessment of brownfields)

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