

Does a Manufacturing Plant Have a 'Fiduciary Duty' to Protect Neighbours from Pollution?



Environmental duties may arise from not only statutes but also what's known as "common law," that is, law made by courts one case at a time. Thus, a manufacturing plant might have to pay damages for negligently causing environmental harm to a neighbouring property. Polluters may also be held to an even more potent common law standard: fiduciary duty, which is like negligence on steroids. A "fiduciary" is supposed to act not just in good faith but to exercise extra loyalty and care to protect a third-party beneficiary, even if it means putting the beneficiary's interest ahead of its own. Does the owner of a plant emitting pollutants it knows to be harmful owe a fiduciary duty to protect its neighbours? Here's how a Nova Scotia court answered this question.

Situation

A homeowner's land becomes contaminated and his family suffers adverse health effects as a result of pollutants. He blames the neighbouring facility that has been used as a steel plant, coke oven, and tar pond since 1900. The homeowner sues the companies that have owned and operated the facility at different times over the years. His claim: The plant owners

knew they were releasing contaminants and that it was harming neighbouring properties. Consequently, they had a fiduciary duty to notify neighbours of the danger and protect them from harm. One of the plant owners is a private company; two others are government agencies. All three ask the court to dismiss the case without a trial.

Ruling 1. Former Private Plant Owner Has No Fiduciary Duty

The Nova Scotia Court of Appeal dismisses the case against the private company that owned the plant from 1928 to 1967.

Reasoning

There's no fiduciary duty on the part of landowners to protect neighbours against pollution, the Court explained. No statute or regulation provides for such a duty. A fiduciary duty can also arise under common law when one person has special influence or power over another, like a lawyer vis-a-vis a client. That wasn't the case here. True, the neighbour was in a position of vulnerability. But vulnerability isn't enough. The owner and the neighbour had no contact, discussion or dealings, according to the Court. They were strangers. So, the neighbour had no right to expect the owner to act as a fiduciary and put the neighbour's interests ahead of its own (although he could still sue the plant owner for negligence).

Ruling 2. Former Government Agency Plant Owners May Have Fiduciary Duty

The Nova Scotia Court refused to dismiss the case against the government agencies that owned the property from 1968 to 1988.

Reasoning

Unlike the private owner, the two government agencies **were** in communication with the neighbour. There was evidence that they “have told and continue to tell” him that they weren’t responsible for the pollution and that it was safe for the neighbour to live on the land. Providing information and advice can be enough to establish a fiduciary duty, the Court explained. What did the agencies actually say about the emissions and the neighbour’s safety? And was this enough to make the agencies fiduciaries of the neighbour? A trial would have to be held so a jury could answer these questions, the Court ruled.

[*Nova Scotia \(Attorney General\) v. MacQueen; Canada \(Attorney General\) v. MacQueen; Ispat Sidbec Inc. v. MacQueen*, 2007 NSCA 33 \(CanLII\).](#)