Supreme Court of Canada Clarifies Nuisance Claim Rules

In *St. Lawrence Cement Inc. v. Barrette*, [2008] S.C.J. No. 65, Nov. 20, 2008, the Supreme Court of Canada ruled that a nuisance claim can be successful even when a company is in total compliance with all applicable environmental laws, permits and certificates of approval and has exercised due diligence. (For details on the facts of that case and the court's ruling, see Case of the Month, March 2009, p. 9.) But in a recent decision, the Court clarified the rules for a successful nuisance claim'and these rules are good news for companies. Here's a look at this decision.

THE CASE

What Happened: A truck stop with a restaurant and gas station on Highway 17 in Ontario was patronized by drivers travelling along the highway. But in 2004, the Ministry of Transportation opened a new section of the highway, eliminating drivers' direct access to the truck stop. As a result, the owner was forced to close it. He sued the Ministry for damages for the loss of the property's market value and loss of business. One of the issues that arose in the case was whether the owner could've, under the law of private nuisance, obtained damages if the highway construction wasn't done under statutory authority.

What the Court Decided: The Supreme Court of Canada ruled that the owner could've had a successful nuisance claim.

The Court's Reasoning: The Court reviewed the rules on nuisance claims and clarified its decision in *St. Lawrence Cement*. It explained that the elements of a nuisance claim are based on a two-pronged test in which such claims must be based on an impairment that's both 1) a substantial and 2) an unreasonable interference with the occupation or enjoyment of land by its owner.

Substantial. A substantial interference is one that isn't trivial and is more than a slight annoyance or a trifling interference. The Court said that only interferences that significantly alter the nature of the owner's property or interfere, to a significant extent, with the actual use are a sufficient basis for a nuisance claim. It also indicated that nuisance may include not only actual physical damage to land, but also interference with the health, comfort

or convenience of the owner or occupier. So not all interferences with a property owner's use or enjoyment would give rise to a nuisance claim. For example, slight or trivial interferences and minor inconveniences won't be compensable.

Unreasonable. If the substantial test is met, the focus shifts to whether the non-trivial interference was also unreasonable. The Court explained that the reasonableness of the interference'not the reasonableness of the defendant's conduct'must be assessed in light of all of the relevant circumstances. The gravity of the harm must be balanced against the utility of the conduct allegedly causing the nuisance. To assess the gravity of the harm, a court should take into account the character of the neighborhood, the sensitivity of the property owner, and the frequency and duration of the interference. For example, prolonged interferences are more likely to give rise to compensation than temporary interferences. Evidence that the defendant took all possible precautions to avoid harm may have a bearing on whether he subjected the property owner to an unreasonable interference. Thus, the fact that work is carried out with reasonable care and due diligence is part of the reasonableness analysis, noted the Court [*Antrim Truck Centre Ltd. v. Ontario (Transportation)*, [2013] SCC 13 (CanLII), March 7, 2013].

ANALYSIS

After the Court's decision in *St. Lawrence Cement*, many industrial facilities worried that the door was now open for nuisance claims based on even the slightest inconveniences imposed on their neighbours. They also worried that even if they were fully compliant with all environmental laws, standards, permits, etc., they'd still be at risk of liability for nuisance. But the *Antrim* case goes a long way toward alleviating these concerns. This decision makes it clear that minor and slight inconveniences to neighbours *aren't* sufficient for a successful nuisance claim. And it notes that the defendant's compliance with applicable standards is, in fact, relevant to the analysis of such claims.