

FORM 4.02A

2007

Hfx. No. 281667

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

DONALD JOSEPH RIOUX and ANDREA FRANCES RIOUX



- and -

1840743 NOVA SCOTIA LIMITED, EVERETT AND SMITH LIMITED, FOORD CONSTRUCTION LIMITED, SOBEYS LAND HOLDINGS LIMITED, and THE ATTORNEY GENERAL OF CANADA representing Her Majesty the Queen in right of Canada.

DEFENDANTS

NOTICE OF ACTION Amended on this 30th day of November, 2010 pursuant to Civil Procedure Rule 83.04.

To: 1840743 NOVA SCOTIA LIMITED

To: EVERETT and SMITH LIMITED

To: FOORD CONSTRUCTION LIMITED

To: SOBEYS LAND HOLDINGS LIMITED

To: THE ATTORNEY GENERAL OF CANADA representing Her Majesty the Queen in right of Canada

Action has been started against you

The plaintiffs take action against you.

The plaintiffs started the action by filing this notice with the court on the date certified by the prothonotary. The plaintiffs claim the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada

- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiffs must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages Under \$100,000

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiffs state the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiffs.

This action is *not within* Rule 57. [State “within” if the action is for an order for judgment under \$100,000, no other order (eg. injunction, declaration) is claimed, and the claim is based on debt, injury to property, injury to a person, supply of goods or services, breach of contract, breach of trust, or dismissal from employment.]

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary, 1815 Upper Water Street, Halifax, Nova Scotia (telephone # 424-4900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The plaintiffs designate the following address:

Raymond F. Wagner
Wagners
1869 Upper Water Street
Halifax NS B3J 1S9

Documents delivered to this address are considered received by the plaintiffs on delivery.

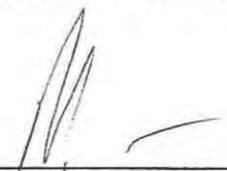
Further contact information is available from the prothonotary.

Proposed place of trial

The plaintiffs propose that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature

Signed November 30, 2010.

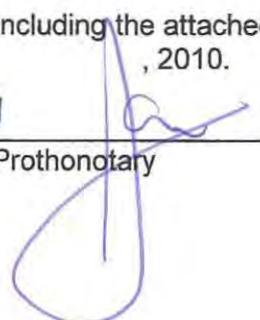


RAYMOND F. WAGNER
Solicitor for Plaintiffs

Prothonotary's certificate

I certify that this notice of action, amended on *Nov-30*, 2010 including the attached amended statement of claim, was filed with the court on *Nov-30*, 2010.

GEORGE GHOSN
Deputy Prothonotary



Prothonotary

AMENDED STATEMENT OF CLAIM

Proceeding under the *Class Proceedings Act*, S.N.S 2007, c. 28

1. In this Statement of Claim, the following capitalized terms have the meanings set out below:

(a) "Base" means the lands and facilities at CFB Greenwood owned and operated by the Attorney General of Canada.

(b) "Canada" means the Attorney General of Canada representing Her Majesty the Queen in right of Canada.

(c)-(a) "1840743" means the Defendant 1840743 Nova Scotia Limited.

(d)-(b) "Class Boundaries" are provisionally described, subject to refinement as that area of Greenwood, in the Municipality of the County of Kings, in the Province of Nova Scotia bounded on the north by the Annapolis River, on the east by 14 Wing Greenwood, on the south by Central Avenue and on the west by Bridge Street and by Sampson Drive.

(e)-(e) "Class" or "Class Member" means, a Family Class Member, an Injury Class Member, a Property Owner Class Member, a Residential Class Member and/or such other Class Members as will be further defined in the Application for Certification.

(f)-(d) "Class Period" means the period from the early 1950s to the present.

(g)-(e) "Chemicals" means the solvents used in the operation of the Dry Cleaning Facility on the Dry Cleaning Facility Lands, the solvents used in the administration of firefighting simulation exercises provided by CFB Greenwood for the benefit of trainee firefighters, and solvents, degreasing or cleaning agents used at CFB Greenwood and were discharged or disposed either directly or indirectly into the soil, ground, and surface water. ~~and includes~~ The manufactured chemical, tetrachloroethylene, which is also known as "Perc"- is included as a solvent.

- ~~(h)~~-~~(f)~~ "Contaminants" means the materials and compounds used in and produced by the Dry Cleaning Facility operations; the materials and compounds used in and produced by the administration of firefighting simulation exercises provided by and at CFB Greenwood for the benefit trainee firefighters, both of which practices included including tetrachloroethylene, or Perc, which has harmful human and environmental impacts when released into soil and groundwater; and the solvents, degreasing or cleaning agents and other materials and compounds used in the activities of CFB Greenwood in aircraft maintenance and operation.
- ~~(i)~~-~~(g)~~ "Dry Cleaning Facility" means the dry cleaning operation operated from between the early 1950s to 1999 from premises located on the Dry Cleaning Facility Lands.
- ~~(j)~~-~~(h)~~ "Dry Cleaning Facility Lands" means the lands located at 783 Central Avenue within the Class Boundaries on which the Dry Cleaning Facility was operated.
- ~~(k)~~-~~(i)~~ "Everett and Smith" means the Defendant, Everett and Smith Limited.
- ~~(l)~~-~~(j)~~ "Family Class Member" means any person who has a derivative claim on account of a family relationship with a person described in the Injury Class.
- ~~(m)~~-~~(k)~~ "Foord Construction" means the Defendant, Foord Construction Limited.
- ~~(n)~~ ~~(j)~~ "Injury Class Member" means any person resident within the Class Boundaries and elsewhere in Canada who claim personal injury and/or damage to his/her property as a result of exposure to Perc between the early 1950s and the present time.
- ~~(o)~~-~~(m)~~ "Property Owner Class" or "Property Owner Class Member" means persons other than the Defendants and their parent companies, affiliates or subsidiaries who were the beneficial owners of real property within the Class Boundaries at the time of an Order for Certification is issued.
- ~~(p)~~-~~(n)~~ "Residential Class" or "Residential Class Member" means living persons who:
- (i) Have lived within the Class Boundaries continuously throughout the Class Period; or
 - (ii) Have lived within the Class Boundaries for their entire lives; or

- (iii) Have lived within the Class Boundaries for a minimum of one (1) continuous year during the Class Period; or
- (iv) If not of the age of majority have lived within the Class Boundaries for 50% or more of their lives or for one (1) continuous year whichever is less.

(q)-(e) "Sobeys Land Holdings" means the Defendant, Sobeys Land Holdings Limited.

I. REPRESENTATIVE PLAINTIFFS AND CLASS

2. The Plaintiffs, Donald Joseph Rioux and Andrea Frances Rioux, are husband and wife and reside within the Class Boundaries at 1208 Mayhew Drive, Greenwood, Nova Scotia.
3. The Plaintiffs seek to certify this action as a class proceeding, and plead the Supreme Court of Canada's decision in *Western Canadian Shopping Centers Inc. v. Dutton*, [2001] 2 S.C.R. 534, and Rule 5.09 of Nova Scotia's *Civil Procedure Rules*, as providing the basis for such certification. The Plaintiffs, as the Representative Plaintiffs, do not have any interest adverse to any of the members of the proposed class. The Plaintiffs state that there is an identifiable class that would be fairly and adequately represented by the Plaintiffs; that the Plaintiffs' claims raise common issues; and that a class proceeding would be the preferable procedure for the resolution of such common issues.
4. The Plaintiffs propose to bring a common law class proceeding on behalf of themselves and a class of other residents and former residents of Greenwood, Nova Scotia who have suffered personal injuries, property damage and other damages as a result of tetrachloroethylene, or Perc, contamination of well water within the Class Boundaries. The proposed class, which will include Injury Class Members, Family Class Members, Property Owner Class Members and Residential Class Members, will be further defined in the Application for Certification.
5. The Plaintiffs and Class Members have been continuously exposed to Perc as hereinafter described. Each of the Plaintiffs is an Injury Class Member, a Residential Class Member and a Property Owner Class Member.

II. DEFENDANTS

1840743 Nova Scotia Limited

6. 1840743 Nova Scotia Limited is a limited company incorporated under the laws of Nova Scotia with its registered office at Mahone Bay, Lunenburg County, Nova Scotia. 1840743 operated the Dry Cleaning Facility (known as Sun-Ray Cleaners) between 1988 and 1995 from premises located on the Dry Cleaning Facility Lands.

Everett and Smith Limited

7. Everett and Smith Limited is a limited company incorporated under the laws of Nova Scotia with its registered office at Bridgetown, Nova Scotia. Everett and Smith has been the registered owner of the Dry Cleaning Facility Lands since 1979.

Foord Construction Limited

8. Foord Construction Limited is a limited company incorporated under the laws of Nova Scotia with its registered office at Stellarton, Pictou County, Nova Scotia. Foord Construction was the registered owner of the Dry Cleaning Facility Lands between 1959 and 1962.

Sobeys Land Holdings Limited

9. Sobeys Land Holdings Limited is a limited company incorporated under the laws of Nova Scotia with its registered office located at Stellarton, Pictou County, Nova Scotia. Sobeys Land Holdings is the successor of Food City Limited which was amalgamated into Sobeys Land Holdings in 1993. Food City Limited was the registered owner of the Dry Cleaning Facility Lands between 1962 and 1969.

The Attorney General Of Canada

10. The Defendant, The Attorney General of Canada represents Her Majesty the Queen in right of Canada. All agencies and all departments of the Government of Canada are referred to herein as Canada, which, for the purposes of this action, includes all of its contractors, sub-contractors, agents, servants.

III. THE CONTAMINATION AND ITS DISCOVERY BY THE PLAINTIFFS

11. ~~40.~~ A Dry Cleaning Facility was operated from premises located on the Dry Cleaning Facility Lands from the early 1950's until 1995 when the premises were destroyed by fire.
12. ~~44.~~ During this period waste Chemicals from the Dry Cleaning Facility, including Perc, were either discarded directly on the ground surface of the Dry Cleaning Facility Lands and/or were allowed to spill or seep onto them, thereby contaminating the soil and the ground and surface waters on the Dry Cleaning Facility Lands.
13. ~~42.~~ Between 1959 and 1962 Foord Construction owned the Dry Cleaning Facility Lands and allowed Perc to migrate onto the lands within the Class Boundaries.
14. ~~43.~~ Between 1962 and 1969 Sobeys Land Holdings (as successor to Food City Limited) owned the Dry Cleaning Facility Lands and allowed the chemical Perc to migrate onto the lands within the Class Boundaries.
15. Between 1969 and 1979 Milfred S. Jefferson Sr. and Helen Elizabeth Jefferson owned the the Dry Cleaning Facility Lands.
16. ~~44.~~ Between 1979 and the present Everett and Smith has owned the Dry Cleaning Facility Lands and allowed Perc to migrate onto the lands within the Class Boundaries.
17. ~~45.~~ Between 1988 and 1995, 1840743 operated the Dry Cleaning Facility and allowed Perc to migrate onto the lands within the Class Boundaries.
18. ~~46.~~ Throughout the periods referred to above during which the Dry Cleaning Facility operated on the Dry Cleaning Facility Lands and continuing up to the present the Contaminants escaped from the Dry Cleaning Facility Lands, were carried in ground and surface water and migrated onto the lands and into the aquifer beneath the lands within the Class Boundaries.
19. ~~47.~~ None of the facts concerning the existence and/or migration of these Contaminants were known or could have been known by the Plaintiffs or by other members of the public generally until after August 2004 when an environmental consultant to the Government of Nova Scotia reported to the Government that Perc had been coincidentally discovered in the well water of a property within the Class Boundaries.

20. Facts linking Canada to the contamination to the lands and surface and ground water in the Class Boundaries recently became available to Class Members. Canada's involvement and links to the Chemicals and Contaminants were deliberately concealed by employees and agents of Canada so as to mislead the Class Members as to the source of contamination.
21. Class Members who, at all material times hereto, were/are residents in, at, or in close proximity to the Canadian Armed Forces Base in Greenwood (hereinafter the "Base") in the Province of Nova Scotia, and subsequently suffered adverse health effects and damage to property.
22. During the Class Period, the Base simulated firefighting exercises for the benefit of training local firefighters. During these exercises, Chemicals and Contaminants were used to burn materials so that trainee firefighters could extinguish the fires which had ignited. Canada disposed of the Chemicals and Contaminants by disposing of them onto the soil and into the ground and surface water.
23. These Chemicals and Contaminants were either discarded directly on the ground surface of the land at the Base and/or were allowed to spill or seep onto them, thereby contaminating the soil and the ground and surface waters at CFB Greenwood; and these Chemicals and Contaminants were discarded on the ground surface of the land adjacent to the Base, thereby contaminating the soil and the ground and surface waters of the properties adjacent to the Base.
24. During the Class Period, these Chemicals and Contaminants were carried in ground and surface water and migrated onto the lands and into the aquifer beneath the lands within the Class Boundaries.
25. None of the facts concerning the existence and/or migration of these Contaminants were known or could have been known by the Plaintiffs or by other members of the public generally until after August 2004 when an environmental consultant to the Government of Nova Scotia reported to the Government that Perc had been coincidentally discovered in the well water of a property within the Class Boundaries.

IV. NATURE OF THE ACTION

Contamination within the Class Boundaries

26. ~~48.~~ The Dry Cleaning Facility Lands was and is one of the primary sources of the Perc contamination now contained within the Class Boundaries

27. ~~49.~~ Contaminated ground and surface water has migrated and continues to migrate from the Dry Cleaning Facility Lands onto the lands within the Class Boundaries.

28. ~~20.~~ The Contaminants remain on and in the soil, in the groundwater and in the aquifer under the lands within the Class Boundaries.

29. ~~24.~~ The Contaminants have caused damage to the physical and mental health of the Plaintiffs and Class Members and to their properties.

30. ~~22.~~ No effective remediation has taken place on the Dry Cleaning Facility Lands or on the lands within the Class Boundaries.

31. ~~23.~~ The continued presence of the Contaminants in and on the properties and homes owned, occupied or used by the Plaintiffs and Class Members creates ongoing risks to the health of the Plaintiffs and Class Members and causes ongoing damage to their properties.

32. ~~24.~~ During the applicable times within the Class Period when each of the respective Defendants owned and/or occupied the Dry Cleaning Facility Lands, they knew or ought to have known of the existence of the Contaminants.

33. ~~25.~~—None of the Defendants, 1840743 Nova Scotia Limited, Everett and Smith Limited, Foord Construction Limited, Sobeys Land Holdings Limited, took any steps to prevent or to remediate the contamination, nor were any steps taken to protect the health, safety and property of the Plaintiffs and Class Members.

34. ~~26.~~ The Defendants accordingly knew or ought to have known that the Plaintiffs and Class Members would have contact with the Contaminants. This contact constituted a non-trivial interference with the bodily security and property of persons exposed to the Contaminants.

- ~~34. 27. Until in or about September 2004, the Plaintiffs and Class Members were unaware of the existence, nature, extent and ramifications of the contamination within the Class Boundaries.~~
35. The Base was a primary source of the Chemicals and Contaminants now contained within the Class Boundaries.
36. Contaminated ground and surface water has migrated from the Base onto the lands of Class Members within the Class Boundaries.
37. The Contaminants remain on and in the soil, in the groundwater and in the aquifer on and under the lands within the Class Boundaries of Class Members.
38. The Contaminants have caused damage to the physical and mental health of the Plaintiffs and Class Members and to their properties.
39. The continued presence of the Contaminants in and on the properties and homes owned, occupied or used by the Plaintiffs and Class Members creates ongoing risks to the health of the Plaintiffs and Class Members and causes ongoing damage to their properties.
40. During the applicable times within the Class Period, Canada knew or ought to have known of the existence of the Contaminants.
41. None of the Defendants, including Canada, took any steps to prevent or to remediate the contamination source to the Class Members properly. Nor were any steps taken to protect the health, safety and property of the Plaintiffs and Class Members.
42. The Defendants, including Canada, accordingly knew or ought to have known that the Plaintiffs and Class Members would have contact with the Contaminants. This contact constituted a non-trivial interference with the bodily security and property of persons exposed to the Contaminants.
43. Until in or about August 2004, the Plaintiffs and Class Members were unaware of the existence, nature, extent and ramifications of the contamination within the Class Boundaries.

44. Information as to the involvement of Canada as one if not the most significant source of the Chemicals and Contaminants became available to Class Members in 2010. Prior to 2010 public proclamations as to the source of the contaminants, Canada deliberately concealed involvement in the contaminants migrating to the lands and ground and surface water on the property of Class Members.

Exposure and Impact on Plaintiffs and Class Members

45 ~~28~~. The Plaintiffs, in the normal course of their lives within the Class Boundaries during the Class Period have been exposed to and continue to be exposed to the Contaminants.

46 ~~29~~. The Plaintiff, Donald Joseph Rioux, has suffered from diabetes, kidney problems, high blood pressure and increased cholesterol levels. This Plaintiff states that these personal injuries were caused or materially contributed to by his exposure to the Contaminants.

47 ~~30~~. The Plaintiff, Andrea Frances Rioux, has suffered from allergies. This Plaintiff states that these personal injuries were caused or materially contributed to by her exposure to the Contaminants.

48 ~~31~~. In addition, the Plaintiffs have suffered and continue to suffer from anxiety about their own and their family's health because of the contaminated environment in which they live. The Plaintiffs state that all of the Defendants bear the responsibility to, *inter alia*, create a medical monitoring fund/mechanism as described below that would give them and Class Members access to experts who could address their health concerns.

49 ~~32~~. The Defendants have caused injury to the Plaintiffs and to the Class Members of the proposed class they represent, including:

- (a) cost of periodic medical examinations to monitor their health;
- (b) cost of medication to combat the adverse health effects related to exposure to the Contaminants;
- (c) additional expenses related to rearing children with health problems;
- (d) enhanced risk of future illness attributable to exposure to the Contaminants;
- (e) reduced standard of living as a result of illness; and

(f) reduced life expectancy;

50. ~~33.~~ In addition, the Plaintiffs and Class Members are the owners of residential properties within the Class Boundaries. The soil on these properties was contaminated by Perc and well water was made unfit for human consumption. As a direct consequence of the contamination a central water supply had to be installed in 2005 at a cost of approximately \$5,000.00 to each property owner, including the Plaintiffs and Property Owner Class Members.

51. ~~34.~~ Further, since there has been no effective remediation of the contamination on the properties of the Plaintiffs and Property Owner Class Members, their property values have been diminished

V. LIABILITY

(A) Strict Liability and Nuisance

52. ~~35.~~ Each of the Defendants is liable pursuant to the doctrine of strict liability in *Rylands v. Fletcher*, in that the storage and release of the Contaminants is a non-natural use of the lands owned and/or occupied by each of the Defendants. Further, the Defendants failed, and continue to fail, to prevent the migration of the Contaminants, thereby causing continuing damage to the Plaintiffs and other Class Members.

53. ~~36.~~ In addition, the Defendants are accordingly strictly liable given that they, in pursuit of their own interests, created an abnormally dangerous and pervasive risk to the health and welfare of the people working and living within the Class Boundaries and, in particular, to the Plaintiffs and Class Members. The extraordinary risk created by the Defendants has materialized resulting in direct and consequential damages to the property and health of the Plaintiffs and Class Members.

54. ~~37.~~ Further, the past and ongoing exposure to the Contaminants has substantially and unreasonably interfered with the Plaintiffs' and Class Members' use and enjoyment of their lands and premises. In addition to causing extensive property damage, exposure to the Contaminants has created widespread adverse health consequences and risks to the Plaintiffs and other Class Members. Accordingly, the Defendants are liable in nuisance.

(B) Trespass

55. ~~38.~~ All of the Defendants are liable in trespass in that each of them has discharged Contaminants, without the Plaintiffs' and Class Members' consent, onto lands owned by the Plaintiffs and Class Members as further particularized below.

56. ~~39.~~ The Contaminants released by each of the Defendants remain on the surface of the lands within the Class Boundaries and beneath the surface (water and soil). The Contaminants were deposited by the Defendants on the lands of Plaintiffs and Class Members without the consent of Plaintiffs and Class Members. Their presence accordingly constitutes an ongoing trespass on the properties of the Plaintiffs and Class Members.

(C) Negligence

57. ~~40.~~ Each of the Defendants owed a duty of care to each of the Plaintiffs and Class Members. The standard of care owed by the Defendants to the Plaintiffs and Class Members was elevated in relation to the Contaminants because:

- (a) The quality of the environment (i.e., clean air, water and land) is essential to the well-being of the Plaintiffs and Class Members;
- (b) A contaminated environment is inherently dangerous and poses a risk to human health;
- (c) The Plaintiffs and Class Members neither had nor have control over and/or knowledge in relation to the Contaminants which have affected and continue to affect their environment.

58. ~~44.~~ The Plaintiffs and Class Members live(d) and owned property in close proximity to the Dry Cleaning Facility Lands. The Defendant knew or ought to have known that:

- (a) The Contaminants were impacting the persons and property of the Plaintiffs and Class Members;
- (b) The characteristics of the Contaminants were such that they could seriously harm the health of the Plaintiffs and Class Members; and,

- (c) The characteristics of the Contaminants were such that they could cause damage to the properties of Plaintiffs and Class Members, including wells, soil and buildings.

59. 42. The Defendants accordingly knew or ought to have known that a lack of remediation on their part would cause harm to the Plaintiffs and Class Members and their properties.

60. The Plaintiff and Class Members state that the adverse health effects and/or property damage they experienced were solely as a result of the negligence of the Defendants, particulars of which are as follows:

a) Maintained their or its respective properties and surrounding areas in an unsafe condition for human use;

b) Used the Chemicals and Contaminants in an unsafe manner thereby exposing Class Members from the foreseeable risks of adverse health effects and/or property damage from chemical contamination originating from its operations.

c) Creating a danger which the Defendants knew or ought to have foreseen would cause adverse health effects and/or property damage to the Plaintiff and Class Members;

d) Allowed discharge of Chemicals and Contaminants into the environment knowing that it could cause adverse health effects and property damage.

e) Concealed and denied the existence of information that would have informed the Plaintiffs and Class Members that Chemicals had been used, sprayed, tested or otherwise applied on their respective properties, when they knew or ought to have known that these Chemicals have been linked with serious adverse health effects and property damage;

f) Chose not to post signs warning of danger as a result of the use, spraying, testing or application of Chemicals on their properties and elsewhere;

g) Use unreasonable care to prevent a danger from developing on their respective properties; and migrating onto adjoining properties and into the aquifer, and

i) Such further and other negligence as may appear.

(D) Battery

61. The Defendants are liable to the Plaintiff and Class Members for having committed the intentional tort of battery. The Defendants intended, knew, or were substantially certain that people living in the area surrounding their respective properties would be exposed to the Chemicals directly resulting from their conduct. The Defendants knew what the Chemicals contained, as well as the fact that exposure constituted a non-trivial interference with the bodily security of persons exposed to these Chemicals. This information was not disclosed to the Class Members living in the area at the material time. The Plaintiff and Class Members normally resident or employed in the area were exposed to the Chemicals.

62. In the alternative the Defendants are liable for the tort of negligent battery. The Defendants knew or ought to have known that people living in the area surrounding their respective properties would be exposed to the Chemicals directly resulting from their conduct. In the alternative the Defendants ought to have known what the Chemicals contained, as well as the fact that exposure constituted a non-trivial interference with the bodily security of persons exposed to these Chemicals.

(E) Breach of Fiduciary Duty

63. The Defendants, including Canada, breached their fiduciary duty by virtue of

(a) Their ownership, occupation, operation and control of the Base from which the Chemicals were used, sprayed, tested or otherwise applied;

(b) Their sole discretion to make decisions regarding the use, spraying, testing or other application of the Chemicals; and

(c) The information that the Defendants including Canada possessed about the nature and potential effects of the particular Chemicals used, sprayed, tested or otherwise applied, which knowledge arose from their unilateral control of the Base and from their knowledge of other classified military information to the exclusion of the Plaintiff and Class Members,

64. the Defendants including Canada owed the Plaintiff and Class Members a fiduciary duty to act in the best interests of the Plaintiff and Class Members in dealing with the dissemination of information concerning the Chemicals used,

sprayed, tested or otherwise applied described herein and in the remediation of the contamination described herein.

65. The Defendants including Canada have breached their fiduciary duties by choosing not to:

(a) Fully disclose the known nature and effects of the Chemicals;

(b) Fully disclose and inform the Plaintiff and Class Members of the health risks associated with exposure to the Chemicals;

(c) Take any steps to prevent the spread of the Chemicals to the Plaintiff and Class Members and to the properties they owned or occupied.

66. The Defendants including Canada deliberately concealed its involvement in the contamination and misinformed Class Members as to its considerable involvement in the dispersion of Chemicals and Conatminants.

67. In this respect, the Defendant Canada's duties are fortified by its role as environmental regulator within the Federal Government's sphere of constitutional power. This regulatory role is also part of the basis for fiduciary duties owed by the Defendant Canada to the Plaintiff and Class Members with respect to ensuring that the Chemicals were used, sprayed, tested or otherwise applied at the Base were properly monitored, and remediated.

68. Canada had the statutory power to take legal or regulatory actions which could have prevented or reduced the spread of the Chemicals to the Plaintiff and Class Members and to the properties they owned or occupied. Given Canada's

(a) knowledge of the extent to which the Chemicals were being spread as pleaded herein, and

(b) knowledge of the nature and possible effects of the Chemicals on the Plaintiff and Class Members as pleaded herein,

69. it had an obligation to use its statutory authority to protect the Plaintiff and Class Members from exposure to the Chemicals and the resulting harm. It has further breached its fiduciary obligation by failing to take legal or administrative action to

prevent the contamination of the Base and the properties owned or occupied by the Plaintiff and Class Members as pleaded herein.

VI. JOINT AND SEVERAL LIABILITY

70. ~~43.~~ The Plaintiffs state that the Defendants are responsible, jointly and severally, for the injuries and damages suffered by the Plaintiffs and other Class Members.

71. ~~44.~~ The Plaintiffs plead the doctrine of *respondeat superior* and state that the Defendants are vicariously liable to the Plaintiffs and Class Members for the acts, omissions, deeds, misdeeds and liabilities of their contractors, sub-contractors, agents, servants, employees, assigns, appointees and partners.

72. ~~45.~~ The Plaintiffs plead and rely on the *Tortfeasors Act*, R.S.N.S., c. 471.

VII. DAMAGES

(A) Manifest Harm and Injuries:

73. ~~46.~~ The past and ongoing existence and migration of the Contaminants and the failure of all of the Defendants to take proper or appropriate steps to prevent or minimize the adverse effects of the Contaminants have resulted in the following types of losses or injuries to property:

- (a) Loss of use and enjoyment of property owned, occupied or used by the Plaintiffs and other Class Members, including extensive business and personal loss; and
- (b) Diminution of value of property owned, occupied or used by the Plaintiffs and other Class Members, and the loss of the ability to sell, finance or mortgage properties.

74. ~~47.~~ In addition, the past and ongoing exposure to the Contaminants have resulted in the Plaintiffs' and Class Members' physical and mental health injuries pleaded above, and have further led to pain and suffering, loss of income, impairment of earning ability, loss of valuable services, future care costs, medical costs, loss of amenities and enjoyment of life, anxiety, nervous shock, mental distress, emotional upset, and out of pocket expenses.

75. ~~48.~~ The Plaintiffs asserts a claim for each of the types of damages listed above.

(B) Medical Monitoring: Responding to Material Risk of Illness

76. ~~49.~~ Further, the inhalation, ingestion and dermal exposure to the Contaminants have also caused or materially contributed to increased risks of cancer to the Plaintiffs and other Class Members. As a result of the exposure, the Plaintiffs and Class Members have already and will continue to experience illness, anxiety, loss of amenities and enjoyment of life, and a number will die premature deaths.

77. ~~50.~~ There are medically accepted tests and diagnostic tools which, if used properly and on a timely basis, will detect at an early stage the diseases and conditions which may result from the exposure of the Plaintiffs and Class Members to the Contaminants. However, not all of these tests are generally available or being administered to the Plaintiffs and Class Members despite their elevated risk. The early detection of these diseases and conditions will significantly reduce the harm and risk of death therefrom.

78. ~~51.~~ The Plaintiffs and Class Members seek to recover damages in the form of the total funds required to establish a 'medical monitoring' process to be made available to the Plaintiffs and Class Members. Such damages include the costs of medical screening and treatment incurred by or on behalf of the Class.

79. ~~52.~~ The damages referred to above may have been incurred directly by the Plaintiffs and Class Members, or may constitute subrogated claims owed to provincial health insurers, or to private health, disability, or group benefit insurers.

80. ~~53.~~ The Plaintiffs further allege that the establishment of a medical monitoring process is a necessary and appropriate step for all of the Defendants to take in the course of fulfilling their respective obligations to minimize the damages suffered by Plaintiffs and Class Members.

VIII. AGGRAVATED, PUNITIVE AND EXEMPLARY DAMAGES

81. ~~54.~~ The Defendants operated or allowed their respective properties ~~the Dry Cleaning Facility~~ to operate ~~on the Dry Cleaning Facility Lands~~ with full knowledge of the fact that they were discharging Perc that could and did adversely impact the physical and psychological health of, as well as the property owned and/or used by the Plaintiffs and

the Class Members. Knowledge of the risks associated with such an emission was not released to the Plaintiffs and Class Members. Despite having specific information that the Plaintiffs and Class Members were at risk of higher mortality and morbidity rates due to the failure to install appropriate environmental controls, the Defendants continued or permitted the continuation of the use of Chemicals Dry-Cleaning Facility without any or reasonable controls.

82. 55. These activities were carried out with reckless, callous and wanton disregard for the health, safety and pecuniary interests of the Plaintiffs and other Class Members. The Defendants knowingly compromised the interests of the Plaintiffs and Class Members, solely for the purpose of monetary gain and concealing their involvement. Furthermore, once the Defendants knew of the extraordinary dangers that their operations posed to the Plaintiffs and Class Members, the Defendants failed to advise them in a timely fashion, or fully, or at all.

83. 56. Consequently, the Plaintiffs and Class Members are entitled to aggravated damages, and an award of punitive and exemplary damages commensurate with the outrageous behaviour of the Defendants.

IX. RELIEF SOUGHT

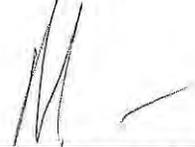
84. 57. The Plaintiffs repeat the foregoing paragraphs and state that the Defendants are jointly and severally liable for the following:

- (a) an Order certifying this proceeding as a class proceeding and appointing the Plaintiffs as Representative Plaintiffs for the Class;
- (b) compensatory damages, including aggravated damages for personal injuries;
- (c) general and special damages for damage to the Plaintiffs' and Class Members property and for the cost to the Plaintiffs and Class Members of installing, connecting and maintaining (including increased taxes) the central water supply;
- (d) general and special damages for the diminution of the Plaintiffs' and Class Members' property values including, where applicable, the costs of relocation;
- (e) special damages for medical expenses and in the diagnosis and treatment of diseases and illness related to exposure to the Perc;

- (f) aggravated, punitive and exemplary damages;
- (g) damages for the funding of a "Medical Monitoring Program", supervised by the Court, for the purpose of retaining appropriate health and other experts to review and monitor the health of the Plaintiffs and other Class Members, and to make recommendations about their treatment;
- (h) an Order directing the Defendants, 1840743 Nova Scotia Limited, Everett and Smith Limited, Foord Construction Limited, and/or Sobeys Land Holdings Limited, to remediate the Dry Cleaning Facility Lands to a pristine level, ensuring that such remediation is undertaken in a manner which prevents further property and/or health risks to Class Members;
- (i) subrogated claims on behalf of Provincial providers of medical services;
- (j) interest pursuant to the *Judicature Act*;
- (k) costs; and
- (l) such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, Nova Scotia this ^{30th} day of ~~November~~, 2010/



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