

DIRECTORS AND OFFICERS BEWARE: You face additional risk of personal liability for your conduct and the conduct of the corporate entity.

In *Gehring v Chevron Canada Ltd.* [2006], BCJ No. 2880 Mr. Justice Gray addresses corporate and director liability in remediation cost recovery litigation. This case involved a typical set of facts: an historical gas station site, with numerous owners and operators, that had been closed and redeveloped. Hydrocarbon contamination (gasoline) was found and remediation occurred. The current owner sought to recover from all of the historical parties. The following are some of the more interesting conclusions:

- (a) The plaintiff can recover from the previous owner of the property whose operations have contributed to the contamination;
- (b) The plaintiff can recover from a director or an employee of a previous owner so long as such an individual authorized, permitted, or acquiesced in the activity which caused the contamination;
- (c) The plaintiff cannot recover from a director or employee of a dissolved corporation;
- (d) It is possible for a previous owner or director of a company which previously owned the property to be held liable on the basis it authorized, permitted or acquiesced in the contamination, in circumstances where the contamination occurred prior to that owner's purchase of the property and where that owner failed to take any steps to remediate the contamination. In essence, where an owner had the opportunity to prevent the spread of contamination and failed to do so, it will be held liable for the cost of some of the remediation;
- (e) A current or previous "operator" of the site (such as the leasee gas station), will be held liable for remediation of a contaminated site. This definition also includes the leasor of the property to commercial tenants;
- (f) A director or an employee of an operator of the contaminated site is liable for remediation where they authorized, permitted or acquiesced in the contamination. Again, a director or employee of an operator will not be held liable where the corporation is dissolved; and
- (g) The allocation of liability will include consideration of the degree of involvement in the conduct which contributed to the property becoming contaminated and the relevant due diligence of the responsible person, bearing in mind the increasing public awareness of environmental concerns over time.

This case is being appealed. For further information contact Mark J. Braidwood.