



ENVIRONMENTAL LIABILITY

The costs associated with the clean-up of an environmental spill are frequently immense. It is of crucial importance to have representation in resultant lawsuits to limit the costs, share the exposure with other potentially responsible parties, and ultimately recoup the costs from responsible third parties.

Our Environmental Liability Group understands these dynamics, and is well-qualified to serve clients in the following areas:

- Insurance Coverage
- Remediation
- Defence, Recovery, and Subrogation

Services

Coverage

A primary concern of the company involved with the spill, as well as its insurer, is the extent to which a potential environmental liability is covered by insurance. Our lawyers regularly assess coverage entitlements and exposures, providing legal interpretations of such issues as:

- the definition of “pollutant”;
- the applicability of the insurance policy’s “pollution exclusion”;
- the effect of a ministerial remediation orders; and
- policy provisions relating to on-site and off-site clean-up.

Remediation

The Environmental Liability Group has extensive experience with the legal aspects of site remediation activities, including:

- developing and implementing remediation programs for both onsite and offsite cleanup;
- negotiating acceptance of the remediation program with the Ministry of the Environment;
- negotiating settlements with injured third parties; and
- liaising with local authorities, the public, and the media.

We also provide loss avoidance advice on the development and implementation of an effective Proactive Environmental Risk Management Plan for use by clients before a spill occurs.

Defence, Recovery, and Subrogation

The Environmental Liability Group will ensure that our clients are vigorously defended against any environmental claims, while working to maximize the potential for subrogation and recovery from other liable parties. We guide our clients in:

- formulating effective litigation strategies from the first notification of the claim through to the trial and appeals;
- retaining appropriate experts to determine causation and the precise location of a spill as quickly as possible;
- determining potentially responsible parties, and pursuing them for contribution; and
- gathering and preserving scientific, oral, and documentary evidence from the earliest stages.

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We have extensive trial and appeal experience in successfully defending clients against complicated and potentially devastating environmental claims. As part of this service, we work with environmental experts to determine the parties ultimately responsible for the spill, and we vigorously pursue these parties to recoup our clients' damages and expenses.

Recent Publications

- *Ontario Court of Appeal releases decision in expert evidence case*
- *Part II: Litigating Oil Leak Claims: Trucking and Marine Accidents: Oils Spills and Liability for Environmental Remediation*
- *Clarifying pollution exclusions in commercial insurance policies*
- *Bill C-311: The Climate Change Accountability Act*
- *Case Summary: Tridan Developments Ltd. v. Shell Canada Products Ltd.*