

ENVIRONMENTAL REVIEW TRIBUNAL

**BAKER ET AL. V. DIRECTOR, MINISTRY OF THE
ENVIRONMENT**

In the matter of requests for a Hearing by Neil W. Baker, Mark Emery, Gordon Flatt, Glenn E. Hess, Donald K. Jackson, David A. Rattee, Greg A. Schindler, Wayne E. Shaw, Michael J. Tkach, James D. Wallace and Colin D. Watson filed on November 30, 2012 and by Craig A. Yuen filed on December 7, 2012 pursuant to section 140 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended with respect to Director's Order No. 5866-8WKU92 issued by the Director, Ministry of the Environment, on November 14, 2012 under sections 17 and 18 of the *Environmental Protection Act* in relation to trichloroethylene contamination at and in the vicinity of the Northstar property located at 695 Bishop Street North, in the City of Cambridge, Regional Municipality of Waterloo, Ontario; and

In the matter of a Motion for Particulars brought by Neil Baker to be heard on May 14, 2013.

NOTICE OF MOTION

Motion for Amendment, Particulars and

Disclosure Returnable May 14, 2013

Neil Baker will make a motion to the Environmental Review Tribunal ("**Tribunal**") on Monday, May 14, 2013, at 10:00 a.m., or as soon thereafter as it can be heard, at 655 Bay Street, 15th floor, Toronto, Ontario, M5G 1E5.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order that the Director serve and file, within 20 days of the release of the Tribunal's decision, a document that specifies her theory of legal liability and all material factual allegations she is relying on to justify the Director's Order against Mr. Baker, in sufficient detail to allow Mr. Baker to identify each transaction referred to, and how each relates to sections 17, 18 or 93 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19.
2. This should include:
 - (1) The Director's specific basis for naming Mr. Baker in the Order;
 - (2) Whether Mr. Baker is alleged to have done anything wrong, and if so what it was;
 - (3) How s. 93 and the 1995 spill are relevant to Mr. Baker's liability?
 - (4) What is the discharge?
 - (5) How and when did Mr. Baker permit it?
 - (6) What did Mr. Baker manage or control?
 - (7) How did that lead to the Order?
 - (8) What are the preventive measures?
 - (9) What could Mr. Baker, personally, have done to avoid personal liability for the cleanup?
3. In relation to paragraph 2.21 of the Order, this document should specify:
 - (1) What material facts gave Mr. Baker a personal duty to "ensure" continuing implementation of the TCE remediation strategy after the insolvency of both Northstar companies, whether under s. 93 of the EPA or otherwise, and when that duty arose;

- (2) Whether she alleges Mr. Baker had notice of such personal duties, and if so when;
 - (3) What amount of money Northstar Inc. would have had to “secure”, and when, for Mr. Baker to have successfully discharged these personal duties;
 - (4) What steps she alleges Mr. Baker could have taken, and when, that would have resulted in Northstar Inc. “securing” this enormous amount of money despite its financial difficulties; and
 - (5) How she says Mr. Baker could have prevented the distribution of this money to higher priority creditors under federal insolvency rules by order of the Superior Court, when Northstar Inc. became insolvent.
4. An Order that the Director disclose the evidence she relies upon to establish any such alleged material facts.
 5. An Order granting Mr. Baker leave to amend his Notice of Appeal as set out in his letter to the Tribunal, dated April 18, 2013, and attached as Exhibit B to the Affidavit of Sara J. Erskine.
 6. Such further relief as the Tribunal may deem just.

THE GROUNDS FOR THE MOTION ARE:

Grounds for particulars and disclosure

1. The Director’s Order does not provide enough detail to permit Mr. Baker to know the case he must meet in this proceeding.
2. The Director’s Order does not provide a specific basis for naming Mr. Baker in Order.
3. Counsel to the Director in these proceedings and counsel to the Ministry of the Environment in related CCAA proceedings have offered contradictory explanations for

the grounds that the Director is relying on to issue the Director's Order against Mr. Baker.

4. Mr. Baker requires further particulars in order to make full answer and defence to the Director's Order.
5. Mr. Baker requires further particulars in order to know the case against him.

Grounds for permissions to amend

6. Mr. Baker's proposed amendments will clarify the grounds raised in the former D&O Group's original Notice of Appeal, and will better apply them to the specific circumstances of Mr. Baker.
7. The scope of the appeal will not change. Like all other appellants, Mr. Baker challenges the entire Order, on constitutional, jurisdictional and fairness grounds.
8. Counsel to Mr. Baker moved promptly to advise the Director and the Tribunal of their intention to amend the Notice of Appeal.
9. The proceedings are still at an early stage, and the Director will suffer no prejudice as a result of the amendment.

Other Grounds

10. *Rules of Practice and Practice Directions of the Environmental Review Tribunal*, 9 July 2010, s. 163.
11. *Statutory Powers Procedure Act*, RSO 1990, c S22, including s. 5.4(1).
12. *Environmental Protection Act*, R.S.O. 1990, c. E.19, s. 142.
13. Such further grounds as counsel may advise and this Tribunal may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The affidavit of Sara J. Erskine, sworn May 5, 2013.
2. Such further material as counsel may advise and the Tribunal may permit.

Dated: May 6, 2013

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