

ERT Case Nos. 12-158 to 12-169

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 Order No. 5866-8WKU92 issued by the Director, Ministry of the Environment, on November 14, 2012 under sections 17, 18 and 196 of the Environmental Protection Act, requiring certain work to be undertaken at, and in the vicinity of, a site located at 695 Bishop Street North, Cambridge.

MINUTES OF SETTLEMENT

**MINUTES OF SETTLEMENT
(the "Agreement")**

Dated this 18th day of October, 2013

B E T W E E N :

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT
(hereinafter referred to as "Ontario")**

- and -

**THE DIRECTOR, MINISTRY OF THE ENVIRONMENT
(hereinafter referred to as the "Director")**

- and -

**NEIL W. BAKER, MARK EMERY, DONALD K. JACKSON, DAVID A. RATTEE,
WAYNE E. SHAW, JAMES D. WALLACE, COLIN D. WATSON AND CRAIG A. YUEN
(hereinafter referred to as the "Former Directors and Officers")**

WHEREAS Ontario, the Director, and the Former Directors and Officers are hereinafter collectively referred to as the "**Parties**";

AND WHEREAS a Director appointed under the *Environmental Protection Act* R.S.O. 1990, c. E.19 ("**EPA**") issued Director's Order No. 586-8WKU92 (the "**Order**") pursuant to s. 17 and s. 18 of the EPA, requiring the Former Directors and Officers and others to, amongst other things, remediate contamination relating to the property located at 695 Bishop Street North, in the City of Cambridge, Ontario (the "**Site**") that is owned by Northstar Aerospace (Canada) Inc. now known as NSA (Canada) Liquidating Inc. ("**Northstar**") and at other properties in the City of Cambridge;

AND WHEREAS the Former Directors and Officers and others (hereinafter referred to as the "**Appellants**") appealed the Order to the Environmental Review Tribunal ("**ERT**");

AND WHEREAS the Appellants have paid approximately \$800,000 to date to comply with the Order;

AND WHEREAS: (a) the Director is prepared to withdraw the Order as against the Appellants; (b) Ontario is prepared to release the Former Directors and Officers from any administrative or

civil action that could be brought by Ontario; (c) the Former Directors and Officers are prepared to release Ontario from any administrative or civil action that could be brought by the Former Directors and Officers; and (d) the Former Directors and Officers are prepared to make a certain payment to Ontario on terms that are agreeable to the Parties;

NOW THEREFORE, in consideration of the payment, promises and the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Subject to Paragraphs 2 and 5 of this Agreement, the Former Directors and Officers and the Director agree that as soon as possible after the execution of this agreement they will jointly request that the ERT issue an order that:
 - (a) revokes the Order as against the Appellants (but, for greater certainty, not as against Northstar or Mr. Thomas Connerty);
 - (b) dismisses the appeals without costs;
 - (c) provides that all funds paid to Ontario pursuant to this Agreement will be held and used as financial assurance pursuant to Part XII of the EPA ("FA") for the performance of environmental assessment and remediation associated with the Site and impacted or potentially impacted off-site properties, any existing orders or approvals issued to Northstar, or any other orders or approvals that may be issued in respect of the Site under provincial environmental legislation; and
 - (d) amends Item 3.12.5 of the Order to provide access to any person required under sections 146 and 147 of the EPA to do work at the Site.
2. The Parties agree that they will jointly request that the ERT withhold the issuance of the order contemplated in paragraph 1 above until the ERT is advised by the Parties that the conditions described in paragraphs 6, 7, 8(a), and 10 of this Agreement have been satisfied.

CONDITIONS PRECEDENT TO THE FORMATION OF THE AGREEMENT

3. This Agreement is conditional upon the written approval of the Deputy Minister of the Ministry of the Environment by October 22, 2013, or such other date as the Parties may agree.
4. The obligation of the Former Directors and Officers, the Director and Ontario to complete this Agreement is conditional on the ERT issuing an order substantially in accordance with paragraph 1 of this Agreement.

TERMS OF THE AGREEMENT

5. The Parties agree that this Agreement shall be completed on the second business day after the Tribunal approves this Agreement and issues an order substantially in accordance with paragraph 1 but no later than November 12, 2013, unless the Parties otherwise agree in writing (the "**Closing Date**").
6. Ontario shall deliver to the Former Directors and Officers on or before the Closing Date an executed release from Ontario in the form appended as **Schedule "A"** to this Agreement.
7. By October 21, 2013, the Former Directors and Officers will pay the sum of \$4,750,000 CAD into trust to be held by WeirFoulds LLP.
8. The Former Directors and Officers will pay the sum of \$4,750,000 CAD, less any costs incurred by the Former Directors and Officers under Paragraph 10 of this Agreement up to a maximum of \$100,000 CAD unless otherwise agreed to by the Director or approved by the Mediator (the "**Settlement Payment**"). The Settlement Payment shall be provided in the form of cash, or as otherwise directed by Ontario. The Settlement Payment shall be made as follows:
 - (a) the amount of \$4,500,000 shall be paid by the Closing Date; and
 - (b) the remaining amount of the Settlement Payment shall be paid by January 20, 2014 at the latest.

9. The Former Directors and Officers agree that at the MOE's option, the Former Directors and Officers shall carry out the work required under Parts 3.0, 3.3, 3.4, 3.5, 3.11, and 3.12 of the Order between October 21, 2013 and December 4, 2013, or such other dates as may be agreed to by the Parties, up to a maximum of \$100,000 CAD unless otherwise agreed to by the Director or approved by the Mediator. This work shall be paid for out of the Settlement Payment.
10. The Former Directors and Officers shall deliver to Ontario an executed release from the Former Directors and Officers and 2362942 Ontario Inc. in the form appended as **Schedule "B"** to this Agreement.
11. The Settlement Payment and any accrued interest shall be held as FA and used by Ontario directly or indirectly for the purposes described in Paragraph 1(c) of this Agreement. The Parties acknowledge that achievement of these purposes may involve the transfer of funds held as FA to a purchaser of some or all of the Site.

OTHER MATTERS

12. If either of the Conditions Precedent is not satisfied, this Agreement shall be null and void and have no further force and effect, and WeirFoulds may release the settlement funds back to the Former Directors and Officers who contributed them forthwith. In that event, the Parties agree that the hearing of the appeals will proceed as soon as reasonably possible.
13. The Parties agree and consent to this Agreement, once executed by all the Parties, being filed with the ERT for approval.
14. The Parties agree that they will make a joint submission to the ERT in support of the approval of this Agreement.
15. If any condition in this Agreement is not satisfied or performed prior to the time specified therefor, the Party for whose benefit the condition is inserted may, in writing, waive compliance with the condition in whole or in part in its sole discretion by notice to the other Parties and without prejudice to any of its rights

of termination in the event of non-fulfilment of any other condition in whole or in part.

16. The Parties agree that all Parties are contractually bound and that the provisions of this Agreement are immediately enforceable by civil action, subject to Paragraph 15 above, should any of the Parties be in breach of this Agreement.
17. If either of the Conditions Precedent is not satisfied, the Parties agree to return to mediation with Mr. Martin Teplitsky.
18. If there is any dispute about the terms of this Agreement that the Parties cannot resolve, the Parties agree to refer the matter to Mr. Martin Teplitsky as mediator/arbitrator.
19. This Agreement and all other documents to be executed and delivered pursuant to this Agreement constitute the entire Agreement between the Parties as to the matters dealt with herein and supersede all prior negotiations and understandings. Any amendment to this Agreement or waiver of any provision of this Agreement must be in writing and signed by the Parties hereto.
20. The entering into this Agreement and the payments to be made hereunder do not constitute an admission of liability on the part of the Former Directors and Officers, and such liability is specifically denied by the Former Directors and Officers.
21. The Former Directors and Officers assigns to Ontario any and all rights to claim pursuant to the EPA, and on any other legal basis, a return or release of any funds paid by the Former Directors and Officers and Directors under Paragraph 9 of this Agreement.
22. This Agreement shall be governed, interpreted and enforced in accordance with the laws of the Province of Ontario.
23. This Agreement may be executed by one or more of the Parties by facsimile transmitted signature, and all Parties agree that the reproduction of any signature

on a copy of this Agreement by way of a facsimile device will be treated as though such reproduction is an executed original copy of this Agreement.

24. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

ADDITIONAL PARTIES

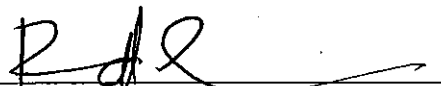
25. On or prior to October 25, 2013, any one or more of Gordon Flatt, Glenn E. Hess, Greg. A. Schindler, and Michael J. Tkatch may become Parties to this Agreement if:

- (a) He signs the Agreement and the Release appended as Schedule "B" to this Agreement; and
- (b) the Former Directors and Officers consent;

and upon so doing Ontario shall deliver to him on or before the Closing Date an executed release from Ontario in the form appended as Schedule "A" to this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO AS REPRESENTED BY THE
MINISTER OF THE ENVIRONMENT**

By: 

Name: Paul Evans

Title: Deputy Minister, Ministry of the
Environment, Ontario

/I have authority to bind Ontario

**DIRECTOR UNDER THE ENVIRONMENTAL
PROTECTION ACT (WITH RESPECT TO THOSE
PROVISIONS OF THIS DOCUMENT RELATED TO
THE ISSUANCE OF AN ORDER)**

By: Jane Glassco — Oct 18/13

Name: Jane Glassco
Title: Director, Sections 17 and 18, EPA
Ministry of the Environment, Ontario

FORMER DIRECTORS AND OFFICERS:

Neil W. Baker

Neil W. Baker
Dated: October 18, 2013

Mark Emery
Dated:

Donald K. Jackson

Donald K. Jackson
Dated: Oct. 18 / 2013

David A. Rattee

David A. Rattee
Dated: OCT 18, 2013

Wayne E. Shaw
Dated:

James D. Wallace

James D. Wallace
Dated: Oct 18, 2013

Colin D. Watson
Dated: Oct 18/13

Craig A. Yuen

Craig A. Yuen
Dated: Oct 18, 2013

Gordon Flatt
Dated:

By: Jane Glassco - Oct 18/13

Name: Jane Glassco
Title: Director, Sections 17 and 18, EPA
Ministry of the Environment, Ontario

FORMER DIRECTORS AND OFFICERS:

Neil W. Baker

Dated: October 18, 2013

Mark Emery

Dated:

Donald K. Jackson

Dated: Oct. 18 / 2013

David A. Rattee

Dated: OCT 18, 2013

Wayne E. Shaw

Dated: Oct 21, 2013

James D. Wallace

Dated: Oct 18, 2013

Colin D. Watson

Dated: Oct 18/13

Craig A. Yuen

Dated: Oct 18, 2013

Gordon Flatt

Dated:

Neil W. Baker

Dated:

Mark Emery

Dated:

Donald K. Jackson

Dated:

David A. Rattee

Dated:

Wayne E. Shaw

Dated:

James D. Wallace

Dated:

Colin D. Watson

Dated:

Craig A. Yuen

Dated:

Gordon Flatt

Dated:

Glenn E. Hess

Dated:

Greg. A. Schindler

Dated:

Glenn E. Hess
Dated:

Greg. A. Schindler
Dated:

Michael J. Tkach
Dated:

Schedule "A"

RELEASE

**TO: NEIL W. BAKER
MARK EMERY
DONALD K. JACKSON
DAVID A. RATTEE
WAYNE E. SHAW
JAMES D. WALLACE
COLIN D. WATSON
CRAIG A. YUEN**

AND TO:

**2362942 ONTARIO INC. AND ITS DIRECTORS, OFFICERS, EMPLOYEES
AND AGENTS**

AND TO:

**NORTHSTAR AEROSPACE, INC. AND ITS FORMER DIRECTORS,
OFFICERS, EMPLOYEES AND AGENTS**

AND TO:

**GLENN E. HESS (only if he is a Party to the Minutes of Settlement, dated Oct. 18,
2013)**

**GORDON FLATT (only if he is a Party to the Minutes of Settlement, dated Oct. 18,
2013)**

**GREG A. SCHINDLER (only if he is a Party to the Minutes of Settlement, dated
Oct. 18, 2013)**

**MICHAEL J. TKACH (only if he is a Party to the Minutes of Settlement, dated Oct.
18, 2013)**

(the "Releasees")

IN CONSIDERATION of the execution, delivery and performance of their obligations under the Minutes of Settlement dated October 18, 2013 between the Releasees and the undersigned and the payment of **FOUR MILLION AND SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$4,750,000.00) CAD** and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the powers granted to me pursuant to the *Environmental Protection Act, R.S.O. 1990, c. E.19*, Her Majesty the Queen in Right of the Province of Ontario ("Ontario") hereby agrees as follows:

1. To release, settle and forever discharge the Releasees as well as their respective heirs, trustees, beneficiaries, executors, administrators, legal or personal representatives, employees, agents and assigns from all manner of actions, causes of actions, suits, grievances, proceedings, complaints, debts, statutory claims, damages, liabilities, demands, orders, directions or obligations whatsoever that Ontario may have now or in the future under all applicable environmental laws ("Claims"), including without limitation any Claims under the *Environmental Protection Act, R.S.O. 1990, c. E.19* or the *Ontario Water Resources Act, R.S.O. 1990, c.O.40*, (including without limitation, Claims requiring the carrying out of any environmental work, including investigations, studies, tests, controls, monitoring work, preventative work, clean-up work, remedial work, decommissioning work or requiring the payment of fines, the suffering of penalties or the making of any other payments whatsoever with respect to any environmental matter, adverse effect, contaminant, pollutant or waste), that relates to any existing environmental matter, adverse effect, contaminant, pollutant or waste that originates from 695 Bishop Street North, in the City of Cambridge, Ontario (the "Site") at any time.
2. Not to make any Claim or take any other action against any person, organization or corporation, including any governmental agency, federal or provincial, which might claim contribution, indemnification or some other remedy from the Releasees under common law, agreement or statute, including the Negligence Act of Ontario, or exercise a statutory power against the Releasees, with respect to the subject of this Release, other than Mr. Thomas Connerty, General Electric Company Canada and its officers and directors, or Northstar Aerospace (Canada), Inc. (now known as NSA (Canada) Liquidating Inc.).
3. That this release does not apply to Northstar Aerospace (Canada), Inc., its successors or assigns, or any person who acquires an interest in the Site.
4. That the consideration paid to Ontario does not constitute an admission of liability on the part of any of the Releasees with respect to the subject of this release.
5. That this release shall be binding on and shall enure to the benefit of the successors of Ontario and the Releasees.
6. This is without prejudice to the MOE's claims against Northstar Aerospace, Inc. in proceedings under the *Company Creditors' Arrangement Act*.

SIGNED this day of , 2013.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO AS REPRESENTED BY THE
MINISTER OF THE ENVIRONMENT (WITH
RESPECT TO THOSE PROVISIONS OF THIS
DOCUMENT NOT RELATED TO THE ISSUANCE OF
AN ORDER)**

By:

**Name: Paul Evans
Title: Deputy Minister, Ministry of the
Environment, Ontario
I have authority to bind Ontario**

Schedule "B"

RELEASE

TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

(the "Releasee")

IN CONSIDERATION of the execution, delivery and performance of their obligations under the Minutes of Settlement dated October 18, 2013 between the Releasee and the undersigned and the revocation of the Director's Order No. 5866-8WKU92 issued November 14, 2012 (the "Order") in respect of 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, Colin D. Watson, Craig A. Yuen and 2362942 Ontario Inc. and its directors and officers (the "Releasers") and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby agree as follows:

1. To release and forever discharge the Releasee, together with its former and current employees, agents and servants from any and all actions, causes of actions, claims, demands, costs, expenses, or damages which the Releaser may have or may hereafter have relating to or arising from the Order.
2. To not make any claim or take any other action against any person, organization or corporation, including any governmental agency, federal or provincial, which might claim contribution, indemnification or some other remedy from the Releasee under common law, agreement or statute, including the Negligence Act of Ontario, or exercise a statutory power against the Releasee, with respect to the subject of this release.
3. This release shall be binding on the respective heirs, trustees, beneficiaries, executors, administrators, legal or personal representatives, employees, agents and assigns of the Releasers.

SIGNED this day of , 2013.

2362942 ONTARIO INC.

By:

Name:

Title:

I have authority to bind the corporation.

Neil W. Baker

Dated:

Mark Emery

Dated:

Donald K. Jackson

Dated:

David A. Rattee

Dated:

Wayne E. Shaw

Dated:

James D. Wallace

Dated:

Colin D. Watson

Dated:

Craig A. Yuen

Dated:

Gordon Flatt

Dated:

Glenn E. Hess

Dated:

Greg. A. Schindler

Dated:

Michael J. Tkach
Dated: