

Notes for Address
Wilfred Laurier University
Conference on Environmental Illness
Saturday, May 23, 1992
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LEGAL REMEDIES REGARDING ENVIRONMENTAL ILLNESS

Good afternoon. I am pleased to speak to you today about legal remedies regarding environmental illness. Our time is short, and I understand that there will be some time for questions to which I will be happy to try to respond. I will therefore be able only to make some very general remarks, which I hope will still be of some use to you.

As you've been discussing throughout this conference, and as you all know only too well, environmental illness can mean many many different things and be caused by many different sources. However this question: What is causing the illness? is the key question as to whether there is any traditional or statutory legal remedy available. This question is also often the hardest to answer, and is often a major

stumbling block in the way of achieving a successful remedy.

This is because lawyers and judges look for "proof" about how the illness was caused, and for "proof" that it is the legal responsibility of the person or organization you are pursuing for a remedy.

To give some context to the kinds of situations in which the question of proving the cause and responsibility for the illness can arise, I will briefly mention some of the remedies which may be available.

Firstly, if it can be proven that someone was NEGLIGENT, then there may be a remedy against that person. We would have to show that they failed to take the due care that would normally be expected of them. This could be shown about something that someone actively did, like spraying a toxic chemical in a residential neighbourhood, or about something that someone omitted to do - like failing to use some protective equipment, or in a workplace environment, perhaps not making protective equipment available.

Together with this, we would also have to show that the person responsible SHOULD HAVE KNOWN BETTER (or even did know better). Another way of putting that, in legal terms, is that the harm or injury caused should have been foreseeable to the person.

This is where some concerns might arise in a case involving a specific environmental illness. If the harm is caused to someone who is particularly susceptible, the Defendant might be able to show that it wasn't foreseeable on a reasonable standard that the activity would cause that harm. Similarly, if the adverse effects of the activity or omission are very little known, a Defendant could win, even where they were otherwise "negligent", because the harm was not foreseeable to them.

On the other hand, tort law generally says that one "takes their victim as they find them" & it is not a defence to say that the P had an extraordinary response to the activity because of their illness.

You can see how important it is then to educate the general public about the main causes of environmental illnesses, and about the common sense steps which can be taken to prevent harm to susceptible people. The more educated the public is, the more likely a Court will find that the law's "reasonable person" would have known

enough to take steps to prevent the harm, and would have foreseen the injuries they could cause by not taking protective measures.

Another traditional area which is sometimes available as a basis for relief is the law of nuisance. This is an area which is of restricted assistance since an individual can only make a claim if they are specially affected by the nuisance complained of. If the nuisance affects the public generally, then our current law says that only the Attorney General can take action to stop the nuisance. To succeed in nuisance, one has to show that he or she is being prevented from reasonable use and enjoyment of one's own lands by the nuisance activity. It is a remedy very much tied to property rights.

Because of the limitations in the law of nuisance and other remedies, there are various investigations as to law reform taking place, at both provincial and federal government levels, and by bodies such as the Law Reform Commission. There have been suggestions that there be an Environmental Bill of Rights. There are

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also draft bills in committee right now as to proposed Class Action legislation and funding for Class Actions. If these proceed, they would effect radical changes to some of the traditional legal remedies. Right now, the ability to take action as a class of people is also fairly restricted. I have brought with me some copies of the Class Action bills, which you may be interested in actively supporting. I can make other copies available if you want to leave a business card or your address with me afterwards.

A great many environmental illnesses are caused by the workplace environment. If a person is covered by the Worker's Compensation Act, then they may be entitled to Worker's Compensation, on a permanent or partial basis, or by payment of a lump sum in some cases to make up for lost income. This remedy is in place of taking action in the Courts against the employer. As always, the big hurdle is proving that the workplace environment caused the illness. If a person elects to forego their worker's compensation rights, or is not covered by worker's compensation, then there may be an action against the employer for damages if it can be shown that

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the employer was negligent. This means that it would not be enough just to show that the work place caused the illness. We would have to show that the employer did not take due care to protect the employees from harm which was reasonably foreseeable. Again education can make all the difference here, not only to establish liability, but to prevent the harm from happening in the first place.

Another workplace remedy is the use of the Occupational Health and Safety Act. This Act mandates workplace Health and Safety Committees which include employee representatives. Those committees have the power to suspend work while the Ministry of Labour is called to investigate whether an employee is being required to work in unsafe conditions. The Ministry of Labour is also sometimes available to come to the workplace to make inspections as to the safety of the workplace, whether it's a construction site with unsafe practices or an office building with poor ventilation.

Some workers who are unionized will have additional remedies available through their collective agreements.

To return to the issue I mentioned at the outset, in all of these cases, a primary concern will be to prove how the illness was caused, and whether that causation fits into the parameters of the remedies available. Our Courts require Doctor's reports and evidence by other experts as appropriate which show that the illness was caused by the source on a "balance of probabilities". If there is significant doubt as to the cause of an illness, then it is not likely that a Court would hold a Defendant responsible. Therefore it is critical to pursuing possible remedies that there be a great deal of care taken in obtaining the evidence needed to prove the case.

X Legal Aid
Green Farm
Lawyer Referral Service

Intervenor Funding
Possibly Class Actions
Cost awards.

As mentioned at ^{The} ~~out~~ beginning, I am only able to make very general comments in the time available, but I would be happy to answer any questions, either during the time formally available, or after the conclusion of these proceedings. Thank you for your attention.