

Québec Court of Appeal underscores the evolving nature of environmental standards in transactions

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In the recent *Scene Holding Inc. v. Galeries des Monts inc.* decision,^[1] the Québec Court of Appeal highlighted the importance of considering the evolving nature of applicable environmental standards or criteria when drafting transactions, particularly when these standards or criteria are set out in a policy that does not have force of law.

Background and judgment under appeal

The appellant owned a shopping centre in Saint-Sauveur. It was confronted with groundwater contamination by perchloroethylene (PCE), a toxic solvent, from a tenant of the respondent's neighbouring shopping centre, Les Galeries des Monts Inc. Considering PCE to be a contaminant under the *Environmental Quality Act*,^[2] the appellant filed an originating application against the respondent, seeking damages for the loss of value of its land and for the respondent's extracontractual liability.

In 2004, the parties entered into a settlement transaction (the transaction), which included an obligation to perform decontamination work. In 2013, the appellant filed a second action seeking annulment of the transaction and damages of nearly \$5.7 million. The appellant alleged that the respondent had failed to fulfill its obligations under the transaction, while the respondent claimed reimbursement of the amounts paid under the transaction, with interest, for a total of \$454,753.

The Superior Court of Québec dismissed the appellant's claim, who appealed to the Court of Appeal.

Reasoning of the Court of Appeal

Scope of the parties' decontamination obligation

The appellant's claim was based on the premise that the respondent's decontamination obligation was not limited to PCE but also covered other environmental contaminants. According to the appellant, the first judge should have recognized the existence of a contractual ambiguity, which would have justified an interpretation of the contract that would have taken into account the environmental concerns of the time.

The Court of Appeal concluded that the intention of the parties, as expressed in the transaction, was to limit the decontamination of the appellant's site to the contaminant PCE only. Indeed, the evidence revealed that the parties were aware that PCE degraded into other metabolites, thus constituting other environmental contaminants, but the preamble to the transaction expressly and unambiguously identified PCE as the environmental contaminant.

In the Court's view, the interpretation might have been different if the parties had not had this knowledge when they entered into the transaction. Although the appellant's goal at the time of signing the transaction was to obtain mortgage financing, this was not reflected in the common intention of the parties. The Court noted that the appellant did not refute the fact that it was advised by environmental experts when the transaction was concluded.

As the decontamination obligation was limited to PCE, the respondent could therefore benefit from the release provided for in the transaction, according to which the appellant "absolutely and irrevocably" waived any cause of action relating to the contamination issue, even if contamination other than the PCE persisted.

The decontamination objective to be achieved

The appellant also argued that the parties had never intended to limit remediation to the "*Résurgence dans les eaux de surface ou infiltration dans les égouts*" (RESIE) criterion set out in the *Soil Protection and Contaminated Site Rehabilitation Policy* (the policy) of 1998. According to the appellant, the purpose of the transaction was in fact to remediate the contamination fully in order to obtain funding, so that the applicable criterion for determining whether the respondent had fulfilled its decontamination obligation would be the "*Résurgence dans l'eau de surface*" criterion in force since the adoption of the 2016 policy.

The Court of Appeal confirmed that the decontamination objective to be achieved was the RESIE criterion of the 1998 policy, which was in force when the transaction was concluded. In order for a new law that came into force after the conclusion of the transaction to apply, the parties would have had to have unambiguously incorporated it, which was not the case. Therefore, the criterion applicable to the decontamination of the appellant's site could only be that applicable at the time the transaction was concluded.

Key takeaways

In this decision, the Court of Appeal reiterates that the rights and obligations arising from a contract are fixed and crystallized as soon as it is concluded, unless the parties expressly provide otherwise. More specifically, the rights and obligations of the parties to a contract are, in principle, governed by the law in force at the time of the conclusion of the contract, and in order for a new law, which comes into force after the contract has been concluded, not to modify them, the parties must clearly and unambiguously provide for it. In the present case, since the criteria of the 1998 policy are not legal norms, the objective to be achieved by the transaction could not be moving, unless the parties had expressly provided for it, which they did not.

In conclusion, the *Scene Holding Inc.* decision is a reminder of the importance of precisely drafting environmental clauses to reflect the intention of the parties at the time the contract is concluded. Despite the complexity of environmental regulations and policies, the intention of the parties remains a crucial and determinative factor. Even in the presence of strict legal obligations, the courts will endeavour to discern the intention of the parties at the time of concluding the contract. Consequently, it is incumbent on the parties to pay particular attention to clauses relating to environmental policies and their possible evolution, which may influence the performance of the contract. Similarly, this decision highlights the need for careful drafting to anticipate and integrate the evolution of environmental standards

according to the intention of the parties. This decision may serve as a precedent for future disputes concerning the interpretation of contractual clauses in environmental matters.

[1] *Scene Holding Inc. v. Galeries des Monts inc.*, 2024 QCCA 704 (*Scene Holding Inc.*).

[2] *Environment Quality Act*, CQLR, c. Q-2.