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SUPREME COURT OF CANADA: THE ENVIRONMENT

## **Polluters liable for 'annoyances,' even if they have broken no laws**

by KIRK MAKIN, JUSTICE REPORTER

Polluters can be successfully sued for emitting annoying odours, dust or noise - even if they are in compliance with government regulations, the Supreme Court of Canada ruled yesterday.

In a landmark ruling favouring the environmental movement, the court allowed a class action launched by 2,000 citizens near Quebec City who suffered for half a century from an irritating blanket of dust and odour emanating from a St. Lawrence Cement Inc. plant that was located in their midst.

The court said polluters must pay "based on the annoyances suffered by the victim being excessive, rather than on the conduct of the person who allegedly caused them."

The 6-0 ruling applies specifically to Quebec - which has a distinct Civil Code. However, the broad principles enshrined by the court are expected to quickly spread across the country in future rulings.

"This is a massive victory for the environmental community and for citizens in Canada, particularly Quebec," said Will Amos, a lawyer for the environmental group Ecojustice.

"It is going to make it much easier for citizens to make environmental-nuisance complaints," Mr. Amos said in an interview. "They are not going to have to prove fault or wrongdoing. They have only to prove that an abnormal annoyance occurred. That is absolutely critical."

The court delineated two separate streams of potential liability in environmental lawsuits. The first relates to cases in which actual wrongdoing can be proved. The second relates to emissions which, despite being legal, exceed reasonable levels of tolerance in a community.

"Even though it appears to be absolute, the right of ownership has limits," Mr. Justice Louis LeBel and Madam Justice Marie Deschamps wrote for the court.

They said that plaintiffs "do not require evidence of wrongful conduct to establish the liability of an owner who has caused excessive neighbourhood annoyances."

Yesterday's decision realized the worst fears of St. Lawrence Cement and other companies caught up in disputes with their neighbours.

Judge LeBel and Judge Deschamps said that the plaintiffs symbolically represent a multitude of others across the country in an era when citizens no longer accept noxious pollutants as an acceptable irritant.

"Dust they are, and unto dust they shall return, yet human beings have difficulty resigning themselves to living in dust," they said. "Sometimes, weary of brooms and buckets of water, they are not unwilling to turn to the courts to get rid of it. This case is proof of that."

The court noted that its ruling stems from accepted principles of both Quebec civil law and Canadian common law. "What is more, such a scheme is consistent with general policy considerations, such as the objective of environmental protection and the application of the polluter-pay principle," it said.

St. Lawrence Cement opened its Beauport plant in 1952. By 1955, the company and the community were at war over noise, odour and airborne pollutants, which the inhabitants alleged were damaging their property and enjoyment of life.

While the class action was launched in 1994 and the plant ceased operating in 1997, the litigation lived on. In another victory for environmentalists, the court ruled that damage awards can vary within a community, since citizens may suffer differing degrees of harm.

The other concurring judges were Chief Justice Beverley McLachlin, Mr. Justice Morris Fish, Madam Justice Rosalie Abella and Madam Justice Louise Charron.