

Legal Aspects of Nuisance

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Presentation Outline

- **What is Nuisance?**
- **Regulatory Orders and Prosecutions**
- **Common Law Nuisance Actions**
- **Case Studies**

WHAT IS “NUISANCE”?



What is “Nuisance”?

- **Noise, vibration, odour and dust causing**
 - loss of enjoyment
 - material discomfort
- **Rarely causes health or environmental effects**

Dust, Noise and Odour Compliance

- **Notwithstanding “compliance”**
 - trigger for complaints
 - abatement orders to address complaints
 - prosecution for “adverse effects”
 - contravention of municipal by-laws
 - lawsuits for private or public nuisance

REGULATORY AUTHORITY



Sources of Regulatory Authority

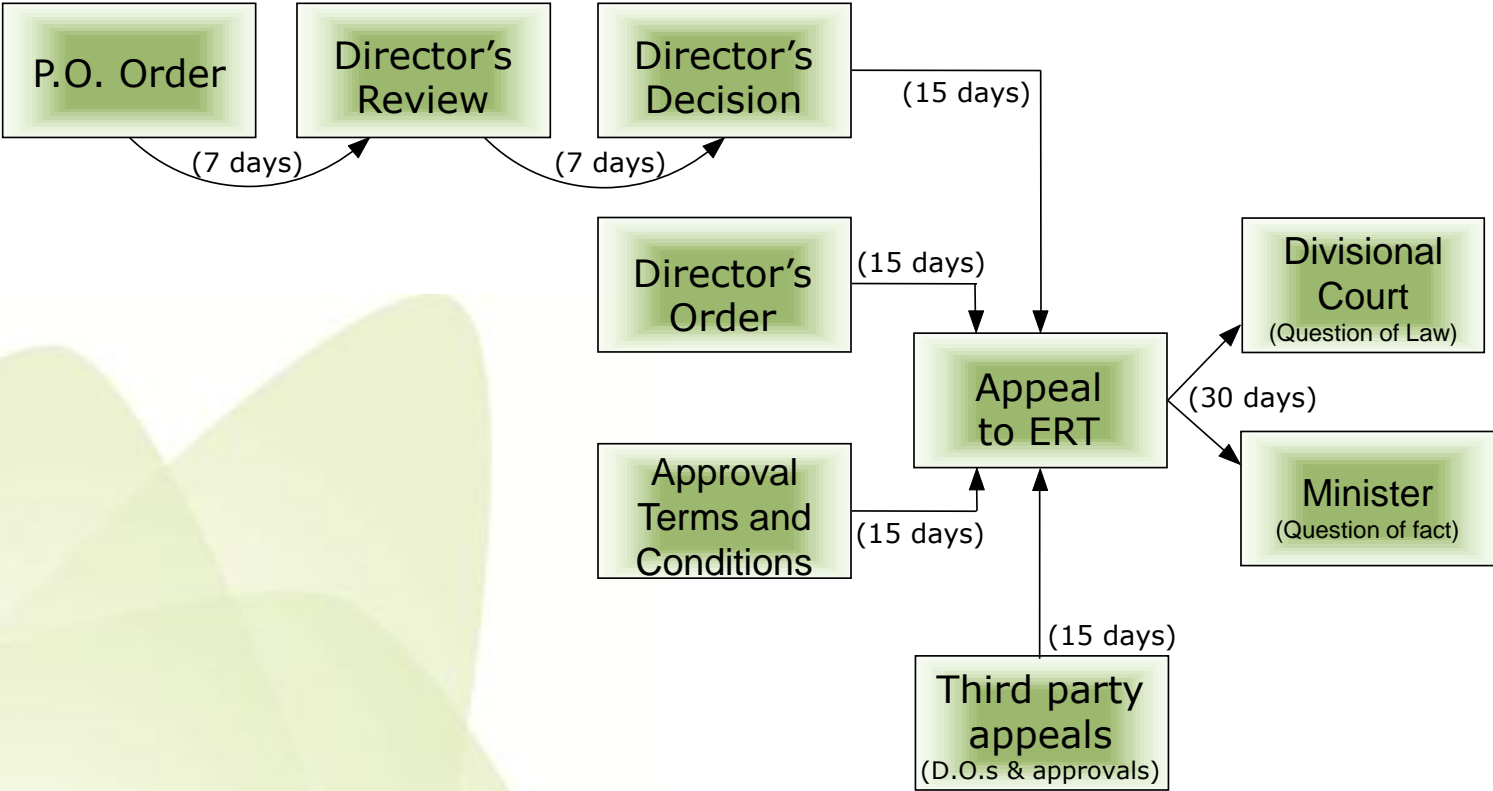
- ***Environmental Protection Act***
- **Environmental Noise Guideline – NPC 300**
- **Air Pollution – O Reg 419/05**
- **Land Use Planning Guidelines**
- ***Municipal Act, 2001***
- **Provincial Policy Statement**

Inspections and Investigations

What Can the Regulator Do?

- **Request for voluntary abatement**
- **Program approvals**
- **Control documents**
 - Director Orders
 - Provincial Officer Orders
- **Amendments to Instruments**
 - environmental compliance approval
 - permit
 - licence

Deadlines to Appeal MOECC Orders and Approvals



COMMON LAW NUISANCE



Common Law Nuisance

- **Public nuisance**

- unreasonable interference with public's right to use and enjoy public aspects of air, land and water
- anyone who creates a public nuisance may be held responsible
- compliance is not a defence

Common Law Nuisance

- **Private nuisance**

- unreasonable interference with use and enjoyment of land by occupier
- balance competing interests of parties
- occurs where individual or corporation created, authorised, permitted or permitted others to cause interference
- both corporation and individuals having control
- compliance is not a defence

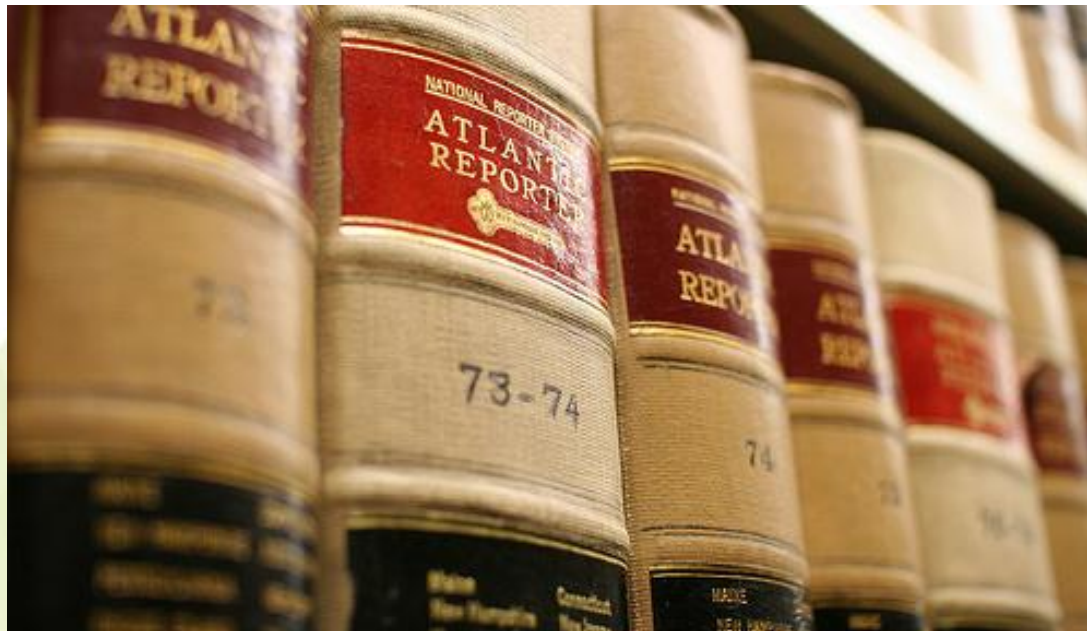
Test for Private Nuisance

- ***Antrim Truck Centre Ltd. v Ontario (Ministry of Transportation) (SCC 2013)***
 - private nuisance claimants must show that interference with the use of the property is both substantial and unreasonable.
 - A **substantial** injury “is one that amounts to more than a slight annoyance or trifling interference.”
 - Courts must balance the gravity of the harm against the utility of the defendant’s conduct to establish whether the interference was **unreasonable**

Origin of Nuisance

- ***French v Chrysler* (ONSC 2014)**
 - nuisance has “certain defined, long-standing characteristics, which courts have considered to be essential to the tort. In particular, the **alleged nuisance must originate somewhere other than on the plaintiff’s land.**”

CASE LAW REVIEW



Case Law Review – Prosecutions

Dust and Fly Rock

- ***Austin Powder Ltd. (2014)***
 - quarry blasting services at limestone quarry near Arnprior
 - fly rock discharged beyond 200 m control area - later determined should have been 500 m control area
 - rock struck worker at neighbouring business in the arm
 - scalehouse (230 m away) and two vehicles (300 m away) damaged by fly rock
 - Austin Powder failed to report incident forthwith
 - conviction – \$130,000 plus 25% VFS and 6 months to pay



Case Law Review – Prosecutions

Private Nuisance – Odour

- ***Four Vaughn companies, Directors and Officers (2012 and 2013)***
 - four waste companies operated a waste disposal site
 - In 2008, companies and individuals appealed the conviction and were granted a new trial
 - In 2011, companies and individuals convicted for causing or permitting the discharge of smoke and odour causing adverse effects
 - companies fined \$1,000,000 plus 25% VFS
 - Directors and Officers fined \$47,000 plus 25% VFS and sentenced to 11 days in jail

Case Law Review – Prosecution

Private Nuisance – Odour

- ***Universal Resource Recovery Inc. (2013)***
 - composting facility discharged odours that caused adverse effects
 - facility was shut down in May 2011
 - loss of enjoyment to neighbours, impairing quality of natural environment, causing material discomfort to a person
 - company fined \$200,000 plus 25% VFS

Case Law Review – Prosecutions

Noise

- ***Bobcaygeon Company (2012)***
 - dairy product processing facility located in Bobcaygeon
 - neighbouring property owners complained of noise from the facility
 - MOE attended the site and discovered the company had expanded its operations without ministry approval
 - discharge of noise caused adverse effects to neighbouring property owners
 - conviction – \$45,000, plus 25% VFS and 60 days to pay

Case Law Review – Prosecutions

Noise and Vibration

- **1191802 Ontario Ltd. O/A Jim Weir Custom Crushing (2012)**
 - rock crushing process generated noise
 - residents awakened by loud noise of constructions equipment from nearby quarry
 - residents complained of
 - loss of enjoyment of property
 - personal stress
 - possible reduction in property values
 - conviction – \$10,000 plus 25% VFS

Case Law Review – Prosecutions

Dust and Odour

- ***R v 1404749 Ontario Ltd. (2012)***
 - large plume from industrial fire at site in Toronto
 - plume drifted off-site over roadways and railway tracks used by GO Transit
 - smoke caused disruptions in road and GO train traffic and led to evacuations in area
- conviction – \$75,000 plus 25% VFS



Case Law Review – Prosecutions

Odour

- ***R v Kraft Canada Inc. (2011)***
 - manufacturing facility in Ingleside generated wastewater that was temporarily stored in a tank
 - tank needed repair; company used its on-site lagoon as a back up
 - June 2010 – Ministry received odour complaint from neighbour
 - Ministry observed strong odours from lagoon
 - conviction – \$110,000 and 30 days to pay

Case Law Review – Civil Actions

Private Nuisance – Airborne Dust

- ***TMS Lighting Ltd. V KJS Transport Inc.***
(ONCA 2014)
 - dust from KJS Transport property caused substantial and unreasonable interference with use and enjoyment of TMS lands (retail lighting manufacturer)
 - four factors considered to establish nuisance



1. severity of interferences
2. character of neighbourhood
3. utility of defendant's conduct
4. sensitivity of plaintiff

Case Law Review – Civil Class Actions

Private Nuisance – Dust (Nickel Particulate)

- ***Smith v Inco* (ONCA 2011)**
 - nickel refinery operated from 1918-1984
 - Ministry released studies in 2000 showing above normal soil nickel levels
 - class must show Inco's actions amounted to “interference” with
 - use or enjoyment of property or
 - physical injury to land requiring actual, substantial, physical damage
 - must point to action that leaves property unfit for purpose for which owner purchased

Case Law Review – Civil Actions

Private Nuisance – Odour

- ***Pyke v Tri-Gro* (ONCA 2001)**
 - strong/disturbing odour from mushroom composting
 - loss of enjoyment to neighbours
 - damages awarded – \$7,500 to \$35,000 per household
 - Tri-Go sought leave to SCC but was denied



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