



WORK CARRIED OUT IN WETLANDS AND THE *ENVIRONMENT QUALITY ACT*

By Me Daniel Goupil, lawyer

The Quebec government amended the *Environment Quality Act*, hereinafter called (E.Q.A.) to add a specific provision prohibiting any work to be carried out in lakes ponds marshes swamps and peat bogs without a certificate of authorization issued by the Minister of Environment (art. 22, al. 2, E.Q.A.). There are very few decisions that can be used as guides to interpret this provision. In a recent case, *9047-4784 Québec inc. c. Claude Bécharde et Ville de Laval* (540-17-001816-056), the honorable Luc Lefebvre, J.C.S., helped clarify the interpretation of the term 'swamp' and the limitations of the interdiction.

In this matter, the plaintiff asked that an order, given by the *Ministère du Développement durable, de l'Environnement et des Parcs* on August 23, 2005, be set aside. The order required the demolition of work that had been carried out in wetlands. The work was to be carried out in a manner that would return the terrain to its previous state.

As part of a housing project known as « *Domaine Islemère* » in Laval, the plaintiff had started work clearing trees and removing black earth in order to build roads.

The environment department alleged that this work was done in wetlands, specifically in two swamps and a wooded peat swamp. After stating that the environment department's experts are strongly in favour of exercising caution in these matters and that protecting the environment is an important value for Canadian society as a whole, the judge examined whether the decision made by the environment department was reasonable with regard to the interpretation of the term 'swamp' according to article 22 of the E.Q.A.

As the term is not specifically defined in the law, which only itemizes different types of wetlands (lakes, watercourses, ponds, marshes, swamps and peat bogs), the judge used various definitions from dictionaries to establish the extent of the interdiction. The term 'marsh' designates a stagnant wetland filled with aquatic vegetation; a swamp refers to a large area of wetlands with shrub cover that also includes marshes. In addition, because the *Règlement sur les habitats fauniques* (Regulation on wildlife habitats) specifies that fish live in marshes and swamps, the judge concluded that the presence of water is required for an area to be characterized as a swamp.

In conclusion, the judge ruled that the work carried out in the wooded peat swamp did not contravene article 22 of the E.Q.A. and therefore the re-naturalization order was quashed for this area. With regard to the other areas characterized as 'marsh', the court stated that if the plaintiff had wanted to speed up the development of the land because large amounts of money had been invested, or if the goal was to present the environment department with a *fait accompli* that would influence the department, the plan had failed, because the plaintiff had not obtained a certificate of authorization as required by the law before doing the work. In other words, except for the area defined as 'wooded peat swamp', the court confirmed the order of the tribunal that demolition and re-naturalization must be carried out.

Finally, municipal inspectors and other experts who must identify wetlands, as well as any person who wants to clear trees, remove earth or fill in land, should be aware that there are municipal regulations that apply, and that the definitions in the municipal regulations should be studied carefully before deciding to apply the case of *9047-4784 Québec inc.* in any particular situation.

DEMYSTIFYING THE TASKS OF OUR PARALEGALS

In addition to assisting lawyers with different files, including real estate matters, litigious and corporate files, our paralegals can also manage small claims cases (under \$7000, and concerning companies with fewer than five (5) employees). Before they are

concluded, property transactions that do not require mortgages should always be subject to a title search. Our paralegals are specialists in this field. Our firm's paralegals can also obtain, renew or rectify alcohol permits, carry out verifications with the R.D.P.R.M. (for example, before purchasing a vehicle), and assert landlord's claims with the Quebec Rental Board. Do not hesitate to call us for more information.

NEWS FROM OUR FIRM

- **Me Richard Gendron, Me Etienne Morin and Me Jean-François Mallette** had led a conference for l'Association des Gens d'Affaires de Blainville (AGAB) on last March 14th. The subject of the conference was commercial leases, protection of trade secrets and harassment in the workplace.
- **Me Stéphane Sansfaçon**, from our firm's environment and municipal law division, had spoken at a full day session on recent developments in municipal law. The session took place on March 23 and was organized by the Barreau du Québec. Me Sansfaçon's presentation had covered the difficulties in applying municipal regulations regarding the protection of banks, shores, littorals and floodplains.
- **Me Sansfaçon** had also led a training session on March 14th for municipal inspectors in the Laurentians. The session had covered effective complaint management, recourse in cases of gaps in municipal regulations, and preparing for court cases. The training session was organized by the Fédération québécoise des municipalités (FQM).
- This year, **Prévost Fortin D'Aoust's** team of lawyers is organizing another edition of la Friperie. **PFD** lawyers are again getting undressed for a good reason, and this year in 2007, they are also undressing their children! The 'Friperie' activity will be held April 27 and 28th at the Best Western Hotel in Saint-Jérôme, in support of Pallia-Vie. Last year, Pallia-Vie, an important organization in the Laurentians, began building a residence for people in terminal phases of cancer and for their families.

We will soon provide you with more information about this activity. **PFD's** lawyers hope to see you at this event!



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