

IN THE SUPREME COURT OF NOVA SCOTIA

B E T W E E N:

NEILA CATHERINE MACQUEEN, JOSEPH M. PETITPAS,
ANN MARIE ROSS, KATHLEEN IRIS CRAWFORD, and THE ESTATE OF CARL
ANTHONY CRAWFORD by his executor or representative KATHLEEN IRIS
CRAWFORD

Plaintiffs

- and -

ISPAT SIDBEC INC., a body corporate; ~~HAWKER SIDDELEY CANADA INC., a body
corporate~~; SYDNEY STEEL CORPORATION, a body corporate; THE ATTORNEY
GENERAL OF NOVA SCOTIA representing Her Majesty the Queen in right of the
Province of Nova Scotia; CANADIAN NATIONAL RAILWAY COMPANY, a body
corporate; THE ATTORNEY GENERAL OF CANADA representing Her Majesty the
Queen in right of Canada; and DOMTAR INC., a body corporate.

Defendants

Proposed Common Law Class Proceeding

THIRD AMENDED STATEMENT OF CLAIM

1. In this Amended Statement of Claim, the following capitalized terms have the meanings set out below:
 - (a) "Band and Camus Study" means the study commissioned by the Defendant Canada and published in March of 2003 which specifically identified (i) some of the materials contained in the Contaminants; (ii) the unique and specific exposure of residents of the Neighbourhoods to high levels of airborne emissions; and (iii) the potential for a causal link between the Contaminants and adverse health consequences.
 - (b) "By-Products Defendant" means Domtar Inc.
 - (c) "By-Products Operations" means the facilities located on the Coke Ovens Lands where Domtar refined and stored coal tar, the approximate location of which is marked as "BPO" on Schedule "B" hereto.

- (d) "Canada" means the Queen in right of Canada, the Attorney General of Canada, the former Cape Breton Development Corporation and all of their agencies, departments, contractors, subcontractors, agents, servants, employees, assigns, appointees or partners.
- (e) "Choquette Study" means a study of the emissions from the Steel Works commissioned by the defendant Canada and completed in or about 1974 which concluded that the emissions from the Steel Works exceeded guidelines including the National Ambient Air Quality Guidelines and were impacting Class Members and their property.
- (f) "Class Boundaries" are provisionally described, subject to refinement as the area within a 3.5 mile radius around the Steel Plant, Coke Ovens and Muggah Creek. The centre point from which the 3.5 mile radius is calculated is the centre of Victoria Road at the centre of the intersection of Victoria Road and Laurier Street in Whitney Pier and is shown as "X" on Schedule "B" hereto. The 3.5 mile radius includes all of the inhabited areas within the historical boundaries of the City of Sydney, Edwardsville, Westmount and includes part of Sydney River, South Bar, Mira Road, Alexandra Street, Lingan Road and Grand Lake Road.
- (g) "Class" or "Class Member" means either a Property Owner Class Member or a Residential Class Member.
- (h) "Class Period" means the period from 1957 to the present.
- (i) "CNR" means the Canadian National Railway Company.
- (j) "CNR Contaminants" means those chemicals and materials used and emitted by the CNR Operations, including oil, petroleum hydrocarbons, PCB's, PAH's and varsol.
- (k) CNR Operations means the railway, railway terminus and maintenance facility located on or adjacent to the lands now occupied by the Sydney Tar Ponds which were operated by CNR until approximately 1994.

- (l) "Coke Ovens" means the facility formerly located within the Class Boundaries at which coke was produced for use in the Steel Plant, which was located on the Coke Ovens Lands, the location of which is within the green boundaries shown on Schedule "A" hereto.
- (m) "Coke Ovens Lands" means the lands formerly occupied by and surrounding the Coke Ovens, and located within the green boundaries shown on Schedule "A" hereto.
- (n) "Contaminants" means the Operational Emissions, the Domtar Contaminants, the CNR Contaminants and the Tar Ponds Contaminants.
- (o) "Domtar" means Domtar Inc., formerly Dominion Tar and Chemical Company Limited.
- (p) "Domtar Contaminants" means the materials used and produced in the By-Products Operations including petroleum hydrocarbons, polycyclic aromatic hydrocarbons, benzene, toluene, ethylbenzene, xylene, phenols and heavy metals including lead, arsenic and cadmium.
- (q) "DOSCO" means Ispat Sidbec Inc.
- (r) "Havelock Study" means a study of the emissions from the Steel Works commissioned by the Defendant Canada and completed in or about 1973 which concluded that the emissions from the Steel Works were impacting Class Members and their property and that significantly reduced emissions levels were necessary to insure acceptable levels of ambient air quality.
- (s) "Hawker Siddeley" means Hawker Siddeley Canada Inc., formerly known as Hawker Siddeley Canada Limited.
- (t) "Ispat" means Ispat Sidbec Inc.
- (u) "Katz Study" means a study of the emissions from the Steel Works commissioned by the Defendant Canada and completed in or about 1959 which concluded that the emissions from the Steel Works were impacting

Class Members and their property and presented a risk to the health and property of Class Members.

- (v) "Neighbourhoods" means all residential neighbourhoods within the Class Boundaries.
- (w) "Nova Scotia" means the Queen in right of the Province of Nova Scotia, the Attorney General of Nova Scotia, Sydney Steel Corporation, and all of their agencies, departments, contractors, subcontractors, agents, servants, employees, assigns, appointees or partners.
- (x) "Operational Emissions" means the materials originating from the Steel Works which have escaped from the Steel Works into the air, soil or water within the Class Boundaries, which materials include heavy metals (including lead, arsenic and cadmium), polycyclic aromatic hydrocarbons ("PAH's" including benzo[a]pyrene, benzchphenanthrene, benz(a)anthracene, a benzfluoranthene isomer, a bezfluoranthrene isomer, and clolanthrene) and dangerous respirable particulates.
- (y) "Property Owner Class" or "Property Owner Class Member" means persons other than the Defendants and their parent companies, affiliates or subsidiaries who were the beneficial owners of real property within the Class Boundaries as of March of 2003, when the nature, extent and ramifications of the significant toxic contamination of the properties within the Class Boundaries became publicly known and understood.
- (z) "Residential Class" or "Residential Class Member" means living persons who:
 - (i) Have lived within the Class Boundaries continuously throughout the Class Period; or
 - (ii) Have lived within the Class Boundaries for their entire lives; or
 - (iii) Have lived within the Class Boundaries for a minimum of three (3) continuous years during the Class Period; or

- (iv) If not of the age of majority have lived within the Class Boundaries for 50% or more of their lives or for three (3) continuous years whichever is less.
- (aa) "Steel Plant" means the facility within the Class Boundaries at which steel was manufactured until 2000, the location of which is located within the red boundaries shown on Schedule "A" hereto.
- (bb) "Steel Works" means the Steel Plant and the Coke Ovens.
- (cc) "Steel Works Defendants" means Canada, Nova Scotia, Ispat Sidbec, ~~Hawker Siddeley~~, and Sydney Steel Corporation.
- (dd) "Sydney Tar Ponds" means the former tidal flats adjacent to Sydney Harbour at the mouth of Muggah Creek where the runoff from the Coke Ovens Brook and other proximate watercourses or brooks has accumulated, which is marked as "Muggah Creek", "North Pond" and "South Pond" on Schedule "B" hereto.
- (ee) "SYSCO" means the Defendant Sydney Steel Corporation.
- (ff) "Tar Ponds Contaminants" means the contaminants that have accumulated in the Sydney Tar Ponds, including oils, heavy metals (including lead, arsenic and cadmium), polychlorinated biphenyls (PCB's), and polycyclic aromatic hydrocarbons (PAH's, including benzo[a]pyrene, benzchphenanthrene, benz(a)anthracene, a benzfluoranthene isomer, a bezfluoranthrene isomer, and clolanthrene).

I. OVERVIEW

2. For many years, Sydney, Nova Scotia was home to a steel plant, coke ovens and by-products operations that operated in the heart of the city with no emissions controls. Throughout that period, those operations spewed hundreds of thousands of tonnes of Contaminants into Sydney's air, water and soil.
3. The Defendants in this action are those who directed and operated the Steel Works, the By-Products Operations and the CNR Operations that caused the

pollution that continues to contaminate Sydney to this day. As a result, Sydney, home to approximately 26,000 people, is one of Canada's most polluted sites.

4. Nova Scotia and Canada have committed \$400,000,000 to the cleanup of the Sydney Tar Ponds, and the Coke Ovens Lands, which are the most prominent symbols of contamination in Sydney. Nova Scotia and Canada know, however, that the contamination extends beyond the lands targeted for remediation.
5. The remediation plan proposed by Canada and Nova Scotia fails to address the impacts of Sydney's contamination on its residents and their property. The Plaintiffs and Class Members continue to be exposed to the Contaminants from their own and surrounding properties.
6. In this action, the Plaintiffs seek, on their own behalf and on behalf of the Class:
 - (a) To stop the exposure of Class Members by inhalation, ingestion and dermal contact to the Contaminants and to compensate for the property damage caused;
 - (b) To identify, monitor, and treat the health risks created by the Contaminants; and
 - (c) To compensate the existing health effects caused by the Contaminants.
7. The Plaintiffs seek to certify this action as a class proceeding, and plead the Supreme Court of Canada's decision in *Western Canadian Shopping Centers Inc. v. Dutton*, [2001] 2 S.C.R. 534, and Rule 5.09 of Nova Scotia's *Civil Procedure Rules*, as providing the basis for such certification. The Plaintiffs state that there is an identifiable class that would be fairly and adequately represented by these Plaintiffs (the Class); that the Plaintiffs' claims raise common issues; and a that class proceeding would be the preferable procedure for the resolution of such common issues.

II. REPRESENTATIVE PLAINTIFFS

8. The Plaintiffs and Class Members have been continuously exposed to the Contaminants as hereinafter described. Each of the Plaintiffs is both a Residential Class Member and a Property Owner Class Member.

III. DEFENDANTS

(A) Steel Works Defendants

9. Ispat is a federal company, duly incorporated pursuant to the laws of Canada with its registered office located at the Town of Contrecoeur in the Province of Quebec. Ispat is now known as Mittal Canada Inc., and is now a wholly owned subsidiary of Mittal Steel Company N.V., which is, through various affiliates and subsidiaries, one of the world's largest steel makers. Ispat owned and operated the Steel Works from 1928 until December 31, 1967.
10. In or about 1957, the Defendant Ispat became a subsidiary of Hawker Siddeley, (then called A.V. Roe Ltd.), which was itself a Canadian subsidiary of the British owned Hawker Siddeley Group Limited. ~~The Defendant~~ Hawker Siddeley is now a wholly owned subsidiary of Glacier Ventures International Corp., a Vancouver based information communications company. ~~The Defendant~~ Hawker Siddeley, through its subsidiary Ispat, owned and operated the Steel Works between 1957 and 1967.
- ~~11. During the period from 1957 to 1967, Hawker Siddeley exercised control over the affairs of Ispat through its appointment of the directors and officers of Ispat. Ispat was therefore the agent of Hawker Siddeley during that period, and Hawker Siddeley is directly and/or vicariously liable for the actions of Ispat.~~
12. On October 13, 1967, the Defendants ~~Hawker Siddeley and~~ Ispat announced an intended closure of the Steel Plant on April 30, 1968. Shortly after this announcement the Defendants ~~Hawker Siddeley and~~ Ispat agreed to sell all of the assets used in the Steel Works to Nova Scotia. At this time, the *Sydney Steel Corporation Act*, 1967 (2nd) Sess., c. 1, was enacted to authorize the purchase of the Steel Works, and to create SYSCO to operate the Steel Works. SYSCO was at all times the agent or instrument of the Defendant Nova Scotia, and Nova Scotia is, accordingly liable in law for all of SYSCO's acts, omissions and liabilities as owner or occupier of the lands on which the Steel Works were operated.
13. The Defendant SYSCO operated the Steel Works from 1967 until it finally closed operations in 2000. For six of these 33 years the Coke Ovens were owned and

operated by Canada. Specifically, the Coke Ovens were sold to the federal crown corporation, the Cape Breton Development Corporation ("DEVCO") in or about July 1, 1968. DEVCO was a federal crown corporation statutorily created in 1965 pursuant to the *Cape Breton Development Corporation Act*, 1985, Chap. C-25, as amended. The Defendant, the Attorney General of Canada representing Her Majesty the Queen in right of Canada (hereinafter "Canada"), is the legal successor to the now dissolved (on or after June 29, 2000) DEVCO pursuant to the *Cape Breton Development Corporation Divestiture Authorization and Dissolution Act*, R.S.C. 2000, C-23.

14. ~~Nova Scotia, through its various representatives, was at all material times the environmental regulator and the regulator of public health and safety matters in the province.~~
15. DEVCO owned and operated the Coke Ovens from July 1, 1968 until in or about 1974, when they were sold back to the Defendants Nova Scotia and SYSCO. Except for a temporary closure between 1983 and 1985 due to a surplus in available quantities of coke, the Defendants SYSCO and Nova Scotia owned and operated the Coke Ovens until they were permanently closed in 1988.

(B) By-Product Defendant: Domtar

16. Domtar is a federal company duly incorporated pursuant to the laws of Canada, with its registered office located in Montreal, Quebec. Between 1903 and 1962, Domtar operated the By-Products Operations directly adjacent to the Coke Ovens on leased land. Domtar diverted coal tar from the Coke Ovens, refined it, moved it through a series of above ground pipes, stored it in tanks and shipped it elsewhere.

(C) CNR

17. CNR is a federal company duly incorporated pursuant to the laws of Canada, with its registered office located in Montreal, Quebec. CNR owns and/or occupies a portion of the Sydney Tar Ponds, and some adjacent lands, or did so for a period known to it. The remaining portion of the Sydney Tar Ponds is owned by the Defendant Nova Scotia or SYSCO. To the extent that CNR is or was only an

occupier of the lands in question, it is or was an occupier by way of an agreement with Nova Scotia.

IV. THE DEFENDANTS' OPERATIONS

(A) Steel Plant and Coke Ovens Operations (1900 – 2000)

18. In 1900, the Steel Plant was built in the heart of Sydney, Nova Scotia, alongside Muggah Creek, a tidal estuary flowing into the Sydney harbour. An integral part of the steel making operations involved the use of coke as fuel in the Steel Plant's blast furnaces. Coke is a by-product of the incomplete combustion of coal. Consequently, in addition to the Steel Plant, batteries of coke ovens were built on an approximately 60 hectare parcel of land abutting the Steel Plant. In addition, the Coke Ovens Lands included a number of on site by-products plants directed at processing some of the coking by-products including coal tar, benzol, ammonia sulphate, and sulphuric acid. The Steel Works Defendants were, either serially or concurrently, the owners and operators of the Steel Works from 1928 up to the present time.
19. The Steel Works were built by the Dominion Iron and Steel Company (DISCO) in or about 1900. In or about 1909, DISCO amalgamated with the Dominion Coal Company to become the Dominion Steel Corporation. In 1920, the British Empire Steel Company (BESCO) was combined with the Dominion Steel Corporation, and other coal and rail operations. In 1928, BESCO went into receivership and the Defendant Ispat, formerly known as the Dominion Steel and Coal Corporation (DOSCO), assumed ownership and control of BESCO operations, including the Steel Works.
20. There were never any emission controls installed by any of the Steel Works Defendants to combat air pollution from the Steel Works, although the Steel Works Defendants have known since at least the completion of the Katz Study in 1959 that the emissions from the Steel Works were a danger to the Plaintiffs and Class Members.
21. There exists, underneath the Coke Ovens Lands, approximately one hundred and sixty kilometres of underground pipes. These pipes were used to move

chemicals throughout the Steel Works site. Despite the fact that these pipes contain a mixture of dangerous, toxic and potentially explosive substances, many were never purged of their contents when the Coke Ovens operations ceased.

22. When the Defendant Canada operated the Coke Ovens the Operational Emission levels were exacerbated. During this operational phase, very low grade coal was used in the coking process resulting in even greater levels of Operational Emissions and Tar Ponds Contaminants being emitted into the air. Many Operational Emissions and Tar Ponds Contaminants were dumped directly onto the lands, and directly into Muggah Creek or its tributaries. Canada knew or ought to have known that using low grade materials would result in a significantly increased level of Operational Emissions and Tar Ponds Contaminants from the Coke Ovens, but proceeded to do so without using any emission controls.
23. The Steel Works Defendants also deposited and released slag at or under properties in the vicinity of the Steel Plant. Slag is a routine by-product of steel and coke production, and was habitually dumped by each of the Steel Works Defendants during the period when it operated the Steel Works.

(B) By-Product Operations (1903 – 1962)

24. Domtar ceased its operations in Sydney in 1962. Domtar abandoned its former facilities consisting of several storage tanks, waste disposal lagoons, a series of above ground pipes, several buildings and other equipment. At that time, Domtar conducted little or no clean up of the site of its former operations.
25. A large tank, commonly referred to as the "Domtar tank", remains in place on the Coke Ovens Lands. This tank is approximately twenty-eight metres in diameter and six metres high. The tank contains materials abandoned by Domtar, along with other materials that have been added since 1962. Until recently it remained uncovered and open to the elements. Consequently, during the many years where the tank remained uncovered, each time it rained the contents mixed with the precipitation and frequently overflowed, running into the surrounding soils and groundwater systems. Prior to efforts to clean up the Domtar tank, which began in 2003, the Domtar tank contained a variety of organic and inorganic substances, including petroleum hydrocarbons, PAH's, benzene, toluene,

ethybenzene, xylene, phenols and heavy metals, all of which represent a human health hazard.

26. During the period when it ran the By-Products Operations, Domtar never installed emission controls, although Domtar knew that the emissions from the By-Products Operations were toxic and accordingly a danger to the Plaintiffs and Class Members.

(C) CNR Operations

27. Until 1994, CNR operated the CNR Operations. Those operations were also a source of contamination of the Sydney Tar Ponds. In the course of its operations, CNR dumped the CNR Contaminants onto its land, and into the Sydney Tar Ponds, through two or more outfall pipes leading from its operations to the west bank of the Sydney Tar Ponds.
28. CNR never took any steps to prevent the Contaminants from escaping from the lands it owned and/or occupied, although it knew that those substances presented a danger to the Plaintiffs and Class Members.

V. NATURE OF THE ACTION: EMISSIONS AFFECTING THE NEIGHBOURHOODS

(A) The Sydney Tar Ponds

29. The Steel Works, By-Product Operations and CNR Operations are all situate in the Muggah Creek watershed. Although originally constructed directly adjacent to the Muggah Creek, after decades of dumping waste on the tidal flats, the Steel Plant is now almost a kilometre distant from the present shoreline of what is left of the tidal estuary. The Coke Ovens Lands are immediately adjacent to the Steel Plant, and are dissected by the Coke Ovens Brook. Muggah Creek, the Coke Ovens Brook, and other proximate watercourses or brooks, including the sewers on the Steel Works site, carried, and continue to carry, contaminated ground and surface water to the surrounding lands, the Sydney Tar Ponds and the Sydney harbour.
30. Over time, the people of Sydney have stopped referring to Muggah Creek by its proper name. Instead, this former tidal estuary is commonly referred to as the

"Sydney Tar Ponds", reflecting the fact that it contains approximately 700,000 tons of sludge consisting of many Contaminants hazardous to human health which were dumped there by the Steel Works Defendants in the course of the operation of the Steel Works, by Domtar in the course of the By-Products Operations, and by CNR in the course of the CNR Operations.

31. The Steel Works, By-Products Operations and CNR Operations are the primary sources of the contamination now contained in the Sydney Tar Ponds co-owned and occupied by CNR and Nova Scotia. The Steel Works Defendants (during the period when each owned and/ or operated the Steel Plant and Coke Ovens) and Domtar directly released the Operational Emissions, Domtar Contaminants and Tar Ponds Contaminants into Muggah Creek, the tributaries leading into Muggah Creek, and onto the land directly adjacent to these water systems, to the knowledge of CNR, Nova Scotia and Canada. The contamination from the Steel Works and By-Products Operations has penetrated the ground to a depth of seventy feet in some parts of the Coke Ovens Lands. CNR released the CNR Contaminants onto the lands it owned and/or occupied and into the Sydney Tar Ponds.
32. In the 2002, Report of the Commissioner of the Environment and Sustainable Development to the House of Commons (Office of the Auditor General of Canada), it was noted that "the federal government has so far failed to address the issue of federal contaminated sites adequately." Further, it was noted that although Sydney Tar Ponds is not considered to be a designated federal toxic site, and despite the fact that \$250 million has been spent on this site and surrounding areas in the last 20 years, the Defendant Canada has not yet "finalize[d] its game plan for the Sydney tar ponds site."
33. On February 2, 2004, the Government of Canada delivered its Speech from the Throne, reiterated in the federal budget announcement delivered on March 23, 2004. Therein, the Defendant Canada announced a \$3.5 billion program to clean up contaminated sites for which it is responsible, along with a further \$500 million to "do its part in the remediation of certain other sites, notably the Sydney tar ponds." The difficulty with this announcement is the establishment of a further ten

year horizon for the effective remediation, and, apparently, the plan still does not address the individual needs and claims of the Plaintiffs and Class Members.

(B) The Contamination Of The Neighbourhoods

34. In addition to their joint and several responsibility for the accumulation of Contaminants in the Sydney Tar Ponds, each of the Defendants knowingly and continuously, during the period when it operated the Steel Works (the Steel Works Defendants), the By-Products Operations (Domtar) and the CNR Operations (CNR), emitted the Contaminants directly, without due regard for the Plaintiffs and Class Members, into the ambient air as fine particulates amenable to inhalation, and into the waters and lands of the Neighbourhoods.

35. The Contaminants emitted by

- (a) each of the Steel Works Defendants when they operated the Steel Works,
- (b) Domtar when it operated the By-Products Operations, and
- (c) CNR when it operated the CNR Operations,

remain on the properties of the Plaintiffs and Class Members, and throughout the Neighbourhoods in the surface water, ground water, and in or on the soil in the ~~Neighbourhoods~~ [Neighbourhoods](#). These Contaminants have migrated and continue to migrate throughout the Neighbourhoods. Prevailing climatological conditions, including precipitation and prevailing winds, and various human activities at play in the affected areas, including industrial activity, vehicular traffic, human foot traffic, and construction activity continue to cause these already widely dispersed Contaminants to migrate into, *inter alia*, the Plaintiffs' and Class Members' property and homes.

36. The Canadian Ministry of the Environment and the Canadian Council of Ministers of the Environment (CCME) has classified a number of carcinogens and "priority substances" (defined as such since they "may be harmful to the environment or constitute a danger to human health"). Many of the compounds customarily associated with steels works and coke ovens operations were among these classified substances. Those compounds include benzene, polycyclic aromatic

hydrocarbons (including benzpyrene and benzfluoranthene) toluene, xylenes, ammonia phenol, particulate matter less than or equal to 10 microns, arsenic and cadmium.

37. The continued presence of all of the Contaminants in the Sydney Tar Ponds and on the lands in the Neighbourhoods has caused, and continues to cause damage to the physical and mental health of the Plaintiffs and Class Members.
38. The presence of the Contaminants in and on the lands and homes owned, occupied or used by the Plaintiffs and Class Members and in the Neighbourhoods, creates a risk to the health of the Plaintiffs and Class Members. No effective toxic remediation has taken place at the Steel Works, Sydney Tar Ponds, the lands presently or formerly owned and/or occupied by CNR, the Domtar Tank, or in the Neighbourhoods. Consequently the Contaminants continue to migrate into and affect the Plaintiffs' and Class Members' properties.
39. Exposure to the Contaminants represents a human health hazard. The Plaintiffs and Class Members regularly inhale, ingest and come into dermal contact with the Contaminants in their everyday lives by virtue of their living in close proximity to the Sydney Tar Ponds and by virtue of the Contaminants having been deposited on the properties of the Plaintiffs and Class Members over the years by the Steel Works, By-Products Operations, and the CNR Operations.

(C) THE DEFENDANTS' KNOWLEDGE OF THE CONTAMINATION

40. In 1959, the Katz Study was made available to the Steel Works Defendants. In 1974, the Choquette Study was made available to all of the Steel Works Defendants except Ispat ~~and Hawker Siddeley~~. In 1973, the Havelock Study was made available to all of the Steel Works Defendants except Ispat ~~and Hawker Siddeley~~.
41. At all times during the Class Period, each of the Defendants knew which of the Contaminants it was emitting, and the properties of those Contaminants, as a result of its knowledge of the nature of its own operations.
42. In 1982, the Defendant Canada closed the lobster fishery in the south arm of Sydney harbour (the outlet of Muggah Creek), since it was discovered that the

lobsters were contaminated with PCB's, mercury, cadmium and lead. Despite the obvious connection between the contamination of local aquatic life and the emissions from the Steel Works, By-Products Operations and CNR Operations, no steps were taken to halt or reasonably limit Nova Scotia's and CNR's then ongoing release of Contaminants, nor were any steps taken to protect the health and safety of the Plaintiffs and Class Members.

43. This lack of response continued even in the face of a 1985 warning, issued in a letter from J. R. Hickman, the then Director of the Bureau of Chemical Hazards at Health and Welfare Canada to the Nova Scotia Regional Director of the federal Environmental Protection Service, that continuing Coke Ovens operations without installing emission controls "could be expected to result in increases of morbidity and mortality in the coke plant workers and probably in the residents of Sydney."
44. The Steel Works Defendants, Domtar and CNR accordingly knew or were substantially certain that the Plaintiffs and Class Members would inhale, ingest and have dermal contact with the Contaminants directly resulting from their operations. This contact constituted a non-trivial interference with the bodily security of persons exposed to these Contaminants.
45. CNR has also known throughout the Class Period that the contamination from the Steel Works and By-Products Operations is present on the lands it owns/owned and/or occupies/occupied, and is migrating therefrom into the Neighbourhoods. CNR was further made aware of the contamination at its site by a 1998 report entitled "Phase III Environmental Site Assessment Former CN Rail Yard Sydney, ~~Nova~~ [Nova](#) Scotia".

(D) The Concealment of the Contamination

46. Until the Band and Camus Study was released to the Sydney community in March, 2003, the Plaintiffs and Class Members were effectively unaware of the nature, extent and ramifications of the contamination in the Neighbourhoods.
47. The Steel Works Defendants knew based on the Katz Study (all Steel Works Defendants), the Havelock Study and the Choquette Study (all Steel Works

Defendants except Ispat ~~and Hawker Siddeley~~) that the Plaintiffs and Class Members were coming into contact with the Operational Emissions and Tar Ponds Contaminants. The Havelock Study and the Choquette Study were marked restricted and intentionally suppressed from public disclosure.

48. In fact, the Defendants Canada and Nova Scotia have told, and continue to tell, the Plaintiffs and Class Members that (i) there is no connection between the Contaminants present on their lands and their respective operations, and (ii) that the Neighbourhoods are a safe place to live. This is a continuing and ongoing representation made by each Nova Scotia and Canada
- (a) by their actions in failing to move the Plaintiffs and Class Members from their contaminated homes or to remediate their properties, and
 - (b) by their words such as the various statements to that effect recorded at the following websites maintained by Nova Scotia: www.gov.ns.ca and www.tarpondscleanup.ca.
49. None of the Defendants has ever stepped forward to correct Canada or Nova Scotia in statements that they know to be untrue. None of them has ever advised the Plaintiffs and Class Members that the Neighbourhoods are contaminated. None of them has offered or attempted to clean up the Contaminants they deposited in the Neighbourhoods or to contribute to such a clean-up.
50. Even in agreeing to relocate the residents of Frederick Street in Whitney Pier in 1999, the Defendant Nova Scotia avowed that it was doing so only on compassionate grounds when, in fact, the serious contamination of those properties resulting in a direct and immediate health risk to those Class Members was the basis for that decision.
51. Those Plaintiffs and Class Members who have suffered manifest illnesses were not made aware of the connection between their exposure to Contaminants and their injuries. The damages wrought by exposure to toxic emissions are peculiarly complex, manifesting themselves slowly. The Plaintiffs and Class Members did not know and were prevented from fully knowing the nature and/or

impact of the offensive contact delivered by the Steel Works Defendants, ~~and Canada and Nova Scotia in particular.~~

52. ~~The Plaintiffs state that Canada's and Nova Scotia's ineffectiveness in undertaking a clean-up is the result of a conflict between their duties as environmental regulators (as set out in paragraphs 58 and 101), and their economic self-interests.~~
53. The suppression of information by Canada and Nova Scotia is inconsistent with the duty of utmost good faith owed by Canada and Nova Scotia **in their respective roles as owners and operators** to the Plaintiffs and Class Members, who rely on Canada and Nova Scotia to ensure that the environment in which they live is not unduly contaminated. The suppression of this information by Canada and Nova Scotia is unconscionable conduct in these circumstances.
54. Canada and Nova Scotia continue to attempt to deny and conceal the harm they have done to the environment in the Neighbourhoods, the property of the Plaintiffs and Class Members, and to the long term health of the Plaintiffs and Class Members including that described herein and in the Band and Camus Study.
55. This concealment of the contamination of the lands within the Class Boundaries and of the health threat presented by that contamination as pleaded herein constitutes equitable fraud.
56. Each of the Defendants is liable to the Plaintiffs and Class Members for the failure to prevent the past and continuing escape of such Contaminants onto lands in the Neighbourhoods of which the Defendants have known at all material times. In addition to the harm already suffered by the Plaintiffs and Class Members, new or additional symptoms caused by the exposure to, and the inhalation or ingestion of, emissions may not manifest for many years. The Defendants' conduct has, however, created a risk of health problems.

(E) No Clean-Up of the Neighbourhoods

57. Despite their knowledge of:

- (a) The nature of their own operations including the materials used therein and their lack of any emissions controls (all Defendants)
- (b) the results of the Katz Study and the data underlying it (all Steel Works Defendants),
- (c) the results of the Havelock Study and the data underlying it (all Steel Works Defendants except Ispat ~~and Hawker Siddeley~~)
- (d) the results of the Choquette Study and the data underlying it (all Steel Works Defendants except Ispat ~~and Hawker Siddeley~~),
- (e) the results of the Band and Camus Study (all Defendants),
- (f) the Hickman letter (all Defendants), and
- (g) the toxic nature of the contamination contained in the Sydney Tar Ponds (all Defendants)

none of the Defendants has taken any steps to remediate the lands in the Neighbourhoods, or to prevent the Class Members from having further contact with the Contaminants. Accordingly, the exposure of the Plaintiffs and Class Members to the Contaminants, and the harm caused thereby remains ongoing.

58. The ~~Defendants Nova Scotia and Canada failed to take such steps or apply such legislation, regulations and guidelines as their mandates, and the "polluter pay principle", required in order to prevent (or attempt to prevent), the continued inhalation, ingestion and dermal exposure to the Contaminants, causing extensive and severe damage to the Plaintiffs' and Class Members' health and property.~~ The duties owed by the Defendants were informed by the environmental statutory framework in which they operated. Specifically, the federal legislation applicable through the Class Period includes:

<u>FEDERAL STATUTE</u>	<u>CITATION</u>	<u>RELEVANT SECTIONS</u>
<u>Fisheries Act</u>	<u>R.S.C. 1952, c.119</u>	<u>ss. 33, 60, 61, 62, 67</u>
	<u>As amended</u>	
	<u>S.C. 1960/61, c.23</u>	<u>ss. 33, 56, 62</u>
	<u>As amended</u>	

<u>FEDERAL STATUTE</u>	<u>CITATION</u>	<u>RELEVANT SECTIONS</u>
	<u>R.S.C. 1985, c. F-14</u> <u>As amended</u> <u>S.C. 1991, c.1</u>	<u>ss. 34-43, 70, 80</u> <u>ss. 34-43, 80</u>
<u><i>Navigable Waters Protection Act</i></u>	<u>R.S.C. 1952, c.193</u> <u>As amended</u> <u>S.C. 1968/69, c.15</u> <u>As amended</u> <u>R.S.C. 1985, c. N-22</u>	<u>ss. 19, 20, 21, 28</u> <u>ss. 19, 20, 25, 26</u> <u>ss. 21, 22, 27, 28</u>
<u><i>Canada Water Act</i></u>	<u>S.C. 1969/70, c.52</u> <u>As amended</u> <u>R.S.C. 1985, c. C-11</u>	<u>ss. 2, 8, 16, 28, 29, 39</u> <u>ss. 2, 9, 10, 18, 30, 31</u>
<u><i>Clean Air Act</i></u>	<u>S.C. 1970/71/72, c.47</u> <u>As amended</u> <u>R.S.C. 1985, c. C-31</u>	<u>ss. 2, 3, 4, 6, 7, 8, 9, 10, 34</u> <u>ss. 2, 3, 4, 5, 7, 8, 9, 10, 11, 35</u>
<u><i>Environmental Contaminants Act</i></u>	<u>S.C. 1974/75/76, c.72</u> <u>As amended</u> <u>R.S.C. 1985, c. E-12</u>	<u>ss. 2, 3, 4, 5, 8, 10, 15, 17, 18</u> <u>ss. 2, 3, 5, 7, 9, 10, 17, 19, 24, 29</u>
<u><i>Canadian Environmental Protection Act</i></u>	<u>R.S.C. 1985, c.16 (4th Supplement)</u>	<u>ss. 2, 3, 4, 7, 8, 11, 15, 17, 18, 32, 33, 34, 35, 36, 39, 40, 53, 54, 57, 58, 60, 64, 65, 87, 99, 100, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 122, 130, 135, 136, 137</u>
<u><i>Canadian Environmental Protection Act, 1999</i></u>	<u>S.C. 1999, c.33</u>	<u>ss. 2, 3, 5, 40, 42, 44, 45, 46, 48, 54, 64, 65, 66, 67,</u>

<u>FEDERAL STATUTE</u>	<u>CITATION</u>	<u>RELEVANT SECTIONS</u>
		<u>68, 69, 70, 76, 77, 82, 89, 90, 93, 94, 95, 96, 98, 121, 125, 135, 167, 169, 171, 172, 173, 200, 201, 205, 209, 212, 214, 215, 218, 235, 238, 239, 240, 272, 273, 274, 275, 276, 277, 279, 280, 282, 291, 292, 296</u>

<u>FEDERAL REGULATION</u>	<u>CITATION</u>	<u>RELEVANT SECTIONS</u>
<i><u>Public Harbours Regulations (Regs to the Canada Shipping Act)</u></i>	<u>C.R.C., c.45 (1955)</u> <i>As amended</i> <u>C.R.C., c.1461 (1978)</u>	<u>s. 14</u> <u>s. 14</u>
<i><u>Public Harbours Regulations (Regs to the Public Harbours and Port Facilities Act)</u></i>	<u>S.O.R. / 83-654</u>	<u>s. 14</u>
<i><u>Public Harbours Regulations (Regs to the Canada Marine Act)</u></i>	<u>S.O.R. / 83-654</u>	<u>s. 14</u>
<i><u>Chlorobiphenyls Regulations (Regs to the Cdn. EPA)</u></i>	<u>S.O.R. / 91-152</u>	<u>ss. 2, 3, 5, 6</u>
<i><u>Storage of PCB Material Regulations (Regs to the Cdn. EPA)</u></i>	<u>S.O.R. / 92-507</u>	<u>ss.1-16</u>

The provincial legislation applicable through the class Period includes:

<u>PROVINCIAL STATUTE</u>	<u>CITATION</u>	<u>RELEVANT SECTIONS</u>
<i><u>Dangerous Goods and Hazardous-wastes Management Act</u></i>	<u>S.N.S. 1986, c.7</u>	<u>ss. 2, 3, 4, 6, 7, 8, 11</u>
<i><u>Environment Act</u></i>	<u>S.N.S. 1994/95, c.1</u>	<u>ss. 2, 3, 4, 8, 10, 14, 52, 67,</u>

<u>PROVINCIAL STATUTE</u>	<u>CITATION</u>	<u>RELEVANT SECTIONS</u>
		<u>68, 69, 71, 72, 75, 85, 88, 89, 104, 105, 111, 114, 116, 125, 126, 134, 141, 142, 143, 159, 162</u>
<u>Environmental Assessment Act</u>	<u>S.N.S. 1988, c.11</u>	<u>ss. 3, 4, 19</u>
<u>Environmental Protection Act</u>	<u>S.N.S. 1973, c.6</u>	<u>ss. 3, 8, 19, 22, 23, 24, 26, 28, 29, 34, 37, 48, 50, 54, 55</u>
<u>Smelting and Refining Encouragement Act</u>	<u>R.S.N.S. 1954, c.267</u>	<u>ss. 1, 3, 4, 5</u>
<u>Sydney Steel Corporation Act</u>	<u>S.N.S. 1967 (2nd Sess.), c.1</u> <u>As amended by S.N.S. 1972, c.61</u> <u>As amended by R.S.N.S. 1989, c.456</u>	<u>ss. 4, 5, 6, 13, 14, 18, 19</u> <u>ss. 4, 5, 6, 13, 14, 18, 19, 22</u> <u>ss. 4, 5, 6, 14, 15, 20, 24</u>
<u>Water Act</u>	<u>R.S.N.S. 1967, c.335</u> <u>As amended by S.N.S. 1972, c.58</u>	<u>ss. 1, 6, 8, 12, 16, 19, 20</u> <u>ss. 2, 7, 9, 10, 11, 15, 16, 18, 19, 20</u>

<u>PROVINCIAL REGULATION</u>	<u>CITATION</u>	<u>RELEVANT SECTIONS</u>
<u>Dangerous Goods Management Regulations (Regs to the s.84 of the N.S. Environment Act)</u>	<u>N.S. Reg. 56/95</u>	<u>ss. 2, 5, 6, 7, 8, 9, 12, 13</u>
<u>PCB Management Regulations (Regs to s.84 of the N.S. Environment Act)</u>	<u>N.S. Reg. 52/95</u>	<u>ss. 1-16</u>

59. On or about November 7, 1986, the Defendants Nova Scotia and Canada entered into a joint federal/provincial agreement to clean up the Muggah watershed area. In the ensuing years, through the auspices of a variety of government departments, agencies, and advisory bodies, there have been lengthy and conflict-ridden deliberations as to how to proceed with an effective clean up.
60. To date nothing material has been done to effect an actual clean up, other than superficial efforts to demolish buildings and to remove a top layer of soil from a patchwork of neighbouring residential properties. Further, nothing material has been done to remedy the personal (by inhalation, exposure and dermal contact) and property exposure suffered by the Plaintiffs and Class Members. The risk of continued inaction is one which is borne directly by the Plaintiffs and other Class Members.

VI. IMPACT ON PLAINTIFFS

(A) Neila Catherine MacQueen

61. The Plaintiff Neila MacQueen, age 63, has lived in Sydney from in or about 1950 to the present time. From in or about 1950 until approximately 1968 she resided at 895 Upper Prince Street in Ashby, one of the Neighbourhoods. From approximately 1968 until 1983 she resided at 29 and 53 Stanfield Street, in Ashby. From 1983 to the present time she has resided at 206 and at 198 Dorchester Street, in North End, another of the Neighbourhoods, in close proximity to the Sydney Tar Ponds. Neila MacQueen also worked at the Prince Street Shopping Mall, which is in close proximity to the Sydney Tar Ponds, for almost thirty years from in or about 1954 to 1983. In the normal course of her residential life in the Neighbourhoods, Ms. McQueen has inhaled, ingested, and had dermal exposure to the Contaminants emitted by all of the Defendants.
62. This Plaintiff is the owner of the residential properties at 198 Dorchester Street, 29 and 53 Stanfield Street, and the store and residential property at 206 Dorchester Street, Sydney. The soil on all four of these properties was tested by the Department of Health of the Defendant Nova Scotia and, with the exception of 29 Stanfield Street, was found to have levels of petroleum hydrocarbons,

polycyclic aromatic hydrocarbons and heavy metals exceeding the recommended CCME guidelines for residential uses. The Defendant Nova Scotia offered to remediate the soil at 53 Stanfield Street, but not at any of the other properties.

63. Ms. MacQueen was diagnosed with lung cancer in 1999. She has never smoked. As a result she has had the lower lobe on her right lung removed. Since 1999 she has suffered from asthma, chronic bronchitis, and a persistent cough. She has also suffered from ear and throat infections. This Plaintiff states that these personal injuries were caused, or materially contributed to, by her exposure to Contaminants released by all of the Defendants.
64. In addition, Ms. MacQueen has suffered and continues to suffer from anxiety about her and her family's health because of the contaminated environment in which they live. This Plaintiff states that all of the Defendants bear the responsibility to, *inter alia*, create a medical monitoring fund/mechanism as described in paragraphs 140-144 below that would give her and Class Members access to experts who could address their health concerns.

(B) Joseph M. Petitpas

65. The Plaintiff Joseph M. Petitpas, age 56, is a lifelong resident of Whitney Pier, one of the Neighbourhoods. Since 1977, he has owned and lived at 153 Laurier Street. In the normal course of his residential life in the Neighbourhoods, Mr. Petitpas has inhaled, ingested, and had dermal exposure to the Contaminants emitted by all of the Defendants.
66. This Plaintiff has made many improvements to the family home. In the past couple of years he has been trying to sell this home. A realtor's sign has been on his front lawn since approximately September, 2002. He has not received any purchase offers.
67. Mr. Petitpas suffers from unexplained, and highly distressing, health conditions, including seizures, headaches, acne (at the age of 58) and prostate problems. Consequently, this Plaintiff has suffered, and continues to suffer, from anxiety about his and his family's health in the face of the contaminated environment in which they live. Mr. Petitpas states that these personal injuries were caused by,

or materially contributed to, his exposure to Contaminants released by the Defendants. This Plaintiff states that all of the Defendants bear the responsibility to, *inter alia*, create a medical monitoring fund/mechanism as described in paragraphs 140-144 below that would give him and Class Members access to experts who could address their health concerns.

(C) Ann Marie Ross

68. Ann Ross, age 44, owns 192 Laurier Street in the Whitney Pier Neighbourhood, and has resided there for her entire life. In the normal course of her residential life in the Neighbourhoods, Ms. Ross has inhaled, ingested, and had dermal exposure to the Contaminants emitted by all of the Defendants.

69. In or about 1999, this Plaintiff started observing an orange substance seeping into her basement. In or about May, 1999, Ann Ross and her daughter (Lindsay), were relocated from their home by the Defendant Nova Scotia and accommodated at a hotel in Sydney for a period of forty-two days. Nine other families, all of whom resided on either Frederick Street or Curry's Lane in the Whitney Pier Neighbourhood, were also relocated by the Defendant Nova Scotia. Subsequent to May 1999, the Defendant Nova Scotia offered to buy all of the properties owned by the nine other families. However, the Defendant Nova Scotia advised Ann Ross that her home was safe for occupation and she should return there.

70. Soil tests were conducted on Ann Ross' property pursuant to the Chronic Health Risk Assessment conducted by the Defendant Nova Scotia and released in or about December, 2001. The results of the testing showed that the soil at 192 Laurier Street had elevated levels of petroleum hydrocarbons, polycyclic aromatic hydrocarbons, and heavy metals exceeding both the recommended CCME guidelines for residential uses and the urban background guidelines (commonly referred to as "the made in Sydney standards"). Ever since June, 1999, the Defendant Nova Scotia has consistently refused to relocate Ann Ross despite numerous requests for relocation.

71. In or about June, 2002, the Defendant Nova Scotia offered to remediate Ann Ross' property. The cost of remediation was estimated to be \$100,000. The

market value of 192 Laurier Street in June of 2002 was approximately \$35,000. Ann Ross declined the Defendant Nova Scotia's offer of remediation and continued to request relocation by the Defendant Nova Scotia.

72. Ann Ross suffers from various medical conditions including nose bleeds, headaches, burning eyes, water blisters, running nose, frequent sore throat, psoriasis, skin rashes, and neurological problems. In addition, Ann Ross has suffered and continues to suffer from anxiety about her and her daughter's health because of the contaminated environment in which they live. Ms. Ross states that these personal injuries were caused, or materially contributed to by her exposure to Contaminants released by all of the Defendants. This Plaintiff states that all of the Defendants bear the responsibility to, *inter alia*, create a medical monitoring fund/mechanism as described in paragraphs 140-144 below that would give her and Class Members access to experts who could identify and address their health concerns.

(D) Kathleen Iris Crawford

73. Iris Crawford, age 63 (born January 5, 1941), is the widow of Carl Anthony Crawford, and currently resides at 86 Hankard Street in the Whitney Pier Neighbourhood. Iris Crawford and the late Carl Anthony Crawford have resided in the Whitney Pier Neighbourhood for their entire lives. In the normal course of her and her late husband's residential life in the Neighbourhoods, they, along with their four children, have inhaled, ingested, and had dermal exposure to the Contaminants emitted by the Defendants.
74. The late Carl Anthony Crawford worked as a member of the Sydney Police Force from 1964 until 1986, when he retired. In June, 2003, Mr. Crawford was diagnosed with pancreatic cancer. He died on November 7, 2003.
75. Iris Crawford is the executor of the Estate of Carl Anthony Crawford and asserts the claims herein on behalf of his estate.
76. As a result of the past and continuing discharge of toxic emissions, and the failure of all of the Defendants to take proper and appropriate steps to prevent or minimize the effects of these Contaminants and activities, Iris Crawford has also suffered damages recognized pursuant to sections 3, 4, and 5(1) of the *Fatal*

Injuries Act, R.S.N.S., c. 163, s. 1. Iris Crawford claims, pursuant to the *Fatal Injuries Act*, *supra*, for herself and their four children, being Cheryl Ann Crawford (born December 14, 1960), Carl Alonzo Crawford (born December 16, 1961), Rhonda Georgina Crawford (born July 24, 1965), and Carol Lynn Crawford (June 20, 1968).

77. In addition, Mrs. Crawford has suffered and continues to suffer from anxiety about her and her family's health because of the contaminated environment in which they live or have lived. This Plaintiff states that all of the Defendants bear the responsibility to, *inter alia*, create a medical monitoring fund/mechanism as described in paragraphs 140-144 below that would give her and Class Members access to experts who could identify and address their health concerns.

V. LIABILITY

(A) Battery

(i) The Steel Works Defendants

78. The Steel Works Defendants are liable to the Plaintiffs and Class Members for having committed the intentional tort of battery. During the period that each of them operated the Steel Works or a portion thereof (as set out above), they knew or were substantially certain, as a result of

- (a) in the case of Ispat ~~and Hawker Siddeley~~, the Katz Study, and
- (b) in the case of Canada, Nova Scotia and SYSCO, the Katz Study, the Choquette Study and the Havelock Study

that people living in the Neighbourhoods would inhale, ingest and have dermal exposure to the Operational Emissions and Tar Ponds Contaminants produced by the Steel Works. The Steel Works Defendants knew what these emissions contained, and that inhalation, ingestion and dermal exposure to the Operational Emissions and Tar Ponds Contaminants constituted a non-trivial interference with the bodily security of the Plaintiffs and Class Members. The Steel Works Defendants intentionally continued to emit the Operational Emissions and Tar Ponds Contaminants, with full knowledge and intention that the Plaintiffs and Class Members would be exposed to them.

78A In the alternative, the Steel Works Defendants are liable for the tort of negligent battery. The Steel Works Defendants' operation of the Steel Works caused the Contaminants to come into contact with the Plaintiffs and Class Members. Despite their knowledge that this contact would occur if they failed to take adequate steps to prevent it from occurring (as pleaded at paragraphs 106-108), the Steel Works Defendants continued to emit the Contaminants without regard to the fact that those Contaminants would come into contact with and cause harm to the Plaintiffs and Class Members as a direct result of their conduct.

79. The Operational Emissions and Tar Ponds Contaminants were deposited in the Plaintiffs' and Class Members' respiratory bronchioles and alveoli, and introduced into the persons of the Plaintiffs and Class Members by way of ingestion and dermal exposure. Such exposure is linked to adverse health effects including premature death and cancer and lung disease.

(ii) Domtar

80. Domtar is also liable to the Plaintiffs and Class Members for battery. Domtar intentionally deposited the Domtar Contaminants on the Coke Ovens Lands, from where it knew that they would migrate into the Sydney Tar Ponds and the Neighbourhoods.

81. Domtar accordingly knew and intended or unreasonably disregarded the risk that the Plaintiffs and Class Members would be exposed to the Domtar Contaminants by inhalation, ingestion and dermal exposure when it dumped the Domtar Contaminants onto the Coke Ovens Lands, and abandoned its operations there.

(B) Strict Liability and Nuisance

82. Each of the Defendants is liable pursuant to the doctrine of strict liability in *Rylands v. Fletcher*, in that the storage and release of the Contaminants is a non-natural use of the lands owned and/or occupied by each of the Defendants. Further, the Defendants failed, and continue to fail, to prevent the escape of these Contaminants, thereby causing continuing damage to the Plaintiffs and other Class Members.

(i) The Steel Works Defendants

83. During the period that each of the Steel Works Defendants operated the Steel Works or a portion thereof, the Contaminants escaped from the Steel Works in the following ways:
- (a) From the smoke stacks at the Coke Ovens and Steel Plant, as fine particulate amenable to inhalation;
 - (b) As dust blown from the Steel Works on the wind;
 - (c) As effluent escaping from the Coke Ovens washing into the soil on the Coke Ovens Lands and migrating in the air, soil and water into the adjoining Neighbourhoods;
 - (d) Underground into the adjoining Neighbourhoods;
 - (e) As effluent dumped into the Coke Ovens Brook which carried it to the Sydney Tar Ponds; from where it has escaped into the air, soil and water and continued to migrate in the air, soil and water into the adjoining Neighbourhoods;
 - (f) In the slag dumped by the Steel Works Defendants on the land surrounding the Steel Works; and
 - (g) As effluent dumped onto the lands immediately surrounding the Steel Plant from where it has escaped into the air, soil and water and continued to migrate in the air, soil and water into the adjoining Neighbourhoods.
84. None of the Steel Works Defendants has ever taken any steps to clean up the Operational Emissions and Tar Ponds Contaminants which escaped from the Steel Works into the Neighbourhoods as described above.
85. The particulates and dust released by the Steel Works Defendants remains in the Neighbourhoods. The Plaintiffs and Class Members continue to have dermal contact with it, to inhale it, and to ingest it in the course of their daily lives. It is in their homes and on their property
86. The Operational Emissions and Tar Ponds Contaminants remain in the water and soil in the Neighbourhoods. They continue to migrate onto the property of the Plaintiffs and Class Members. They continue to seep into the homes of the Plaintiffs and Class Members.

87. In addition, the Steel Works Defendants are strictly liable for the escape of the Domtar Contaminants from the By-Products Operations after Domtar abandoned those operations as the owners or occupiers of the Coke Ovens Lands where the By-Products Operations were located. Specifically, Ispat ~~and Hawker Siddeley~~ ~~are~~ is liable for the escape occurring between 1962 and 1967, Nova Scotia and SYSCO are liable for the escape occurring between 1967 and the present, and Canada is liable for the escape occurring between 1968 and 1974.

(ii) Domtar

88. The Domtar Contaminants escaped from the By-Products Operations in the following ways, both during the period when Domtar ran the By-Products Operations, and after it abandoned those operations in 1962:

- (a) They evaporated from the various facilities used by Domtar to store them, including the Domtar Tank;
- (b) They were dumped on the Coke Ovens lands by Domtar and migrated through the soil and water to the Sydney Tar Ponds and the Neighbourhoods; and
- (c) They overflowed the Domtar Tank when it rained and migrated through the soil and water to the Sydney Tar Ponds and the Neighbourhoods.

89. The Domtar Contaminants were carried into the Neighbourhoods by wind, and spread into the Neighbourhoods through the water and soil. They continue to migrate onto the property of the Plaintiffs and Class Members. The Plaintiffs and Class Members continue to inhale, ingest, and to have dermal contact with them.

(iii) CNR

90. The CNR Contaminants escaped from the CNR Operations in the following ways:

- (a) CNR dumped them into the holding tank under its facility which was allowed to drain into the Sydney Tar Ponds; and
- (b) CNR dumped them onto its lands adjacent to the Sydney Tar Ponds from where they migrated through the air, water and soil to the Sydney Tar Ponds and to the Neighbourhoods.

91. The CNR Contaminants have spread into the Neighbourhoods through the air, water and soil. They continue to migrate onto the property of the Plaintiffs and Class Members. The Plaintiffs and Class Members continue to inhale, ingest, and to have dermal contact with them.

(iv) Conclusion on Strict Liability and Nuisance

92. Each of the Defendants is accordingly strictly liable given that it, in pursuit of its own interests, released, directed the release of, or acquiesced in the release of Contaminants creating an abnormally dangerous and pervasive risk to the health and welfare of the Plaintiffs and Class Members. The risk created by all of the Defendants has materialized resulting in direct and consequential damages to the property and health of the Plaintiffs and Class Members.
93. Further, the past and ongoing release of Contaminants by all of the Defendants from lands they own and/or occupy or from lands which they owned and/or occupied in the past has substantially and unreasonably interfered with the Plaintiffs' and Class Members' use and enjoyment of their lands and premises. In addition to causing extensive property damage, exposure to the Contaminants has created widespread adverse health consequences and risks to the Plaintiffs and other Class Members. Accordingly, the Defendants are liable in nuisance.

(C) Trespass

94. All of the Defendants are liable in trespass in that each of them has discharged Contaminants, without the Plaintiffs' and Class Members' consent, onto lands owned by the Plaintiffs and Class Members as further particularized below.

(i) Steel Works Defendants

95. Between 1928 and 1967, Ispat emitted the Operational Emissions and Tar Ponds Contaminants from the Steel Works. These emissions were deposited on the lands in the Neighbourhoods owned and/or occupied by the Plaintiffs and Class Members through the air in the form of vapour, particulate matter and dust, and through the earth and water migrating from the Coke Ovens Lands and the Sydney Tar Ponds.

96. From 1967 until 2000, SYSCO and Nova Scotia emitted Operational Emissions and Tar Ponds Contaminants from the Steel Works (except for 1968-1974 when Canada operated the Coke Ovens, and 1988-2000 when the Coke Ovens ceased to operate, during which periods Nova Scotia operated only the Steel Plant). These emissions were deposited on the lands in the Neighbourhoods owned and/or occupied by the Plaintiffs and Class Members through the air in the form of vapour, particulate matter and dust, and through the earth and water migrating from the Coke Ovens Lands and the Sydney Tar Ponds.
97. From 1968-1974, Canada emitted Operational Emissions and Tar Ponds Contaminants from the Coke Ovens. These emissions were deposited on the lands in the Neighbourhoods owned and/or occupied by the Plaintiffs and Class Members through the air in the form of vapour, particulate matter and dust, and through the earth and water migrating from the Coke Ovens Lands and the Sydney Tar Ponds.

(ii) Domtar

98. Until 1962, Domtar emitted the Domtar Contaminants from the By-Products Operations. After Domtar abandoned the By-Products Operations in 1962, the Domtar Contaminants continued to escape from the By-Products Operations as a result of Domtar's, Ispat's (1962-1967), SYSCO's and Nova Scotia's (1967-present) failure to remove the Contaminants remaining at the By-Products Operations.

(iii) CNR

99. Until 1994, CNR emitted the CNR Contaminants from its operations adjacent to the Sydney Tar Ponds. The CNR Contaminants were deposited on the lands in the Neighbourhoods owned and/or occupied by the Plaintiffs and Class Members through the air in the form of vapour, and through the earth and water migrating from the land occupied by CNR and the Sydney Tar Ponds.

(iv) Conclusion on Trespass

100. The Contaminants released by each of the Defendants as described in paragraphs 95-99 above remain on the surface of the lands in the

Neighbourhoods (particulate and dust), and beneath the surface (water and soil). Those Contaminants were deposited by the Defendants on the lands of Plaintiffs and Class Members without the consent of Plaintiffs and Class Members. Their presence accordingly constitutes an ongoing trespass on the land of the Plaintiffs and Class Members.

(D) Negligence

101. As set out more particularly below, each of the Defendants owed a duty of care to each of the Plaintiffs and Class Members in the conduct of their respective operations. The standard of care owed by the Defendants to the Plaintiffs and Class Members was elevated in relation to the Contaminants emanating from each of their respective operations because:

(a) The quality of the environment (i.e., clean air, water and land) is essential to the well-being of the Plaintiffs and Class Members;

(b) A contaminated environment is inherently dangerous and poses a risk to human health;

~~(c) — With respect to the Defendants Canada and Nova Scotia, they controlled and regulated all aspects of environmental and toxic waste management;~~
and

(c) ~~(d) —~~ The Plaintiffs and Class Members have no control over and/or knowledge in relation to the Contaminants which have and continue to affect their environment.

(i) The Steel Works Defendants

102. The Plaintiffs and Class Members live(d) and owned property in close proximity to the Sydney Tar Ponds, and to the Steel Works. Each of the Steel Works Defendants knew by 1959, as a result of the Katz Study, that:

(a) The Operational Emissions and Tar Ponds Contaminants were escaping from the Steel Works and were impacting the persons and property of the Plaintiffs and Class Members;

- (b) The characteristics of the Operational Emissions and Tar Ponds Contaminants were such that they could penetrate the lungs of the Plaintiffs and Class Members; and
 - (c) The characteristics of the Operational Emissions and Tar Ponds Contaminants were such that they could cause damage to the property of Plaintiffs and Class Members, including buildings, walls, textiles, laundry and other exposed surfaces.
103. Each of the Steel Works Defendants accordingly knew or ought to have known, during the period that each such Defendant operated the Steel Works or a portion thereof, that a lack of sufficient care on their part would cause harm to the Plaintiffs and Class Members and their property.
104. Accordingly, a duty of care was owed by all of the Steel Works Defendants in their operation of the Steel Works to the Plaintiffs and Class Members. That duty required the Steel Works Defendants to take reasonable steps to avoid the harm to the Plaintiffs, Class Members and their property that was foreseeable as a result of the foregoing, having regard to the likelihood and gravity of the potential harm, and the likelihood that taking such steps would ameliorate the risk of such harm.
105. During the period between 1957 and 1967, the Defendants ~~Hawker Siddeley and~~ Ispat accordingly had a duty to take the following steps:
- (a) To consider and follow the directions and advice including those contained in the Katz Study to reduce the volume of Operational Emissions and Tar Ponds Contaminants from the Steel Works;
 - (b) To take reasonable steps to avoid or reduce the frequency of blast furnace slips and sudden discharges of dust into the atmosphere, such as using stronger, harder coke and less Labrador ore;
 - (c) To contain the dust produced in the steel making process;
 - (d) To ensure that the coal used in the Coke Ovens was relatively pure, and particularly low in sulphur content;

- (e) To carefully monitor the impact of the Operational Emissions and Tar Ponds Contaminants in the Neighbourhoods through air, soil and water monitoring studies;
 - (f) To investigate available pollution control techniques and implement such techniques as were available;
 - (g) To warn the Plaintiffs and Class Members that they were being exposed to the Operational Emissions and Tar Ponds Contaminants, to advise them of the risks posed thereby, and to advise them how to minimize the risk to their persons and their property; and
 - (h) If the spread of Operational Emissions and Tar Ponds Contaminants could not be otherwise contained, to reduce the production of the Steel Works, or to close it down.
106. ~~Hawker Siddeley and Ispat~~ breached ~~their~~ its duties to the Plaintiffs and Class Members by failing to take any of the above steps. Instead, ~~they~~ it
- (a) Ignored the directions and advice provided including that contained in the Katz Study;
 - (b) Concealed that the Plaintiffs and Class Members are, and were, exposed to Operational Emissions and Tar Ponds Contaminants emitted from Steel Works which represent a health hazard;
 - (c) Chose not to warn the Plaintiffs and other Class Members of the hazards posed by the release of the Operational Emissions and Tar Ponds Contaminants from the Steel Works
 - (d) Breached specific statutory obligations under the statutory scheme set out at paragraph 58 as amended, by causing or permitting Operational Emissions and Tar Ponds Contaminants to be discharged into the environment;
 - (e) Failed to conduct ~~their~~ its own investigation to determine whether there were other practical and effective pollution control methods available;
 - (f) Used raw materials, including coal and ore, of inferior quality which ~~they~~ it knew would result in the emission of higher levels of Operational

Emissions and Tar Ponds Contaminants than would occur if better quality coal and ore were used;

- (g) Did not conduct ~~their~~ its own air, soil and water monitoring, or, in the alternative, if ~~they~~ it did, did not share the results of such monitoring with the Plaintiffs and Class Members; and
 - (h) Continued to operate the Steel Works when ~~they~~ it knew or ought to have known that the Operational Emissions and Tar Ponds Contaminants were causing or were likely to cause serious harm to the Plaintiffs and Class Members.
107. When the Defendants Nova Scotia and SYSCO assumed operation of the Steel Works from Ispat and Hawker Siddeley in 1967, they were already aware of the facts set out at paragraph 102 above. They owed the same duty of care as Ispat ~~and Hawker Siddeley~~, and breached it in the same way as Ispat ~~and Hawker Siddeley~~ did.
108. Canada was also aware of all of those facts in 1968 when it assumed operation of the Coke Ovens. During the period when Canada operated the Coke Ovens, it breached its duties to the Plaintiffs and Class Members in the same ways as ~~and Hawker Siddeley~~ Ispat listed above.
109. In 1973, as a result of the Havelock Study, the Defendants Canada, Nova Scotia and SYSCO knew that in order to meet the National Ambient Air Quality Objectives in Sydney,
- (a) Suspended particulates from the Steel Works would need to be reduced by 98% from the levels present in 1972; and
 - (b) Sulphur dioxide emissions from the Steel Works would have to be reduced by 54% from 1972 levels.
110. In 1974, as a result of the Choquette Study, the Defendants Canada, Nova Scotia and SYSCO knew that:
- (a) The Coke Ovens were contributing heavily to air pollution levels in the Neighbourhoods, and that significant reductions in particulate emissions were necessary to insure acceptable levels in ambient air quality;

- (b) To meet the National Ambient Air Quality Objectives, sulphur dioxide emissions would need to be reduced by 45%; and
 - (c) Approximately 95% of the air particulate at ground level in Sydney came from the Coke Ovens.
111. In 1985, as a result of the Hickman letter referenced above at paragraph 43, the Defendants Canada, Nova Scotia and SYSCO knew that continuing to operate the Coke Ovens without installing emissions controls could be expected to result in increases of morbidity and mortality in the Plaintiffs and Class Members.
112. Accordingly, in addition to the breaches listed above, the Defendants Canada, Nova Scotia and SYSCO further breached their duty of care by failing to act on the recommendations made by the Choquette Study, the Havelock Study and the Hickman letter.
113. At no time prior to the closing of the Coke Ovens in 1988, and the installation of electric arc furnaces at the Steel Plant in 1989 were the above or any other steps taken to reduce the emissions emanating from the Steel Works.
114. The Operational Emissions and Tar Ponds Contaminants deposited in the Neighbourhoods, and in the Sydney Tar Ponds by each of the Steel Works Defendants when they operated the Steel Works (or, in the case of Canada, the Coke Ovens) remain in the Neighbourhoods, and continue to migrate thereto from the Sydney Tar Ponds.
115. The past and ongoing release and migration of Contaminants into the ambient air, land and water of the Neighbourhoods has caused, and continues to cause damage to the Plaintiffs and Class Members as pleaded herein. The Steel Works Defendants' failure to exercise a sufficient standard of care in relation to the toxic emissions caused or materially contributed to the damages suffered by the Plaintiffs and Class Members.

(ii) CNR

116. The Defendant CNR, as owner and/or occupier of the lands pleaded herein, and the operator of its operations adjacent to the Sydney Tar Ponds knew or ought to have known that:

- (a) The CNR Contaminants presented a hazard to the Plaintiffs and Class Members if those materials were not suitably contained and disposed of;
 - (b) Regardless of how CNR handled the CNR Contaminants, the lands it occupied were contaminated by the Operational Emissions, Domtar Contaminants and the Tar Ponds Contaminants;
 - (c) The Contaminants present on the lands owned and/or occupied by CNR as a result of the CNR Operations and which migrated there from the Steel Works and By-Products Operations presented a danger to the persons and property of the Plaintiffs and Class Members; and
 - (d) Those Contaminants were presently escaping or could in the future escape from the lands CNR owned and/or occupied.
117. CNR accordingly owed a duty to the Plaintiffs and the Class Members to:
- (a) properly dispose of the CNR Contaminants other than by dumping them on its lands or into the Sydney Tar Ponds;
 - (b) ensure that none of the CNR Contaminants escaped from its lands, by, for example, designing and constructing the waste disposal tank below its facilities so that the CNR Contaminants therein could not escape or be dumped to the Sydney Tar Ponds;
 - (c) ensure that none of the Contaminants present on the lands the CNR owned and/or occupied could escape from those lands;
 - (d) require the Steel Works Defendants and Domtar to remove the Operational Emissions, Domtar Contaminants and Tar Ponds Contaminants from its lands;
 - (e) monitor the Contaminants from whatever source to ensure that none of them were escaping from its lands;
 - (f) to ensure that Contaminants present on the lands CNR owned and/or occupied were adequately contained so as to prevent the Plaintiffs and Class Members from coming into contact with those Contaminants;
 - (g) in the event that escape was detected, to warn the Plaintiffs and Class Members; and

- (h) in the event of escape, to remediate the contamination which escaped from the property it owned and/or occupied.
118. CNR breached those duties by:
- (a) Taking no or inadequate steps in the course of the CNR Operations to contain or properly dispose of the CNR Contaminants;
 - (b) Knowingly or carelessly dumping the CNR Contaminants onto its lands and into the Sydney Tar Ponds;
 - (c) Failing to monitor the Contaminants present on the land or transported to its land to ensure there was no escape;
 - (d) Failing to remediate the contamination on its land or to require the Steel Works Defendants or Domtar to remediate the contamination on its property;
 - (e) Failing to ensure that the contamination did not escape from the land it owned and/or occupied;
 - (f) Providing no warning to the Plaintiffs and Class Members of the escape of those Contaminants; and
 - (g) Failing to remediate the contamination escaped from the property it owned and/or occupied.
119. As a result, the CNR Contaminants deposited in the Neighbourhoods remain in the Neighbourhoods, and the CNR Contaminants remaining in the Sydney Tar Ponds continue to migrate to the ~~Neighbourhoods~~ [Neighbourhoods](#) from the Sydney Tar Ponds.
120. The past and ongoing release and migration of Contaminants into the ambient air, land and water of the Neighbourhoods has caused, and continues to cause damage to the Plaintiffs and Class Members as pleaded herein. CNR's failure to exercise a sufficient standard of care in relation to the toxic emissions caused or materially contributed to the damages suffered by the Plaintiffs and Class Members.

(iii) Domtar

121. The Defendant Domtar, as the operator of the By-Products Operations knew or ought to have known that:
- (a) The Domtar Contaminants presented a hazard to the Plaintiffs and Class Members if those materials were not suitably contained and disposed of; and
 - (b) Those Contaminants were presently escaping or could in the future escape from the By-Products Operations owned and/or occupied, particularly if By-Products Operations were not properly wound down and cleaned out upon abandonment.
122. Domtar accordingly owed a duty to the Plaintiffs and the Class Members to:
- (a) Ensure that none of the Domtar Contaminants could or did escape from the By-Products Operations;
 - (b) Refrain from dumping the Domtar Contaminants on the Coke Ovens Lands in the course of operating the By-Products Operations;
 - (c) Clean up the Domtar Contaminants dumped on the Coke Ovens Lands or elsewhere;
 - (d) Monitor the Domtar Contaminants to ensure that none of them were escaping;
 - (e) In the event that escape was detected, warn the Plaintiffs and Class Members;
 - (f) In the event of escape, remediate the contamination which escaped from the property it owned and/or occupied; and
 - (g) Upon determining to abandon the By-Products Operations, dispose of the remaining Domtar Contaminants in a manner to ensure that the Plaintiffs and Class Members were not further exposed thereto.
123. Domtar breached those duties by:
- (a) Abandoning the By-Products Operations without properly disposing of the Domtar Contaminants;
 - (b) Knowingly or carelessly dumping the Domtar Contaminants on the Coke Ovens Lands and into the Sydney Tar Ponds;

- (c) Taking no measures to remediate the contamination on the Coke Ovens Lands;
 - (d) Providing no warning to the Plaintiffs and Class Members of the escape of those Contaminants; and
 - (e) Failing to remediate the contamination that escaped from the Coke Ovens Lands.
124. The Domtar Contaminants deposited in the Neighbourhoods remain in the Neighbourhoods, and those deposited in the Sydney Tar Ponds remain there and continue to migrate to the Neighbourhoods.
125. The past and ongoing release and migration of the Domtar Contaminants into the ambient air, land and water of the Neighbourhoods has caused, and continues to cause damage to the Plaintiffs and Class Members as pleaded herein. Domtar's failure to exercise a sufficient standard of care in relation to the toxic emissions caused or materially contributed to the damages suffered by the Plaintiffs and Class Members.

(E) Breach of Fiduciary Duty

126. By virtue of
- (a) Their ownership and occupation of the lands and facilities from which the Contaminants were emitted,
 - (b) Their sole discretion to make decisions regarding the operation of the Steel Works (in the case of the Steel Works Defendants), the By-Products Operations (in the case of Domtar) and the CNR Operations (in the case of CNR); and
 - (c) The information that each of the Defendants possessed about the nature and potential effects of the particular Contaminants produced and emitted by the operations in which they were involved, which knowledge arose from their management of the Steel Works (the Steel Works Defendants), the By-Products Operations (Domtar), and CNR's operations (CNR), and, in the case of the Steel Works Defendants, from their knowledge of the

contents of the Katz Study, the Havelock Study and the Choquette Study, to the exclusion of the Plaintiffs and Class Members,

all of the Defendants owe the Plaintiffs and Class Members a fiduciary duty to act in the best interests of the Plaintiffs and Class Members in dealing with the dissemination of information concerning the contamination described herein and in the remediation of the contamination described herein.

127. All of the Defendants have breached their fiduciary duties by choosing not to:
- (a) Fully disclose the known nature and effects of the Contaminants;
 - (b) Fully disclose and inform the Plaintiffs and Class Members of the health risks associated with exposure to the Contaminants;
 - (c) Take any steps to prevent the spread of the Contaminants to the Neighbourhoods; and
 - (d) Take any steps to remediate the contamination now present on the lands in the Neighbourhoods.
128. ~~In this respect, Nova Scotia and Canada's duties are fortified by their roles as environmental regulators within each government's sphere of constitutional power. These regulatory roles are also the basis for fiduciary duties owed specifically by Nova Scotia and Canada to the Plaintiffs and Class Members with respect to ensuring that the emissions from the Steel Works, By-Products Operations and CNR's operations were properly monitored, and remediated.~~
129. ~~Canada had the power under the statutes cited above at paragraph 58 to take legal or regulatory actions which could have prevented or reduced the spread of the Contaminants in the Neighbourhoods. Given Canada's~~
- ~~(a) knowledge of the extent to which the Contaminants were being spread through the Neighbourhoods as pleaded herein, and~~
 - ~~(b) knowledge of the nature and possible effects of the Contaminants on the Plaintiffs and Class Members as pleaded herein.~~
- ~~it had an obligation to use the authority granted under those statutes to protect the Plaintiff and Class Members from exposure to the Contaminants, and the resulting harm. It has further breached its fiduciary obligation by failing to take~~

~~legal or administrative action to prevent the contamination of the Neighbourhoods as pleaded herein.~~

~~130. Similarly, Nova Scotia had the power under the statutes cited above at paragraph 58 to take legal or regulatory actions which could have prevented or reduced the spread of the Contaminants in the Neighbourhoods. Given Nova Scotia's~~

~~(a) knowledge of the extent to which the Contaminants were being spread through the Neighbourhoods as pleaded herein, and~~

~~(b) knowledge of the nature and possible effects of the Contaminants on the Plaintiffs and Class Members as pleaded herein~~

~~it had an obligation to use the authority granted under those statutes to protect the Plaintiff and Class Members from exposure to the Contaminants, and the resulting harm. It has further breached its fiduciary obligation by failing to take legal or administrative action to prevent the contamination of the Neighbourhoods as pleaded herein.~~

~~131. The role of each of Canada and Nova Scotia as regulator placed it in a conflict of interest with respect to its role as an operator of some or all of the Steel Works as pleaded herein.~~

132. In addition, Nova Scotia and Canada have breached their fiduciary obligations in committing to clean up the Sydney Tar Ponds and the Coke Ovens Lands without acknowledging the need for a cleanup of the property of the Plaintiffs or Class Members. In so doing, Canada and Nova Scotia have preferred their own political and economic interests over those of the Plaintiffs and Class Members.

VII. JOINT AND SEVERAL LIABILITY

133. The Plaintiffs state that the Defendants are responsible, jointly and severally, for the injuries and damages suffered by the Plaintiffs and other Class Members.

134. The Plaintiffs plead the doctrine of *respondeat superior* and state that the Defendants are vicariously liable to the Plaintiffs and Class Members for the acts, omissions, deeds, misdeeds and liabilities of their contractors, sub-contractors, agents, servants, employees, assigns, appointees and partners.

135. The Plaintiffs plead and rely on the doctrine of equitable fraud.
136. The Plaintiffs plead and rely on the *Proceedings Against the Crown Act*, R.S.N.S., 1989, c. 360, the *Crown Liability and Proceedings Act*, S.C.C. 1985, c. C-50, and the *Tortfeasors Act*, R.S.N.S., c. 471.

VIII. DAMAGES

(A) Manifest Harm and Injuries:

137. The past and ongoing emissions of the Contaminants and the failure of all of the Defendants to take proper or appropriate steps to prevent or minimize the adverse effects of the Contaminants and activities have resulted in the following types of losses or injuries to property:
 - (a) Loss of use and enjoyment of property owned, occupied or used by the Plaintiffs and other Class Members, including extensive business and personal loss; and
 - (b) Diminution of value of property owned, occupied or used by the Plaintiffs and other Class Members, including the complete or substantial devaluation of certain properties, and the loss of the ability to sell, finance or mortgage numerous properties.
138. In addition, the past and ongoing exposure to the Contaminants emitted by all of the Defendants, and the failure to take proper steps to prevent or minimize the effects of such toxic emissions, have resulted in the Plaintiffs' physical and mental health injuries pleaded above, and have further led to pain and suffering, loss of income, impairment of earning ability, loss of valuable services, future care costs, medical costs, loss of amenities and enjoyment of life, anxiety, nervous shock, mental distress, emotional upset, and out of pocket expenses.
139. Each Plaintiff herein asserts a claim for each of the types of damages listed above.

(B) Medical Monitoring: Responding to Material Risk of Illness

140. Further, the inhalation, ingestion and dermal exposure to the Contaminants emitted by all of the Defendants have also caused or materially contributed to increased risks of cancer and lung disease to the Plaintiffs and other Class Members. As a result of the exposure, the Plaintiffs and Class Members have already and will continue to experience illness, anxiety, loss of amenities and enjoyment of life, and a number will die premature deaths.
141. There are medically accepted tests and diagnostic tools which, if used properly and on a timely basis, will detect at an early stage the diseases and conditions which may result from the exposure of the Plaintiffs and Class Members to the Contaminants emitted by all of the Defendants. However, not all of these tests are generally available or being administered to the Plaintiffs and Class Members despite their elevated risk. The early detection of these diseases and conditions will significantly reduce the harm and risk of death therefrom.
142. The Plaintiffs and Class Members seek to recover damages in the form of the total funds required to establish a 'medical monitoring' process to be made available to the Plaintiffs and Class Members. Such damages include the costs of medical screening and treatment incurred by or on behalf of the Class.
143. The damages referred to above may have been incurred directly by the Plaintiffs and Class Members, or may constitute subrogated claims owed to provincial health insurers, or to private health, disability, or group benefit insurers.
144. The Plaintiffs further allege that the establishment of a medical monitoring process is a necessary and appropriate step for all of the Defendants to take in the course of fulfilling their obligation to minimize the damages suffered by Plaintiffs and Class Members.

(C) Family Losses:

145. As well, as a result of the past and continuing discharge of toxic emissions, and the failure of all of the Defendants to take proper and appropriate steps to prevent or minimize the effects of these Contaminants and activities, the Plaintiff Iris Crawford and the Class Members, who are the spouses, common-law partners, parents or children of deceased persons, have also suffered damages recognized pursuant to sections 3, 4, and 5(1) of the *Fatal Injuries Act*, R.S.N.S., c. 163, s. 1. These damages include:
- (a) Pecuniary losses resulting from the injury to such deceased persons, expenses incurred for the benefit of such deceased persons, travel expenses incurred in visiting such deceased persons during their treatment and recovery;
 - (b) A reasonable allowance for loss of income and the value of nursing, housekeeping and other services rendered to such deceased persons;
 - (c) An amount to compensate for the loss of guidance, care and companionship reasonably expected to be received from such deceased persons if the Contaminants had not been released by all of the Defendants; and
 - (d) funeral and burial expenses for such deceased persons.
146. Iris Crawford asserts a claim for each of the types of damages listed above in respect of her late husband Carl Anthony Crawford.

IX. AGGRAVATED, AND PUNITIVE AND EXEMPLARY DAMAGES

147. The Defendants Canada and Nova Scotia operated the Steel Works for decades with full knowledge of the fact that they were emitting materials that could and did adversely impact the physical and psychological health of, as well as the property used by, the Plaintiffs and the Class Members. Knowledge of the risks associated with such emissions was not released to the Plaintiffs and Class Members. Despite having specific information that the Plaintiffs and Class Members were at risk of higher mortality and morbidity rates due to the failure to

install appropriate emissions controls, Canada and Nova Scotia continued Steel Works operations without any or reasonable controls.

148. These activities were carried out with reckless, callous and wanton disregard for the health, safety and pecuniary interests of the Plaintiffs and other Class Members. Canada and Nova Scotia knowingly compromised the interests of the Plaintiffs and Class Members, solely for the purpose of monetary gain and political expediency. Furthermore, once Canada and Nova Scotia knew of the extraordinary dangers that their operations posed to the Plaintiffs and Class Members, Canada and Nova Scotia failed to advise them in a timely fashion, or fully, or at all. Indeed, the Plaintiffs and Class Members were misled into believing that Sydney's environment was a safe place to live. These misrepresentations persist.
149. Consequently, the Plaintiffs and Class Members are entitled to aggravated damages, and an award of punitive and exemplary damages commensurate with the outrageous behaviour of Canada and Nova Scotia.

X. RELIEF SOUGHT

150. The Plaintiffs restate the foregoing paragraphs of this Statement of Claim and state that the Defendants are jointly and severally liable for the following:
- (a) an Order certifying this proceeding as a class proceeding and appointing the Plaintiffs as Representative Plaintiffs for the Class;
 - (b) compensatory damages, including aggravated damages for personal injuries;
 - (c) general and special damages for damage to the Plaintiffs' and Class Members property and for the diminution of the Plaintiffs' and Class Members' property values, including, where applicable, costs for relocation;
 - (d) special damages for medical expenses and in the diagnosis and treatment of diseases and illness related to exposure to the toxins emitted by the Steel Works, By-Products Operations and CNR Operations;

- (e) punitive and exemplary damages as against Nova Scotia and Canada;
- (f) damages for the funding of a "Medical Monitoring Program", supervised by the Court, for the purpose of retaining appropriate health and other experts to review and monitor the health of the Plaintiffs and other Class Members, and to make recommendations about their treatment;
- (g) ~~a permanent injunction and~~ an Order for declaratory relief directing the Defendants Canada and Nova Scotia to remediate the Plaintiffs' and Class Members property to a pristine level, ensuring that such remediation is undertaken in a manner which prevents further property and/or health risks to Class Members;
- (h) ~~a permanent injunction and~~ an Order for declaratory relief directing the Defendants Canada and Nova Scotia, to the extent necessary to prevent further property and/or health risks to Class Members, to remediate the Steel Plant site, Coke Ovens Lands, Sydney Tar Ponds and Domtar tank ~~to a pristine level~~ and directing ~~ensuring~~ that such remediation is undertaken in a manner which prevents further property and/or health risks to Class Members;
- (i) an Order for a permanent injunction directing the Defendants other than Canada and Nova Scotia to remediate the Steel Plant site, Coke Ovens Lands, Sydney Tar Ponds and Domtar tank and directing that such remediation is undertaken in a manner which prevents further property and/or health risks to Class Members;
- (j) ~~(j)~~ interest pursuant to the *Judicature Act*;
- (k) ~~(k)~~ costs; and
- (l) ~~(l)~~ such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, in the County of Halifax, Province of Nova Scotia this 24th day of March, 2004.

AMENDED at Halifax, in the County of Halifax, Province of Nova Scotia this 17th day of November, 2005.

FURTHER AMENDED at Halifax, in the County of Halifax, Province of Nova Scotia this 14th day of July, 2006.

FURTHER AMENDED at Halifax, in the County of Halifax, Province of Nova Scotia this
day of , 2006.

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