

## ***Claims against Historic Gas Station Owner/Operator Fails to Stay A “Floate” on Summary Dismissal Application***

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*The Alberta Court of Queen’s Bench in Floate v. Gas Plus reminds plaintiffs that they must prove that each defendant is responsible for the alleged contamination at issue. The case is also a reminder to those who operate potentially contaminating businesses of the importance of proper decommissioning and environmental close out reports.*

### **Facts**

In *Floate v Gas Plus*,<sup>1</sup> the plaintiffs owned land neighbouring a gas station. The gas station was owned and operated by Shell until 1988. Shell continued to supply fuel to the gas station until 2000. Shell had no involvement at the gas station after 2000.

In 2010, a spill of 7,000-9,000 litres of gasoline occurred at the gas station and contaminated the plaintiffs’ neighbouring property. Following the spill, the plaintiffs brought a claim against Shell Canada, Gas Plus and others. The plaintiffs alleged that as a result of the 2010 spill, residual hydrocarbons from Shell’s operations were pushed off-site, increasing contamination at the plaintiffs’ property.

Shell brought an application for summary dismissal of the action and related actions on the grounds that there was no evidence that it caused any of the alleged damages.

### **Findings**

The Court noted that there was no evidence presented by the plaintiffs that the contamination at their property was caused by Shell. In 1988, prior to selling the station, Shell decommissioned the existing underground storage tanks and conducted environmental testing.

The plaintiffs’ own expert, while providing the Court with “a helpful critique of the techniques used in 1987”, testified that it was not possible to know whether there was any evidence of material risk to human health from contaminant migration between 1987 and 2001.<sup>2</sup> Without expert evidentiary support, the plaintiffs could not opine that the potential historic residual contamination at the gas station was the cause of their present loss.

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<sup>1</sup> 2015 ABQB 725 [*Floate*].

<sup>2</sup> *Floate*, *supra* note 1, **Error! Bookmark not defined.** at para 19 & 20.

The Court, after considering the evidence and law, held:

...I find that there is not sufficient evidence that the contamination of the plaintiffs' lands was caused by Shell to constitute an issue of merit for trial.<sup>3</sup>

Further,

At a trial, quite simply, the plaintiffs would need to satisfy a trial judge that, at least some of their contamination arose from contamination molecules that originated during Shell's occupation and control of the site. There is no such evidence.<sup>4</sup>

### **Application of *Floate v. Gas Plus***

*Floate v. Gas Plus* affirms the principle that there must be evidentiary underpinnings to support plaintiffs' allegations in cases of historic environmental contamination. In *obiter*, the decision warns plaintiffs that suing all possible defendants without reasonable evidence may only result in prolonged proceedings and cost consequences for all parties.

In addition, the Court noted that on a summary dismissal application, the plaintiffs are not required to prove their case, but must put their best foot forward. The plaintiffs cannot rely on the promise of advancing a better case at trial. The Court also made note of the 10 year gap between Shell's last activity at the site and linking Shell to the 2010 gas spill.

From a defendant's perspective, it is also important to advance as much evidence as possible to support an application for summary dismissal. While *Floate v. Gas Plus* was ultimately decided on the plaintiffs' lack of evidence, Shell presented expert evidence from an engineer on the actual environmental testing conducted at the gas station and from a chemist on the likelihood of off-site migration in support of its submissions that there was no genuine issue for trial.

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<sup>3</sup> Floate, supra note 1, at para. 32

<sup>4</sup> *Ibid* at para. 34.