THE PROBLEM

The competition case is an appeal to the Supreme Environmental Moot Court of Canada of the decision of the Ontario Court of Appeal in *Smith v. Inco Limited*, 2011 ONCA 628. The Supreme Environmental Moot Court of Canada is a Canadian appellate court of last resort. The doctrines of precedent and *stare decisis* apply to it as if it were the Supreme Court of Canada.

INSTRUCTIONS:

Assume for purposes of the competition that Ms. Smith sought leave to appeal to the Supreme Environmental Moot Court of Canada. The Court granted leave to appeal on the following questions:

> 1. Did the Court of Appeal err in holding that the Appellants did not make out a claim under the existing causes of action pleaded?
>
> 2. Should the Supreme Environmental Moot Court of Canada recognize a new cause of action for environmental claims or are existing causes of action adequate?

Counsel are instructed to assume the following facts:

- properties suffered a diminution in value because of elevated levels of nickel in the soil, and
- there is no viable limitations defense.

Counsel should not, in their written or oral submissions, address any issues falling outside the scope of the questions on which leave to appeal was granted. Costs should only be addressed briefly in Part IV of the Factum as required by the Rules. Counsel should not make oral submissions as to costs.

This appeal raises questions specific to this class action as well as broader issues applicable to contaminated land disputes across Canada. The case law on these broader issues is unsettled and in certain respects contradictory. Counsel are expected to address these broader jurisprudential issues while respecting the specific factual and legal context of this appeal.

The competition organizers recognize that these questions are broad and the case law may be limited. Counsel are instructed to address the above questions to the best of their ability even though relevant authorities may be sparse or contradictory and it may be necessary at times to argue from first principles.