



Oil Spill Liability - Kawartha Lakes Continues

By [Donna Shier](#), Partner and Certified Environmental Law Specialist, [Joanna Vince](#), Senior Associate and Raeya Jackiw, Student-at-Law. © Willms & Shier Environmental Lawyers LLP.

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Background

In the most recent [decision](#) in the ongoing Kawartha Lakes saga,¹ the Superior Court of Justice found homeowner Mr. Wayne Gendron partly responsible for an oil spill that destroyed his lakeside property. The Court also found Mr. Gendron's fuel distributor liable for a portion of the costs.

This decision serves to warn homeowners that a distributor's delivery of fuel does not mean that their tanks are safe. It also cautions fuel distributors that they may be liable for spills brought about by a homeowner's negligence.

The Facts

Thompson Fuels ("Thompson") supplied 700 liters of fuel oil to two tanks in Mr. Gendron's basement. Mr. Gendron had installed the fuel tanks himself without proper shut off valves, contrary to industry standards.

During a period of financial difficulty, Mr. Gendron filled these fuel tanks with less expensive stove oil. The stove oil introduced water and microbes into the tanks, causing the tanks to corrode.² When Thompson delivered the fuel oil one of the tanks leaked, spilling approximately 600 liters.

In the hours following the fuel delivery Mr. Gendron tried to manage the spill on his own by collecting what he believed to be all of the leaking oil in Tupperware containers. Approximately 24 hours later, Mr. Gendron called Thompson to complain that it had not delivered his entire shipment of fuel oil – he was short about 600 liters. Mr. Gendron never called to report the spill to the MOECC's Spills Action Centre [hotline](#).³

The fuel oil migrated under Mr. Gendron's house, through the City of Kawartha Lake's drainage system, and into nearby Sturgeon Lake. The MOECC ordered Mr. Gendron and his wife to "ameliorate the adverse effects caused by the discharge of the furnace oil" and "restore the natural environment... to the extent practicable."⁴ Mr. Gendron began remediation of the contamination of his property and the contamination of Sturgeon Lake.

¹ *Gendron v Thompson Fuels*, 2017 ONSC 4009 [Gendron].

² Gendron at para 46.

³ Gendron at para 301.

⁴ Gendron at para 179.

Early remediation efforts were complicated by the frozen lake and soil. Mr. Gendron's personal insurance was rapidly exhausted. His insurer eventually refused to fund further off-site remediation of Sturgeon Lake.

The remediation efforts cost nearly \$2M and required the demolition of Mr. Gendron's home.

The City's MOECC Order

The MOECC ordered the City of Kawartha Lakes to clean up any fuel oil remaining in the City's culverts and sewers that could recontaminate Sturgeon Lake. The City appealed the order first to the Environmental Review Tribunal, then to the Divisional Court, and ultimately to the Ontario Court of Appeal, losing each time. (See our previous article on the Court of Appeal's decision [here](#).)

Environmental Protection Act Claims

Using its powers under the *Environmental Protection Act* ("EPA"),⁵ s. 100.1 the City ordered compensation for its remediation costs from Mr. Gendron, Thompson and the Technical Standards and Safety Authority ("TSSA").⁶

Mr. Gendron, Thompson and the TSSA appealed the order to the Environmental Review Tribunal. Thompson and the TSSA settled with the City and withdrew their appeals. Mr. Gendron's appeal was unsuccessful and he was required to pay more than \$300,000 of the City's costs.⁷

Mr. Gendron then brought a claim for contribution and indemnity against Thompson under EPA, s. 100.1(6). In this most recent case, the Court found that Mr. Gendron could not make out his EPA claim because ownership and control of the fuel oil had transferred to him when the fuel oil was delivered to him by Thompson. Mr. Gendron's claim for contribution under the EPA was dismissed.⁸

Civil Claims

The City of Kawartha Lakes brought civil proceedings against multiple parties including Mr. Gendron to recoup its remediation costs.

Mr. Gendron also sued Thompson, the TSSA, and the manufacturer of the tank, a company called les Reservoirs D'Acier de Granby Inc ("Granby"), for the damage caused by the spill.

The Court dismissed Mr. Gendron's claims against Granby and the TSSA but in passing criticized the TSSA for issuing a "baffling," "confusing," and "unhelpful" order.⁹

While the Court ultimately found for Mr. Gendron, it apportioned 60% of the liability to him and only 40% of the liability to Thompson.¹⁰

The Court found that Mr. Gendron contributed to the spill by improperly installing the tanks, failing to maintain the tanks by having annual inspections, improperly introducing water into the

⁵ RSO 1990, c E 19.

⁶ Gendron at para 387.

⁷ Gendron at para 394.

⁸ Gendron at para 422.

⁹ Gendron at para 148, 152, and 260.

¹⁰ Gendron at para 313.

tank, and failing to promptly report the leak. Mr. Gendron's contribution was not a "minor inadvertent lapse" but a "series of actions" that contributed to the damage.¹¹ The Court said that a reasonable person would not have tried to deal with the spill on their own.

The Court also found that Thompson failed to conduct a comprehensive inspection, as required by law, due to a computer glitch.¹² The court held that this failure contributed to the spill.

The Court concluded that it would be contrary to public policy to allow Thompson to contract out of its obligation to perform the inspection through an exclusionary clause in its customer service agreement.¹³

Civil Contributory Negligence versus Contribution in the EPA

Mr. Gendron sought contribution from Thompson two ways, under the common law contributory negligence framework and under the contribution and indemnity section of the EPA. There are advantages and disadvantages of seeking contribution under each.

- 1 Contribution under the EPA can only be sought from the "owner" or "person having control" of the pollutant.¹⁴ That limitation is not found at common law.
- 2 To be successful in a common law contribution claim the plaintiff must prove damages. The EPA does not require proof of damages but rather relies on a cost assessment made by the Environmental Review Tribunal.

[Donna Shier](#) is a partner at Willms & Shier Environmental Lawyers LLP in Toronto and certified as a Specialist in Environmental Law by the Law Society of Upper Canada. Donna may be reached at 416-862-4822 or by e-mail at dshier@willmsshier.com.

[Joanna Vince](#), is a senior associate lawyer at Willms & Shier Environmental Lawyers LLP in Toronto. Joanna may be reached at 416-862-4830 or by e-mail at jvince@willmsshier.com.

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¹¹ Gendron at para 310.

¹² Gendron at para 94.

¹³ Gendron at para 223.

¹⁴ EPA s. 99.1(1).