

McINNES COOPER

BARRISTERS SOLICITORS & TRADE MARK AGENTS

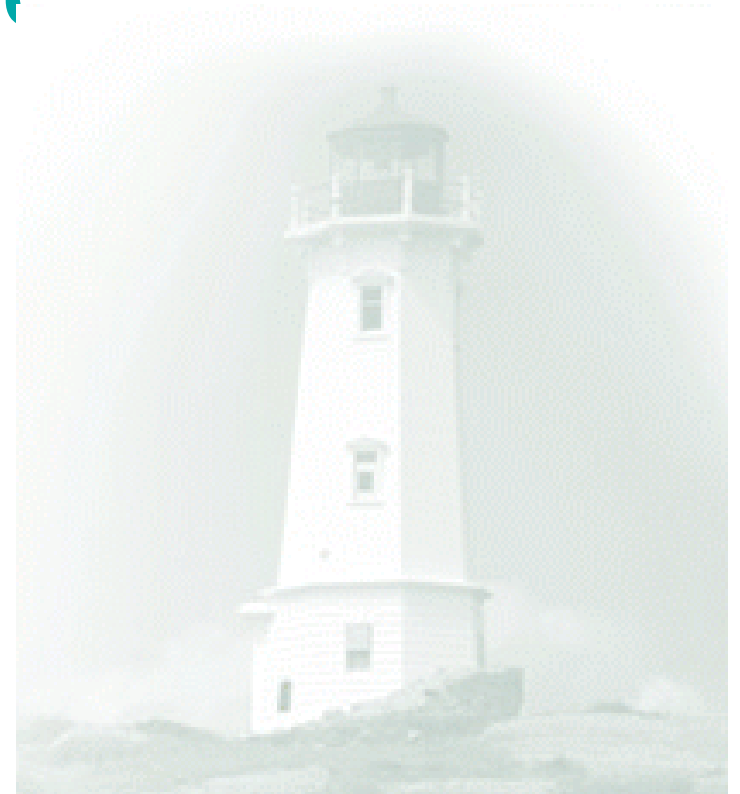
SINCE 1859

One Region. One Firm.



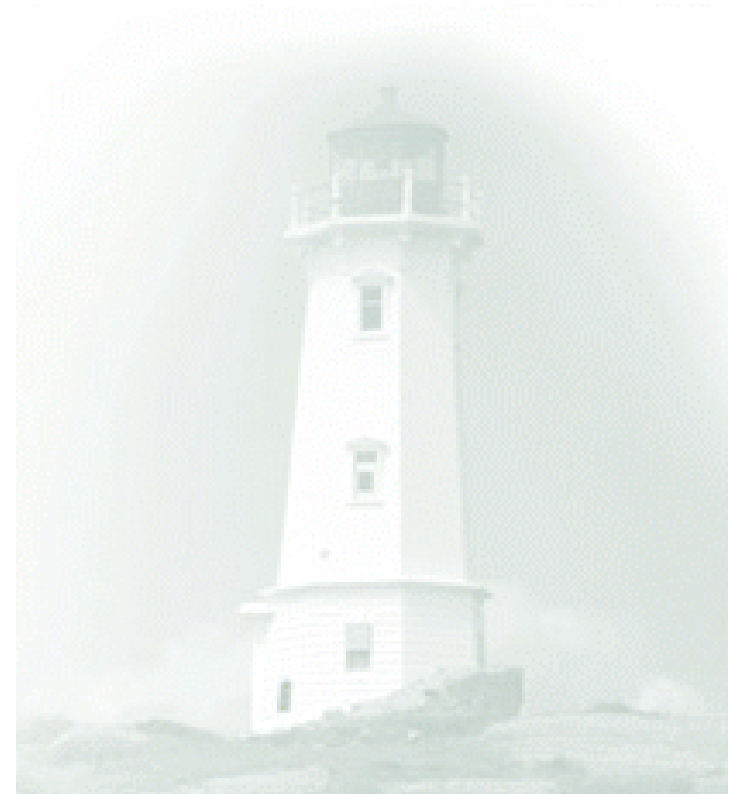
Risk - A legal Perspective

- Matthew T. Hayes, P.Eng.
Saint John, New Brunswick
506-643-6500



Risk of Liability

- Undetermined amount
- Unlimited time
- Unknown parties



Sources of Liability

- Courts

- <Negligence

- <Nuisance

- <Rylands v. Fletcher

- Statutory

- <Clean Environment Act

- Contractual

- <Consultant, Employment, Lease, Services.

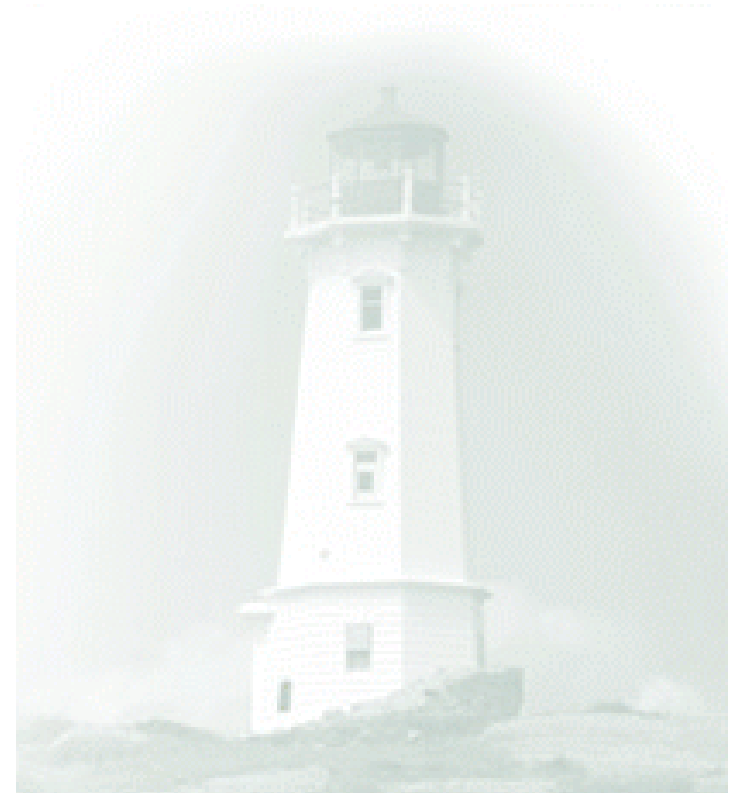


What is the Risk?

Pristine v. Stigma

P Pristine

- <Restoration of the Site
- <Ontario Decision
- <Appealed to the Supreme Court



Stigma

Considerations by the courts

<Impossible to sell

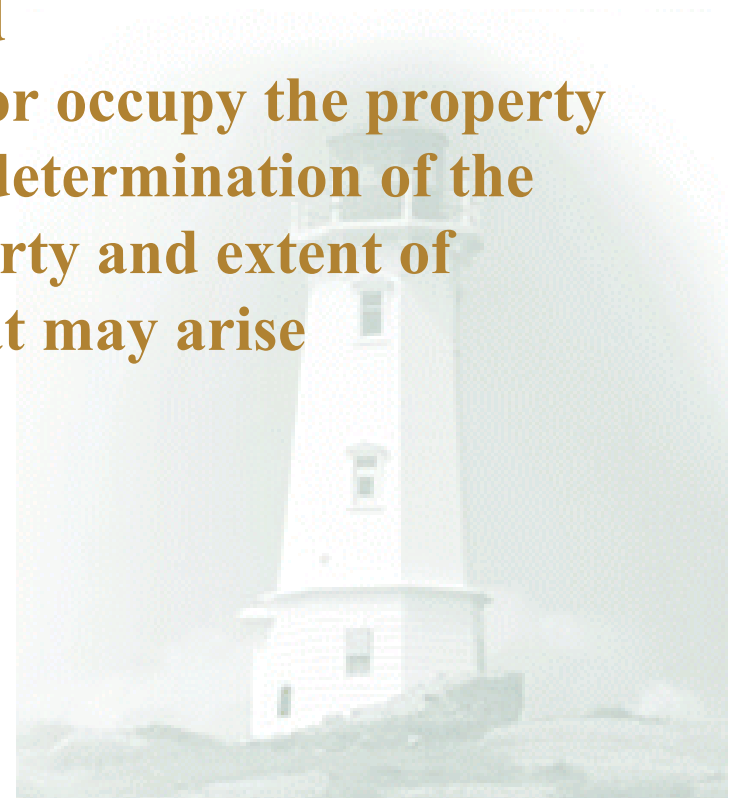
<Acknowledgment of Receipt Card

“Any persons intending to purchase or occupy the property should make their own independent determination of the environmental condition of the property and extent of responsibility and liability, if any, that may arise from taking ownership”

<Status of property

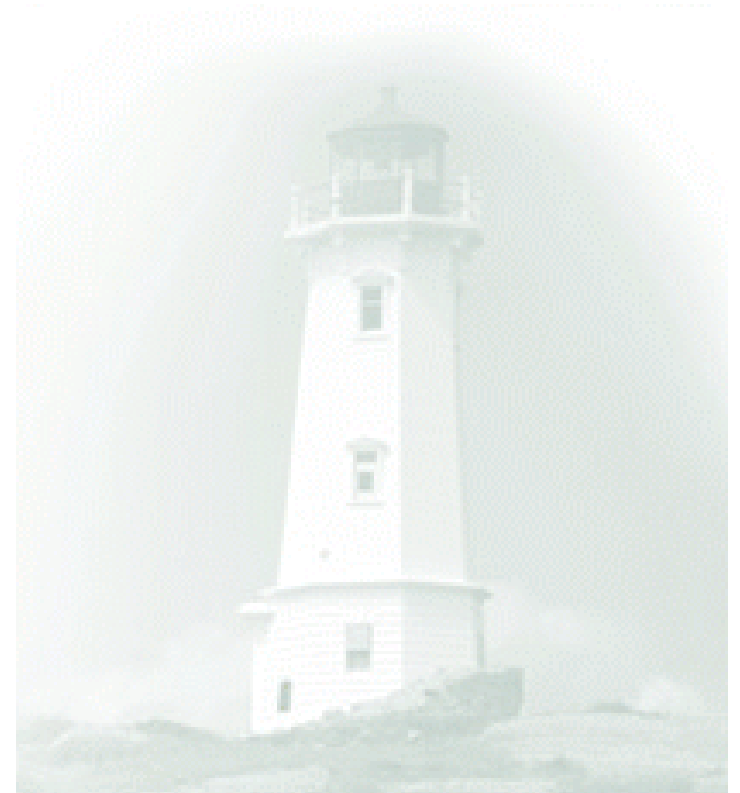
<Contamination below SSTL

<The Community



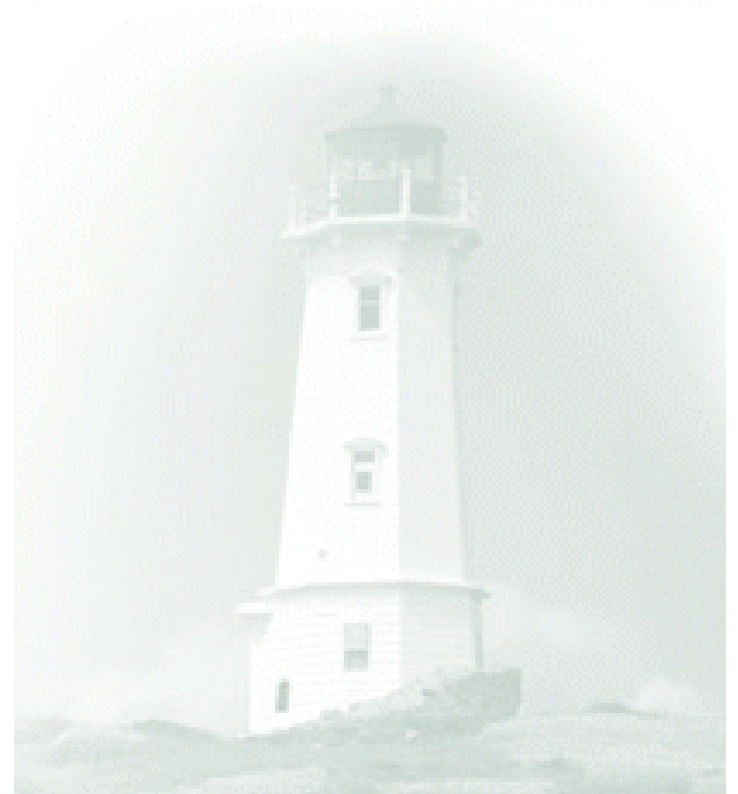
Brownfields and Risk

- Don't use the land
- Understand the liability
- Assign the known risks



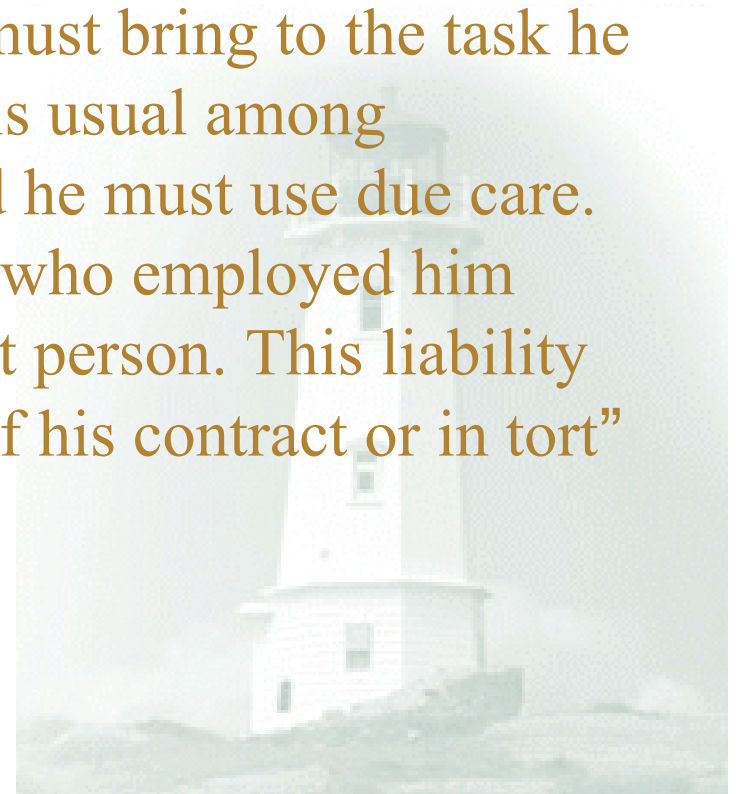
Insuring the Risk

- Cost-Cap Coverage
- Property Transfer Insurance



Professional Liability

“An architect undertaking any work in the way of his profession accepts the ordinary liabilities of any man who follows a skilled calling. He is bound to exercise due care, skill and diligence. He is not required to have an extraordinary degree of skill or the highest professional attainments. But he must bring to the task he undertakes the competence and skill that is usual among architects practicing their profession. And he must use due care. If he fails in these matters and the person who employed him thereby suffers damage, he is liable to that person. This liability can be said to arise either from a breach of his contract or in tort”



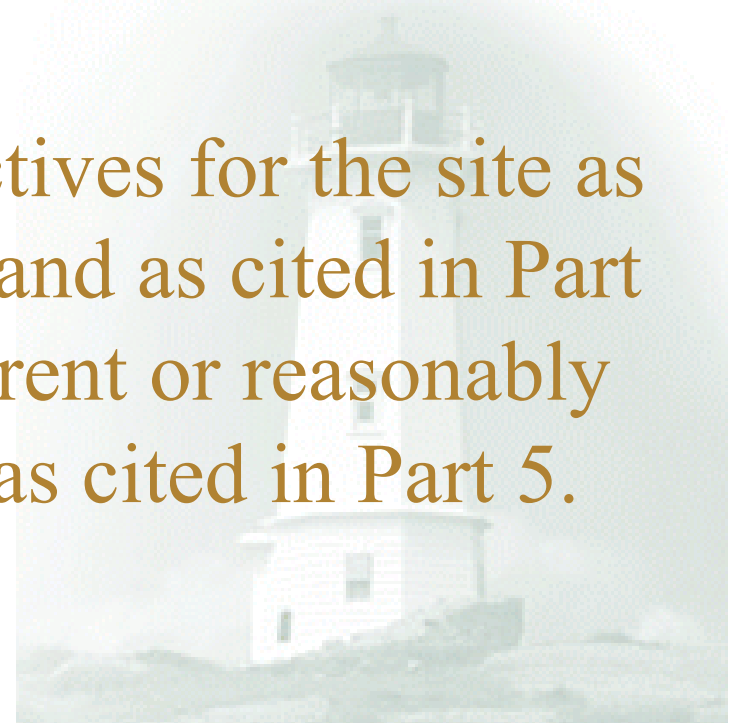
Professional Liability

- The Minister considers the pre-checked statements below to be mandatory for acknowledging receipt of the Record of Site Condition. The signature of the Site Professional on this form indicates the fulfillment of these mandatory requirements as well as the requirements of all other checked statements.



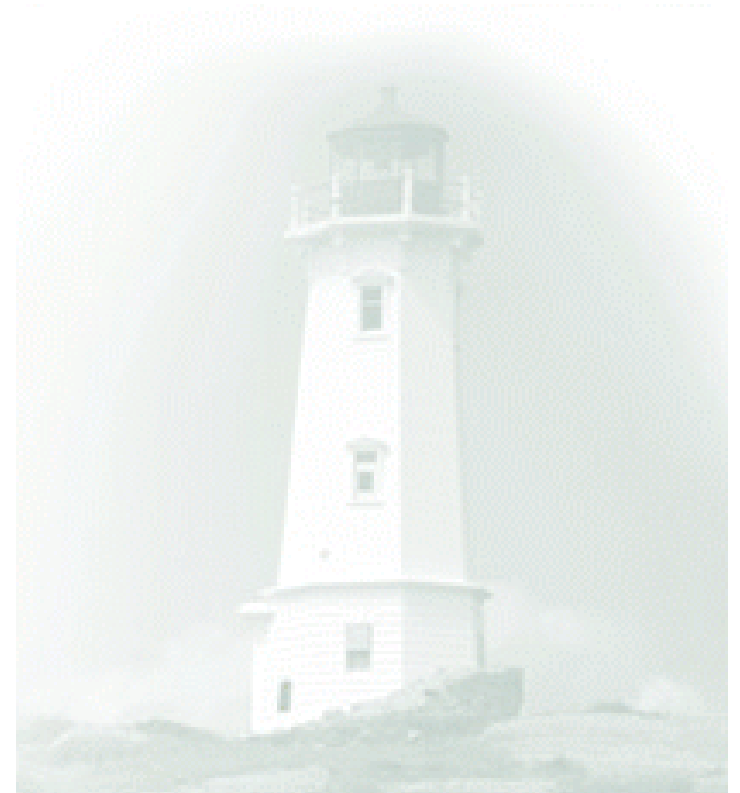
Professional Liability

- All work on which this Record of Site Condition is based was prepared, overseen and/or reviewed by the Site Professional.
- The remedial criteria and objectives for the site as defined by the Site Professional and as cited in Part 3 have been achieved for the current or reasonably foreseeable future site activities as cited in Part 5.



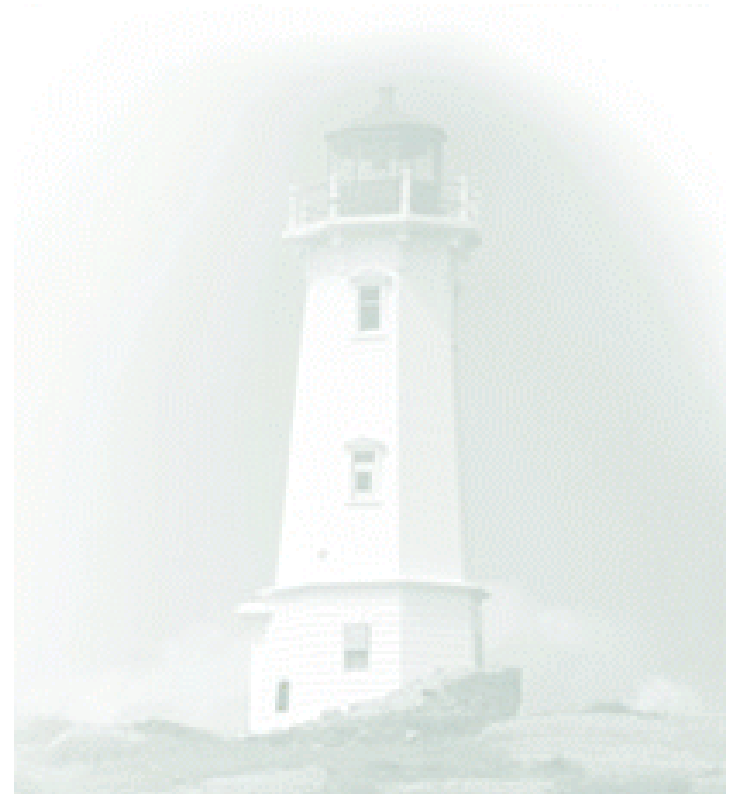
Professional Liability

- Owner
- Future purchaser
- Neighboring property owners
- Ministerial order



New Developments

- Ontario Brownfield Legislation
- Limiting liability
- Insurance



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