

## **Braeside Ridge Residents Suit Against Miller: Update**

Residents of the Braeside Ridge, neighbours of the Braeside Quarry, filed a civil action for damages for nuisance and trespass in Small Claims Court against The Miller Group Inc. on January 18, 2010. After more than a year and a half of delays by the company and the courts, this action is going to trial in Pembroke Superior Court from August 22 to September 2, 2011. Ecojustice Canada, formerly Sierra legal, is representing these residents in this action. Linda McCaffrey, a widely experienced environmental lawyer, formerly Director of Ecojustice, Ottawa is heading up the residents' legal team. These damages arise from emissions from the temporary asphalt plant installed and operated in the quarry during the fall of 2009.

The Ministry of the Environment Certificate of Approval for this operation warns specifically that adverse effects may arise under certain atmospheric conditions, and cautions the operator to use all reasonable care to prevent such occurrences, as this asphalt plant operates without any positive method of odour control. It is alleged that odour, which is a contaminant, has been emitted into the natural environment and has caused such adverse effects as irritation of the eyes, nose and throat, loss of appetite, dyspnea (shortness of breath), headaches and nausea in the plaintiffs.

Noise is also a contaminant and it is alleged that it has affected the plaintiffs' sleep patterns. It is also alleged that stress and worry caused by the noise and odours have been made worse by lack of availability of emission assessment information documenting emissions of particulate matter, sulphur gases, nitrogen gasses, volatile hazardous metals and volatile hazardous organic compounds from the Ministry of the Environment. At the same time, knowledge of literature documenting the dangers of these emissions is readily available and adds to this stress and worry.

As well as the above adverse effects, there has been a loss of reasonable and ordinary use of property such as going outdoors, opening windows for fresh air, entertaining, making home improvements and gardening.

It is alleged that Miller knew that the asphalt plant should not be located in a residential neighbourhood without positive odour and noise control and did nothing to prevent, mitigate or eliminate the disturbance and repeatedly denied the plaintiffs concerns. It is alleged that Miller's conduct was reckless, callous and high-handed. This claim alleges that the defendant is liable to the plaintiffs in nuisance, negligence and trespass to property.

Because of the continuous delays getting this case before a judge, residents have had to suffer through spring, summer and fall of the 2010 paving season of continued emissions.