

## **Community Vindicated!**

Nearly two years ago, the people of the Braeside Ridge won a judgment against the giant paving company, Miller Group, for adverse effects suffered from a temporary asphalt plant located in the Braeside Quarry. Miller appealed that ruling.

Now on August 15, 2013, Justice Martin James of the Ontario Divisional Court has upheld the decision of Deputy Judge Rod Sauriol of the Renfrew Small Claims Court, finding Miller guilty of nuisance.

A temporary asphalt plant was operated in the Braeside Quarry in 2009, then again in 2010 and 2011. During that time neighbours experienced adverse effects, that is, health symptoms from the emissions. Some of these were: irritation of the eyes, nose and throat, loss of appetite, dyspnea (shortness of breath), headaches and nausea. Also people's sleep patterns were disrupted to the point of exhaustion and they suffered stress and worry. Deputy Judge Sauriol found in favour of nine residents of the Braeside Ridge who charged Miller Group with nuisance, trespass and negligence because of adverse effects from the temporary asphalt plant operated by Miller in the Braeside Quarry in the fall of 2009. Ecojustice Canada, formerly Sierra Legal Defense represented these residents in this action.

Judge Sauriol accepted the credibility of the residents completely. He said, "I accept the evidence of the plaintiffs without any hesitation. I find their evidence was truthful and unexaggerated. Even under lengthy cross-examination it was not negated to any extent that would cause me to disbelieve any one of them. The evidence of the plaintiffs I accept without reservation."

Judge Sauriol found Miller guilty of nuisance based on the criteria: 1) severity of harm, 2) the character of the neighbourhood, 3) the usefulness of the defendant's conduct and 4) whether the plaintiffs displayed abnormal sensitivity. Harm was severe; this was formerly a quiet rural neighbourhood; Miller was a private, for-profit company, not a public utility; and the plaintiffs were not abnormally sensitive.

Justice James' support of Deputy Judge Sauriol's ruling is important for a number of reasons. It means that a community, suffering from the same pollution, coming together, cooperating and working together towards a common goal can succeed. This is a legal test that if you marshal the evidence, you can win. For the people of Ontario, this ruling shows that the law is there for the recovery of damages when the facts are clear that loss of enjoyment of property is caused by the pollution of the environment.

This decision is important for this Braeside community for another reason. Miller wants to put a *permanent* asphalt plant in this location. Justice James' decision makes it clear that such a plant would be a public nuisance.

Legal counsel for the Braeside neighbours in the Miller appeal, Robert Peterson, formerly of Ecojustice Canada, says, "This means that the 'public utility' of Miller's work does not trump the people's right to live free of nuisance. It is good as an environmental precedent, since it does not endorse the view that polluters serving some public good get off the hook." Clearly the law says that polluters don't have the right to pollute just because they have a public contract, in this case paving Hwy 417.

Both Linda McCaffrey and Dr. Lynda Collins, formerly of Ecojustice Canada, were ecstatic over this clear vindication of their win. They were legal counsel for the Braeside neighbours, working *pro bono*, who won the nuisance suit in November 2011. Choosing the Small Claims Court as a venue for this suit as they did, made the law accessible for the average person.

Four years after suffering these adverse effects, this community has finally been vindicated.