SCC File No.: 37985

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

HER MAJESTY THE QUEEN AS REPRESENTED BY THE MINISTRY OF THE ATTORNEY GENERAL

APPELLANT
(Appellant)

- and -

WEYERHAEUSER COMPANY LIMITED and RESOLUTE FP CANADA INC.

RESPONDENTS
(Respondents)

- and –

ATTORNEY GENERAL OF BRITISH COLUMBIA

INTERVENER

AND BETWEEN:

RESOLUTE FP CANADA INC.

APPELLANT
(Respondent)

- and –

HER MAJESTY THE QUEEN AS REPRESENTED BY THE MINISTRY OF THE ATTORNEY GENERAL

RESPONDENT
(Appellant)

- and -

WEYERHAEUSER COMPANY LIMITED

RESPONDENT
(Respondent)

AND BETWEEN:

WEYERHAEUSER COMPANY LIMITED

APPELLANT
(Respondent)

- and –

HER MAJESTY THE QUEEN AS REPRESENTED BY THE MINISTRY OF THE ATTORNEY GENERAL

APPELLANT
(Appellant)

FACTUM OF THE RESPONDENT, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, IN WEYERHAEUSER COMPANY LIMITED'S APPEAL

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

MINISTRY OF THE ATTORNEY GENERAL
Crown Law Office – Civil
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9
Fax: 416-326-4181

Leonard F. Marsello
Tel: 416-326-4939
leonard.marsello@ontario.ca

Tamara D. Barclay
Tel: 416-326-4103
tamara.barclay@ontario.ca

Nansy Ghobrial
Tel: 416-326-7246
nansy.ghobrial@ontario.ca

Counsel for the Appellant/Respondent, Her Majesty the Queen as represented by the Ministry of the Attorney General

SUPREME ADVOCACY LLP
100-340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major
Tel: 613-695-8855
Fax: 613-695-8580
mfmajor@supremeadvocacy.ca

Agent for the Appellant/Respondent, Her Majesty the Queen as represented by the Ministry of the Attorney General

BORDEN LADNER GERVAIS LLP
Barristers & Solicitors
22 Adelaide Street West, Suite 3400
Toronto, ON M5H 4E3
Fax: 416-367-6749

Christopher D. Bredt
Tel: 416-367-6165
Email: cbredt@blg.com

Markus Kremer
Tel: 416-367-6658
Email: mkremer@blg.com

Alannah Fotheringham
Tel: 416-367-6394
Email: afotheringham@blg.com

Counsel for the Appellant/Respondent, Weyerhaeuser Company Limited

BORDEN LADNER GERVAIS LLP
World Exchange Plaza
Suite 1300
100 Queen Street
Ottawa, ON K1P 1J9
Tel: 613-237-5160
Fax: 613-230-8842

Nadia Effendi
Email: neffendi@blg.com

Agent for the Appellant/Respondent, Weyerhaeuser Company Limited

TORYS LLP
Barristers & Solicitors
79 Wellington Street, 30th Floor
Box 270, TD South Tower
Toronto, ON M5K 1N2
Fax: 416-865-7380

Andrew Bernstein
Tel: 416-865-7678
Email: abernstein@torys.com

Jeremy R. Opolsky
Tel: 416-865-8117
Email: jopolsky@torys.com

Jonathan Silver
Tel: 416-865-8198
Email: jsilver@torys.com

Counsel for the Appellant/Respondent,
Resolute FP Canada Inc.

POWER LAW
130 Albert Street
Suite 1103
Ottawa, ON K1P 5G4
Tel: 613-702-5573
Fax: 613-702-5573

Maxine Vincelette
Email: mvinceltette@powerlaw.ca

Agent for the Appellant/Respondent,
Resolute FP Canada Inc.

ATTORNEY GENERAL OF BRITISH COLUMBIA
1001 Douglas Street
Victoria, BC V8W 9J7
Fax: 250-356-9154

J. Gareth Morley
Tel: 250-660-3029
Email: gareth.morley@gov.bc.ca

Elizabeth Rowbotham
Tel: 250-660-3029
Email: elizabeth.rowbotham@gov.bc.ca

Counsel for the Intervener,
Attorney General of British Columbia

MICHAEL SOBKIN
331 Somerset Street West
Ottawa, ON K2P 0J7
Tel: 613-282-1712
Fax: 613-288-2896
Email: msobkin@sympatico.ca

Agent for the Intervener,
Attorney General of British Columbia

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PART I – OVERVIEW AND FACTS

A. Overview

1. Weyerhaeuser appeals claiming that the Court of Appeal erred in finding that Bowater's assignment of the full benefits of the 1985 Indemnity[1] to it extinguished any rights Resolute had to them. Weyerhaeuser further submits that the Court erred in not allowing it to benefit from the 1985 Indemnity as a successor on the basis that it once owned the Dryden Property.

2. The Court also remitted back the issue of whether Weyerhaeuser assigned the benefits of the 1985 Indemnity to Domtar in 2007. The possibility of a finding by the lower court of such an assignment is a major concern to Weyerhaeuser given both its obligations under the Director's Order and the potential for future regulatory orders regarding the WDS or the surrounding land.

3. Against this background Weyerhaeuser submits that Ontario contracted to absorb the costs of its own regulatory orders; not just costs that might arise from third party claims such as the First Nations Litigation and other actions resolved at the time of the Settlement.

4. Weyerhaeuser does this by incorrectly submitting that, rather than using ordinary rules of contractual interpretation, the Court applied presumptions against it on both the assignment and succession issues.

5. Regarding the assignment, Weyerhaeuser over generalizes what the Court actually decided. The Court applied the appropriate legal principles. It employed no presumptions against Weyerhaeuser. It also made no findings relative to Weyerhaeuser's issue with Domtar. The Court made conclusions only regarding Resolute's absolute assignment of the full benefits of the 1985 Indemnity to Weyerhaeuser and its effect, based on the terms of the 1998 APA and the factual matrix.

6. Concerning succession, Weyerhaeuser submits that the Court was wrong to conclude that "successor", in the 1985 Indemnity's enurement clause, is limited to "corporate successor".

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[1] Unless otherwise indicated, capitalized terms are used in the same manner as in Ontario's appeal factum.

However, the Court again applied established case law in concluding that, as it was used in a corporate context, "successor" in this case means "corporate successor".

7. Weyerhaeuser effectively submits that the 1985 Indemnity's protection runs with the ownership of the Dryden Property. This is inconsistent with the words of the contract and the context in which the 1985 Indemnity was given. It also ignores the reality that Great Lakes chose to purchase the property in 1979 based on the 1979 Indemnity which afforded protection only until 2010 and which did not include an enurement clause.[2]

8. The Court was also correct in distinguishing the decision of the Ontario Court of Appeal in *Brown v Belleville (City)*[3]. There was never any contractual intention to extend the benefits of the 1985 Indemnity based on ownership of the Dryden Property. Nor should Weyerhaeuser be permitted to circumvent the law which overwhelmingly provides that a positive covenant, such as that in the 1985 Indemnity, cannot run with the land.

B. Facts

(i) Background Facts

9. Ontario repeats and relies on the facts set out in the factum filed in its appeal as well as on the following additional facts.

10. Weyerhaeuser's version of the facts contains a number of errors.

11. Weyerhaeuser states that "[t]he province has been aware of the contamination *of* the waste disposal site since the 1970s and began imposing environmental compliance conditions upon its owners in 1977."[4] This is misleading. The contamination was contained *within* the

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[2] Affidavit of Trina Rawn, sworn October 14, 2014 [Rawn Affidavit] at Exhibit I, Joint Appeal Record [AR], Vol IV, Tab 27I.
[3] 2013 ONCA 148, 114 OR (3d) 561 [*Brown*].
[4] Factum of the Appellant, Weyerhaeuser Company Limited, dated January 4, 2019 [Weyerhaeuser's appeal factum] at para 9.

WDS.[5] The WDS was created in 1971 under order by Ontario.[6] The WDS was a *solution* to the Reed Era mercury contamination.[7]

12. Further, Weyerhaeuser's suggestion that the First Nations commenced a lawsuit based on contamination emanating from the WDS[8] is wrong. As stated, the WDS was a burial site which contained mercury contaminated waste. There was never any evidence that it leaked.[9] The contamination that founded the First Nations Litigation was based on pollution released into the River from the plant operated by the Dryden companies and Reed Ltd. ("Reed Canada").[10]

13. Weyerhaeuser also errs in its portrayal of the Court's findings relating to Resolute.[11]

14. The Court of Appeal did not find that Bowater lost the benefits of the 1985 Indemnity because it sold the Dryden Property. It found that the benefits were lost because they were fully assigned to Weyerhaeuser. The Court recognized that the benefits under the 1985 Indemnity are personal property, not rights connected to land ownership.[12]

15. Likewise, the suggestion that Weyerhaeuser may have lost the benefits in its transaction with Domtar, simply because it sold the Dryden Property, is misleading.[13] The point of concern to the Court was whether Weyerhaeuser had assigned the 1985 Indemnity to Domtar.

16. Weyerhaeuser further errs when it says the 1979 Indemnity was given to both Reed Canada and Great Lakes.[14] It was given only to Great Lakes in order to facilitate the sale.[15] Reed Canada, Reed International P.L.C. ("Reed International") and Great Lakes had made their own

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[5] Rawn Affidavit, *supra* note 2 at Exhibit A, Clauses 1.14-1.15, AR, Vol IV, Tab 27A, p 20.
[6] *Ibid* at para 35, AR, Vol IV, Tab 27, p 10.
[7] *Weyerhaeuser Co v Ontario (AG)*, 2017 ONCA 1007 at paras 81-82, [2017] OJ No 6654 [COA Decision], Brown JA and paras 230-35, Laskin JA, AR, Vol I, Tab 5, pp 54, 110-12.
[8] Weyerhaeuser's appeal factum, *supra* note 4 at para 10.
[9] COA Decision, *supra* note 7 at para 82, Brown JA, AR, Vol I, Tab 5, p 54.
[10] COA Decision, *supra* note 7 at paras 10, 15, Brown JA, AR, Vol I, Tab 5, pp 30-31.
[11] Weyerhaeuser's appeal factum, *supra* note 4 at paras 39(a), 40.
[12] COA's Decision, *supra* note 7 at paras 160-65, Brown JA, AR, Vol I, Tab 5, pp 80-83.
[13] Weyerhaeuser's appeal factum, *supra* note 4 at para 40.
[14] *Ibid* at paras 14(c), 60.
[15] Rawn Affidavit, *supra* note 2 at Exhibit I, AR, Vol IV, Tab 27I.

indemnification arrangements in the Dryden Agreement.[16] The 1979 Indemnity did not reflect an intention to indemnify everyone who ever owned the Dryden Property.

17. The 1985 Indemnity was given to Reed Canada and Reed International because Reed Canada contributed to the Settlement funds and Reed International guaranteed its contribution.[17] Like the 1979 Indemnity, the 1985 Indemnity does not reflect an intention to benefit Reed Canada as former owner. Further, Reed International never owned the Dryden Property.

18. Weyerhaeuser and Bowater signed the 1998 APA which reflected a $790M acquisition by Weyerhaeuser of, amongst other things, Bowater's Dryden assets. The 1998 APA required Bowater to obtain a severance of the portion of the land in which the WDS was located such that it would remain responsible for it after closing.

19. The severance of the WDS was not completed prior to the closing date. The parties then chose to close the deal without the severance and executed an Amending Agreement and a lease ("Lease") under which Weyerhaeuser leased the WDS portion back to Bowater pending severance. The Lease contained an indemnity ("Lease Indemnity") which covered all obligations relating to the WDS and expressly survived its termination.

20. In 2009 Bowater obtained protection under the *Companies' Creditors Arrangement Act*[18]. The WDS was viewed in the *CCAA* proceedings as a non-producing asset and was transferred to a Bowater subsidiary corporation that was in receivership. In 2011, after the Receiver was permitted to abandon the WDS, the MOE issued the Director's Order against Resolute and Weyerhaeuser as former owners and/or persons in management and control.

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[16] Memorandum of Agreement between Great Lakes Forest Products Limited and Reed Ltd. dated December 7, 1979 [Dryden Agreement] at Clause 5.3, AR, Vol III, Tab 17, pp 19-24.

[17] at Clause 5.3(v), AR, Vol III, Tab 17, pp 23-24; Great Lakes Forest Products Limited, Annual Report for 1979 at p 14, AR, Vol III, Tab 19A, p 71. Reed Canada was the Vendor in the Dryden Agreement. Reed International was also a party to the Dryden Agreement as guarantor of Reed Canada's share of any payments to be made under clauses 5.3(i) and (ii). Here, "Reed" is used collectively to refer to Reed Canada and Reed International.

[18] RSC 1985, c C-36; Loi sur les arrangements avec les créanciers des compagnies, LRC 1985, c C-36 [*CCAA*].

21. In October 2012 Weyerhaeuser filed a claim under the Lease Indemnity for costs associated with the Director's Order. As a result, it received shares in the company that emerged from *CCAA* protection and later sold those shares for approximately $68,000.[19]

(ii) Procedural Facts – The Proceedings Below as Relevant to this Appeal

(a) The Summary Judgment Motions

22. Weyerhaeuser claimed that the 1985 Indemnity covered the costs of complying with the Director's Order and that it was entitled to the benefits of the 1985 Indemnity as a successor or assign. It relied on *Brown* in support of its "successor" argument.

23. Ontario's position was that the 1985 Indemnity only covered third party Pollution Claims and did not create an obligation to compensate either Weyerhaeuser or Resolute for costs incurred to comply with the Director's Order.[20] It further submitted that the benefits of the 1985 Indemnity had not been transferred to Weyerhaeuser under the 1998 APA but that if they had been, Resolute was no longer entitled to them. Ontario also argued that Weyerhaeuser was not entitled to benefit as a successor under the principles set out in *Brown*.

24. The motions judge dismissed Ontario's summary judgment motion and granted judgment to Weyerhaeuser and Resolute. The motions judge found that Resolute was entitled to the benefits of the 1985 Indemnity as a corporate successor to Great Lakes and that Weyerhaeuser was entitled both as an assignee pursuant to the 1998 APA and as a successor in title to the WDS per *Brown*.[21]

25. The motions judge rejected Ontario's argument that a consideration of the factual matrix, in accordance with this Court's decision in *Sattva Capital Corp. v Creston Moly Corp.*,[22] demonstrated that the 1985 Indemnity was intended to only cover third party claims.[23]

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[19] Letter from Weyerhaeuser regarding Sale of all shares of Resolute FP Inc., dated April 10, 2015, AR, Vol VI, Tab 33.
[20] Affidavit of Charles K. Douthwaite, sworn November 24, 2014 [Douthwaite Affidavit], Exhibit G, AR, Vol VI, Tab 28G.
[21] *Weyerhaeuser Company Limited v Ontario (Attorney General)*, 2016 ONSC 4652 [SCJ Decision] at paras 55, 58-59, 63-64, [2016] OJ No 3900, AR, Vol I, Tab 1, pp 13-15.
[22] 2014 SCC 53, [2014] 2 SCR 633 [*Sattva*].
[23] SCJ Decision, s*upra* note 21 at para 48, AR, Vol I, Tab 1, p 10.

(b) The Court of Appeal

26. The Court of Appeal allowed Ontario's appeal against Resolute and partially allowed it against Weyerhaeuser.

27. On the issue of scope, the majority upheld the motions judge's finding that the 1985 Indemnity covers the costs of complying with the Director's Order.[24] This finding is the basis of Ontario's appeal.

28. The Court found no palpable and overriding error in the motions judge's conclusion that the 1998 APA operated to assign the full benefit of the 1985 Indemnity to Weyerhaeuser.[25]

29. They further concluded that, while Resolute was a corporate successor to Great Lakes, whatever benefits Great Lakes had under the 1985 Indemnity were lost when Bowater sold it to Weyerhaeuser as part of the 1998 transaction.[26]

30. The Court also held that the question of whether Weyerhaeuser subsequently assigned the 1985 Indemnity to Domtar must be determined by the lower court following a full hearing.[27]

31. The Court rejected Weyerhaeuser's argument that it was entitled to the benefits as a successor owner of the WDS concluding that the motions judge had misapplied *Brown*.[28]

PART II – QUESTIONS IN ISSUE

32. The issues as defined by Weyerhaeuser are designed to accommodate a situation in which the lower court finds that Weyerhaeuser assigned the benefits of the 1985 Indemnity to Domtar in 2007. Weyerhaeuser seeks a decision from this Court that would assist it in arguing that it may still rely on the protection of the 1985 Indemnity even if it made such an assignment.

33. In Ontario's submission, this appeal raises the following issues:

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[24] Justice Laskin dissented on scope. He made no findings on any of the other issues. See COA Decision, *supra* note 7 at para 206, Laskin JA, dissenting, AR, Vol I, Tab 5, p 100.

[25] *Ibid* at para 161, Brown JA, AR, Vol I, Tab 5, p 81.
[26] *Ibid* at para 198, Brown JA, AR, Vol I, Tab 5, p 97.
[27] *Ibid* at paras 165, 185, Brown JA, AR, Vol I, Tab 5, pp 83, 92-93.
[28] *Ibid* at paras 177-78, 184, Brown JA, AR, Vol I, Tab 5, pp 88-90, 92.

(a) Did the Court err in finding that, once Bowater absolutely assigned the full benefits of the 1985 Indemnity to Weyerhaeuser, Resolute was no longer entitled to them?

(b) Did the Court err in concluding that Weyerhaeuser was not a successor under the enurement clause in the 1985 Indemnity?

PART III – ARGUMENT

A. The Standard of Review

34. Decisions concerning the interpretation of negotiated contracts are generally taken to involve questions of mixed fact and law and may be overturned where the court below has made a palpable and overriding error.[29] The appellate process will engage a consideration of the circumstances in which the contract was made. Extricable errors of law, such as the application of an incorrect principle, the failure to consider a required element of a legal test or the failure to consider a relevant factor are reviewable on a correctness standard.[30]

35. A lower court's findings of fact may be reversed where it is established that they amount to a palpable and overriding error.[31]

B. No Basis to Overturn the Court of Appeal on Either Assignment or Succession

36. Weyerhaeuser conflates the assignment and succession issues.

37. In the broader context of the three related appeals the relevant point on the assignment issue is whether Weyerhaeuser acquired the full benefits of the 1985 Indemnity in 1998, such that Resolute can no longer rely on them.

38. Regarding succession, Weyerhaeuser is clearly not a corporate successor to Great Lakes.[32] Its succession argument is based on the theory that it should get the benefits of the 1985 Indemnity, forever, because it once owned the Dryden Property.

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[29] *Ledcor Construction Ltd. v Northbridge Indemnity Insurance Co.*, 2016 SCC 37 at para 21, [2016] 2 SCR 23 [*Ledcor*].
[30] *Ibid* at paras 21, 36; *Sattva, supra* note 24 at para 53.
[31] *Hryniak v Mauldin*, 2014 SCC 7 at para 81, [2014] 1 SCR 87; *Housen v Nikolaisen*, 2002 SCC 33 at paras 5-6, 10, 23, 36, [2002] 2 SCR 235; *HL v Canada (Attorney General)*, 2005 SCC 25 at paras 4, 53-57, 70, 110, [2005] 1 SCR 401; *Peart v Peel (Regional Municipality) Police Services Board*, 217 OAC 269 at para 158, [2006] OJ No 4457 (Ont CA).

39. The "succession" issue reduces itself to a consideration of whether Weyerhaeuser may rely on the benefits of the 1985 Indemnity as a prior owner of the Dryden Property in accordance with *Brown*, despite the clear factual differences between *Brown* and this case.[33]

(i) Assignment – The Court Applied the Appropriate Principles of Contractual Interpretation

40. Weyerhaeuser knows the terms of its 2007 deal with Domtar. As stated, its concern lies in the risk that it may be found to have assigned the benefits of the 1985 Indemnity to Domtar which currently owns the Dryden Property surrounding the WDS.[34] If it did, Weyerhaeuser is exposed to the Director's Order and any potential regulatory orders concerning not only the WDS but the balance of the Dryden land. In an effort to head off this potential problem Weyerhaeuser attempts to expand the Court's decision beyond what it actually found.

(a) The 1998 APA Fully Assigned the Benefits of the 1985 Indemnity

41. The Court of Appeal made no generalized finding that the assignment of an indemnity necessarily leaves the assignor with none of its benefits. As the Court recognized, what has been given to an assignee and, conversely, what if anything remains with the assignor depends on the words of the assignment on a case by case basis.[35]

42. In this instance the Court found that Resolute had absolutely transferred the full benefits of the 1985 Indemnity to Weyerhaeuser:

> [195] Sections 3.1(vii) and (xiv) of the August 1998 APA provided that Bowater sold and transferred to Weyerhaeuser the "full benefit" of contracts and indemnities, which included the [1985] Indemnity. The assignment was absolute and unequivocal. As a result, Bowater's right to call on Ontario to perform the [1985] Indemnity was extinguished upon the closing of the 1998 APA.[36]

43. It is true that Ontario submitted to the motions judge and the Court of Appeal that it made no sense for Bowater to have assigned the benefits of the 1985 Indemnity to Weyerhaeuser.

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[32] COA Decision, *supra* note 7 at para 167, Brown JA, AR, Vol I, Tab 5, p 84.
[33] *Ibid* at paras 177-78, 184, Brown JA, AR, Vol I, Tab 5, pp 88-90, 92.
[34] *Ibid* at para 42, Brown JA, AR, Vol I, Tab 5, p 41.
[35] *Ibid* at paras 193-95, 198, Brown JA, AR, Vol I, Tab 5, pp 95-97.
[36] *Ibid* at para 195, Brown JA, AR, Vol I, Tab 5, p 96.

However, Ontario always also maintained the corollary: namely, both Resolute and Weyerhaeuser could not have the benefits at the same time.

44. It is a straightforward principle of personal property and contract law that one cannot fully assign the benefits associated with a chose in action and also retain them. The Court of Appeal agreed with Ontario on the effect of the assignment in 1998 and applied that basic legal tenet, noting:

> [194] As a general principle, an absolute assignment of a chose in action, which leaves no interest in the assignor, extinguishes the assignor's rights to later call on the obligor to perform the contract as the assignee has acquired the right to such performance: *Milo Candy Co. v. Browns Ltd.* (1915), 8 O.W.N. 99 (Ont. C.A.) at para 10; *Conveyancing and Law of Property Act*, R.S.O. 1990, c.C.34, s.53(1); *Restatement (Second) of Contracts* §317 (1981); *Aaron Ferer & Sons Ltd. v. Chase Manhattan Bank, Nat. Ass'n*, 731 F.2d 112, 125 (2d Cir. 1984). The assignee steps into the shoes of the assignor and has standing to enforce the contract as against the obligor as if it was the original convenantee: *Brown*, at para. 84.[37]

45. In any event, *Ledcor Construction Ltd. v Northbridge Indemnity Co.*[38] is inapplicable to the circumstances of this case because neither the 1998 APA nor the 1985 Indemnity can be interpreted without consideration of the factual matrix surrounding each contract.

(b) The 1985 Indemnity was Never Intended to Run with the Land

46. The circumstances leading to the 1985 Indemnity clearly demonstrate that it was not intended to cover anyone who ever owned the Dryden Property. The 1985 Indemnity was given to Reed Canada, Reed International and Great Lakes because of their contributions to the Settlement and does not reflect an intention to protect them from environmental regulatory orders. They were being protected from future actions like the ones being resolved at the time of the Settlement. As mentioned above, the 1979 Indemnity was not offered to Reed Canada or Reed International even though Reed Canada was then the owner of the Dryden Property.

47. The use of "successors and assigns" rather than "successors or assigns" in the enurement clause contemplates a scenario in which the 1985 Indemnity might first succeed to a corporate successor of Great Lakes and subsequently be assigned, as was the case here. It is also consistent

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[37] *Ibid* at para 194, Brown JA, AR, Vol I, Tab 5, pp 95-96.
[38] *Ledcor, supra* note 31.

with the fact that the 1985 Indemnity was given to Reed Canada, Reed International and Great Lakes, each of whom might have one or more corporate successors and each of whom might have an assign. The use of "successors and assigns" also accommodates a scenario in which a corporate assignee subsequently undergoes a succession. However, it does not contemplate a situation in which a party may still benefit following a full assignment.

48. Weyerhaeuser further submits that as the 1985 Indemnity is not time limited, it is intended to extend to all owners of the Dryden Property for all time. This submission overlooks the fact that the 1985 Indemnity is personal property. The rights it confers are not attendant on real property ownership. There is a difference between owning the 1985 Indemnity and owning the Dryden Property. The fact that the 1985 Indemnity creates rights which are not time limited means nothing more than that it will always cover whoever owns the rights to the benefits from time to time. This is not the same as saying it protects each and every person who ever owned the Dryden Property.

49. On Weyerhaeuser's theory, the Dryden Property could be subdivided numerous times and the 1985 Indemnity would have to respond regardless of the impact multiple severances might have on the ability to regulate effectively. There is no evidence that the parties intended this.

50. In support of its proposed interpretation that the 1985 Indemnity was intended to protect all owners of the Dryden Property in perpetuity, Weyerhaeuser argues that nobody would ever buy the Dryden Property otherwise. However, this is inconsistent with the fact that Great Lakes itself purchased the Dryden Property based on the 1979 Indemnity which expired in 2010 and which contained no enurement clause. It also ignores the fact that decisions in private enterprises are typically driven by a profit motive and include an evaluation and allocation of risk.

51. Further, in 1985 there was no ability "to sell or transfer the landfill." The WDS would not exist as a separate and conveyable parcel of land until August 2000.[39] Decisions made in 1985 about who would be covered by the 1985 Indemnity would have to be based on an anticipated sale of the *entirety* of the Dryden Property. Any projected saleability of the Dryden Property would engage considerations far beyond the WDS.

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[39] SCJ Decision, *supra* note 21 at paras 22-23, AR, Vol I, Tab 1, p 6; Rawn Affidavit, *supra* note 2 at Exhibit R, AR, Vol V, Tab 27R.

(c) The Court's Finding of a Full Assignment Reflects the Reasonable Expectations of the Parties in 1985 and the Policy Underlying the 1985 Indemnity

52. Weyerhaeuser submits that the Court's decision on assignment produces a commercially absurd result.[40] However, exactly the opposite is true. Its submissions actually support the argument Ontario makes in its appeal that the 1985 Indemnity was never intended to cover costs associated with first party proceedings such as the Director's Order.

53. The most absurd scenario appearing across the landscape of the three related appeals is that Ontario would abdicate its regulatory responsibility by entering into a contract under which it agreed to pay for the costs of complying with its own regulatory orders. Such an interpretation also creates a disincentive to maintain and monitor the WDS in the absence of a regulatory order. It is also inconsistent with Great Lakes' own behavior as it complied for years with its regulatory obligations as an operator without seeking compensation.[41]

54. When the 1985 Indemnity is considered through the lens proposed by Ontario, namely that it was intended to cover only third party claims related to Reed Era Pollution, it is evident that it reflects an allocation of risk which was reasonably foreseeable at the time.

55. In 1985 the Reed Era Pollution was known and the cost of the First Nations Litigation brought as a result of it had been crystallized by the Settlement. There would also have been an ability to assess the likelihood of further third party actions arising. In 1985 law suits similar to those brought before the purchase in 1979 were not remote possibilities.

56. In contrast to third party claims, the potential financial exposure to Ontario associated with perpetual obligations relating to the regulation of both the WDS and surrounding land was unknown. It represented an indeterminate risk.

57. Concluding that facilitating the sale of the Dryden Property was the policy underlying the 1985 Indemnity and asking this Court to, in effect, continue to enforce that policy against Ontario does not follow from the circumstances in which the 1985 Indemnity was given.

58. While there is no question that the 1979 Indemnity was given to facilitate the sale to Great Lakes, the 1985 Indemnity arose as part of an effort to address health and welfare concerns

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[40] Weyerhaeuser's appeal factum, *supra* note 4 at para 67.
[41] Rawn Affidavit, *supra* note 2 at Exhibit Z, AR, Vol V, Tab 27Z.

of the First Nations and resolve the First Nations Litigation in respect of which both Reed Canada and Great Lakes contributed several million dollars. They had agreed to do this years before, as evidenced by section 5.3 of the Dryden Agreement.[42] In 1985 there was no need to give an indemnity to facilitate or induce a purchase of the Dryden Property.

59. To support their "absurdity" argument, Weyerhaeuser makes a number of submissions in paragraph 68 of its factum. Ontario responds as follows:

(a) This argument again underscores the submissions made concerning the absurdity of Ontario agreeing to pay the costs of complying with its own regulatory orders. It also assumes that if the Director's Order had been made just prior to the 1998 sale the transaction would have gone forward on the same basis. As a practical matter it likely would not have. Weyerhaeuser's submission also ignores that Bowater had the protection of the 1985 Indemnity, whatever its scope, until it chose to sell it;

(b) The Director's Order was made following the completion of the Bowater insolvency proceedings which left the WDS without environmental stewardship. There is no evidence from which to conclude that Ontario deliberately delayed making the Director's Order to improve its legal position. Prior to the insolvency there was simply no need for an order;

(c) It is speculative hindsight for Weyerhaeuser to suggest that its exposure is higher now than it was when it owned the Dryden Property. This ignores the reality that regulatory orders could have been made against Weyerhaeuser while it was still the owner. Weyerhaeuser's exposure has always been the same. If its protection has changed it is because of its dealings with Domtar;

(d) This submission misconstrues the nature of environmental regulation and the obligations of the Director. A regulatory order is not something that the Director may put to one side and issue only when it is most beneficial financially. The statutory

[42] Dryden Agreement, *supra* note 17 at Clause 5.3, AR, Vol III, Tab 17, pp 19-24.

expectation on the Director is to make an order when environmental concerns require one. The obligation to regulate is a duty owed to the public;[43] and

(e) There is no evidence of the existence of any other such environmental indemnity agreements. In any case, what such indemnities would cover depends on their language and the context in which they were made.

(ii) Assignment – The Court did not Apply any Presumption of Extinguishment against Weyerhaeuser

60. A "general principle" of law and a "presumption" are not the same thing. The former is a principle to be considered by a court in making its decision. The latter shifts either a general or evidentiary burden of proof.

61. The Court applied no legal presumptions. It made no error in concluding that Bowater had assigned the full benefits of the 1985 Indemnity to Weyerhaeuser, never got them back after the severance and conveyance of the WDS in 2000, and consequently could no longer use them to its benefit.

62. As stated, the Court also made no finding on whether Weyerhaeuser assigned some or all of the rights it acquired from Bowater in 1998 to Domtar in 2007. Instead it remitted that matter back for determination by the court below.

63. Whether an assignment of a chose in action transfers all of the rights of the property to the transferee is a question to be determined on a case by case basis and depends on the words used in the particular contract.

64. The motions judge found that Weyerhaeuser acquired the benefits of the 1985 Indemnity by assignment based on his consideration of the provisions of the 1998 APA.[44] The Court of Appeal did so as well.[45]

65. Weyerhaeuser submits that the Court erred by not considering whether the motions judge made a palpable and overriding error and, in effect, applied a presumption that the assignment of

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[43] *Orphan Well Association v Grant Thornton Ltd.*, 2019 SCC 5 at paras 134-135, 2019 CarswellAlta 141.
[44] SCJ Decision, s*upra* note 21 at paras 20, 64, AR, Vol I, Tab 1, pp 5, 15.
[45] COA Decision, *supra* note 7 at para 195, Brown JA, AR, Vol I, Tab 5, p 96.

an indemnity necessarily extinguishes the assignor's ability to benefit.[46] There are at least two problems with this submission.

66. First, the motions judge made no findings at all on the "extinguishment" issue. There was no decision by him for the Court of Appeal to review for palpable and overriding error or otherwise. The words of the assignment provisions in the 1998 APA support both Ontario's corollary submission and the findings of the Court. Given the Court's finding that there had been an assignment of the full benefits of the 1985 Indemnity, none remained with Bowater.

67. Second, using appropriate principles of contractual interpretation, the Court *did* review the motions judge's conclusion that the benefits of the 1985 Indemnity had been assigned to Weyerhaeuser and found no palpable and overriding error. As the Court stated:

> [161] Accordingly, I see no palpable and overriding error in the motion judge's conclusion that the 1998 APA operated to assign the full benefit of the Ontario Indemnity from Bowater to Weyerhaeuser.[47]

68. The Court also noted:

> [160] Moreover, the 1998 APA made no provision for the benefit of any assigned indemnity to revert to Bowater upon the re-conveyance of the WDS once severance was obtained. Nor was the 2000 re-conveyance accompanied by any document purporting to re-assign the benefit of the Ontario Indemnity to Bowater.[48]

69. Contrary to what Weyerhaeuser submits,[49] the Court also addressed the motions judge's error in finding that Resolute was entitled to the benefits of the 1985 Indemnity even if had assigned them away.[50]

70. In reaching its conclusion on assignment the Court referred to its decision in *Milo Candy Co. v Browns Ltd*, among other authorities.[51] It noted that the general legal principle of

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[46] Weyerhaeuser's appeal factum, *supra* note 4 at para 71.
[47] COA Decision, *supra* note **7** at para 161, Brown JA, AR, Vol I, Tab 5, p 81.
[48] *Ibid* at para 160, Brown JA, AR, Vol I, Tab 5, p 81.
[49] Weyerhaeuser's appeal factum, *supra* note 4 at para 72.
[50] SCJ Decision, *supra* note 21 at paras 55, 64, AR, Vol I, Tab 1, p 7; COA Decision, *supra* note 7 at para 198, Brown JA, AR, Vol I, Tab 5, p 97.
[51] (1915), 8 OWN 99, [1915] OJ No 398 (QL) (Ont CA) [*Milo*], Respondent's Book of Authorities ("BOA"), Tab 1.

assignment is that, once a chose in action is fully assigned, the assignor no longer holds an interest in it.[52] That is not the use of a "presumption".

71. The *Rodaro v Royal Bank*[53] decision referenced by Weyerhaeuser[54] is not relevant to the issues in this appeal. Ontario has never contested Bowater's right to assign the 1985 Indemnity. Weyerhaeuser attempts to use a legal shield, which exists to protect obligors, as a sword. The relevant point is not whether Ontario's obligations were increased as a result of the assignment to Weyerhaeuser but whether Bowater assigned the full benefits it had.[55]

72. It is correct that an assignor may not increase the burden of the obligor through assignment without the consent of the obligor. However, even if Ontario is wrong in submitting that the costs associated with future regulatory orders are indeterminate, this is not a license to assign the full benefits of an indemnity and also keep them. The only reason Weyerhaeuser advances this submission is because of its concern for what might happen with the Domtar issue. An "eat your cake and have it too" conclusion is in Weyerhaeuser's best interest.

73. Weyerhaeuser conflates assignment and land ownership succession issues.[56] Ontario never offered a positive covenant that ran with the land. Such a covenant would not have been legally valid.[57] In any event, Ontario does not own the Dryden Property so as to be impressed by any covenant that might run with it.

74. The enurement clause does not signal an intention to extend the 1985 Indemnity to anyone who ever owned the Dryden Property.

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[52] *Ibid* at para 10.
[53] (2002), 157 OAC 203, 2002 CanLII 41834 (Ont CA) [*Rodaro*].
[54] Weyerhaeuser's appeal factum, *supra* note 4 at para 76.
[55] Ontario has earlier submitted that its burdens are increased if the 1985 Indemnity is interpreted to cover costs associated with regulatory orders. See paragraphs 49 and 56, above.
[56] Weyerhaeuser's appeal factum, *supra* note 4 at para 78.
[57] See Bruce Ziff, *Principles of Property Law*, 5th ed (Toronto: Carswell, 2010) at 406-10, BOA, Tab 2; Victor Di Castri, *Registration of Title to Land* (Toronto: Thomson Reuters Canada, 2016), §10.1.4(a); *Durham Condominium Corp. No. 123 v Amberwood Investments Ltd*, 157 OAC 135, 2002 CanLII 44913 at paras 32-33 (Ont CA); *Nortel Networks Corp. (Re)*, 2012 ONSC 1213 at para 131, 2012 CarswellOnt 3153, varied on other grounds, 2013 ONCA 599.

75. The question of whether there was an assignment of the 1985 Indemnity to Weyerhaeuser, and its effect, is a matter of continuing debate between Resolute and Weyerhaeuser.[58] Ontario maintains its position that, based on the language of the 1985 Indemnity and the 1998 APA, Resolute and Weyerhaeuser cannot both rely on the 1985 Indemnity at the same time.

76. Weyerhaeuser suggests that *Milo* turned on the fact that the obligations of the sugar supplier would have doubled had the Court not made the decision it did.[59] This will be true in any case where an assignor is permitted to assign *all* the benefits of a contract and yet still be able to call on the obligor for its own benefit after making the assignment. As stated above, the critical point in *Milo* was that all the benefits of the sugar contract had been assigned to the purchaser. Thus, any rights the assignor had were extinguished. The Court was correct in applying *Milo*.

77. Regarding the submissions made in paragraph 83 of Weyerhaeuser's Factum:

(a) Section 53(1) of the *Conveyancing and Law of Property Act*[60] only has relevance in this appeal on the question of whether the assignment to Weyerhaeuser was a legal assignment or an equitable one. The language of the 1998 APA is clear. The *full* benefits of the 1985 Indemnity were assigned. No interest remained with Bowater. Whether the assignment is legal or equitable has implications for whoever the nominal plaintiff would be in an action against Ontario to recover benefits under the 1985 Indemnity. However, the fact that the assignment may be an equitable one does not mean that any of the benefits remain with Resolute. These issues are addressed more fully in Ontario's factum filed in response to Resolute's appeal and Ontario repeats and relies them;

(b) The reference by the majority to section 317 of the American *Restatement (Second) of Contract* is no more than a recognition that the right to which benefits are extinguished by an assignment depends upon the language of the particular assignment, in this case the 1998 APA; and

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[58] Weyerhaeuser has recently been added as a respondent on Resolute's appeal.

[59] Weyerhaeuser's appeal factum, *supra* note 4 at para 81.

[60] RSO 1990, c C34, s 53(1); Loi sur les actes translatifs de propriété et le droit des biens, LRO 1990, c C34, s 53(1).

(c) The Court of Appeal correctly cited *Aaron Ferer & Sons v Chase Manhattan Bank*[61] for the proposition that an unequivocal and complete assignment extinguishes the assignor's rights against the obligor and leaves the assignor without standing to sue the obligor. On the issue of whether Ferer-London (the assignor) had standing to sue Chase Manhattan Bank (the obligor), the Second Circuit relied on the distinction between an assignment for security and an absolute assignment in concluding that Ferer-London continued to have standing. The Court recognized the need for an exception to the general rule because the assignment in that case was made to secure an antecedent debt owed to the assignee as opposed to an absolute assignment.[62] There is nothing in the record to suggest that the assignment of the 1985 Indemnity to Weyerhaeuser was for security of a debt.

78. Contrary to Weyerhaeuser's submission, the Court never found that *Brown* stood "for the proposition that the assignor of an indemnity loses its benefit."[63] Nor did the Court make any "assumption" that only one person may benefit from an indemnity. Further, it is important that the judgment of the Court in *Brown* was provided in the context of a Special Case. In response to one of the questions the City acknowledged, for the record, that the relevant agreement imposed a perpetual corresponding obligation on whomever the property owner happened to be from time to time.[64]

79. *Brown* only has relevance to whether Weyerhaeuser also acquired the benefits of the 1985 Indemnity as a successor landowner. It did not. This is addressed below.

(iii) Succession

80. On the issue of succession Weyerhaeuser largely repeats the arguments it makes on the assignment issue. These points have been substantially addressed by Ontario above.

81. The motions judge's finding that Weyerhaeuser was entitled to the benefits as a successor was based on his misapplication of *Brown.* There is no basis on the evidence from which to

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[61] 731 F (2d) 112 (2d Cir 1984) [*Aaron Ferer*].
[62] *Ibid* at 125.
[63] Weyerhaeuser's appeal factum, *supra* note 4 at para 84.
[64] *Brown, supra* note 3 at paras 39, 86.

reasonably conclude that the parties intended every person who ever owned the Dryden Property to benefit, for all time, on the basis that they once owned the land.

82. The only way for Weyerhaeuser to enjoy the benefits of the 1985 Indemnity, apart from as an assignee, and subject to its issue with Domtar, would be if it was a corporate successor to Great Lakes. There is no basis on which to overturn the Court's finding that *Brown* is distinguishable from this case.

83. Weyerhaeuser also submits that the Court applied a presumption in finding against it on the succession issue.[65] However, no such presumption was made. The Court correctly considered *Heritage Capital Corp. v Equitable Trust Co.*[66] in its decision:

> [181] The ratio in *Heritage Capital* was that a positive covenant requiring a municipality to make payments to a building owner for heritage restoration work did not run with the land, based upon the interpretation of the statute at issue. In obiter, the Supreme Court considered whether the same result would follow, as a matter of contractual interpretation, if some way could be found to circumvent the common law rule that no affirmative covenant requiring the expenditure of money could be made to run with the land, apart from statute. The court concluded the result would be the same because the agreement obliging the municipality to make the payments did not evidence an intention the payments would run with the land.[67]

84. The Court also correctly noted:

> [183] I do not read this portion of *Heritage Capital* as altering the general principle enunciated by the court in *National Trust*. Instead, I read it as identifying other language in the agreement that confirmed the application of the general principle stated in *National Trust*. In the present case, Weyerhaeuser cannot point to language in the Ontario Indemnity that would justify departing from the general principle.[68]

85. Weyerhaeuser, in essence, argues that the Court ought to have applied *Brown* in its favour.[69] But the Court recognized that *Brown* is very different factually. It correctly concluded

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[65] Weyerhaeuser's appeal factum, *supra* note 4 at paras 90-93, 95.
[66] 2016 SCC 19, [2016] 1 SCR 306 [*Heritage Capital*].
[67] COA Decision, *supra* note 7 at para 181, Brown JA, AR, Vol I, Tab 5, p 90.
[68] *Ibid* at para 183, Brown JA, AR, Vol I, Tab 5, p 91.
[69] Weyerhaeuser's appeal factum, *supra* note 4 at paras 96-99.

that the motions judge had made a palpable and overriding error in finding that Weyerhaeuser was a successor under the *Brown* principle.[70]

86. The Court applied this Court's decision in *National Trust Co. v Mead*[71] which held that "successor," when used in reference to a corporation, "generally denotes another corporation which, through merger amalgamation or some other type of legal succession, assumes the burdens and becomes vested with the rights of the first corporation".[72]

87. Reed Canada had exited the pulp and paper business in Ontario. In 1985 there was no reasonable basis to think it or any entity related to it was ever going to be an owner of the Dryden Property again. While a corporate successor to Reed Canada or Reed International might require the benefits of the 1985 Indemnity in the event of future law suits[73] it was extremely unlikely there would ever be a future Reed-related Dryden Property owner. This is further support for the conclusion that the use of "successors" in the enurement clause was intended to refer to corporate successors.

88. The Court correctly noted that the language of the contract in *Brown* contemplated an intention to benefit the property owner from time to time, whoever that might be.[74] It found no such language in the 1985 Indemnity. The Court also noted that in *Brown* the claim made was by persons who currently owned the property whereas Weyerhaeuser had conveyed the WDS back to Bowater a decade before it sought to rely on the 1985 Indemnity.

89. As stated, the Court also noted that *Brown*, in part, turned on the parties' agreed understanding of the terms of the contract:

> [176] In reaching that conclusion, this court relied, in part, on the parties' agreed interpretation of the 1953 agreement stating, at para. 87: 'On the language of the enurement clause and the agreed proper interpretation of the Agreement as a whole, the City and Mr. Sills clearly understood that the continuing access sought by the City to the affected lands could only be provided by the property owner

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[70] COA Decision, *supra* note 7 at para 184, Brown JA, AR, Vol I, Tab 5, p 92.
[71] [1990] 2 SCR 410, 1990 CarswellSask 165 (WL Can) (SCC) [*National Trust*].
[72] COA Decision, *supra* note 7 at paras 170-71, Brown JA, AR, Vol I, Tab 5, pp 85-86.
[73] It will be recalled from Ontario's appeal factum that after the sale to Great Lakes in 1979, the *EPA* did not permit Ontario to issue a regulatory order against Reed Canada as a former owner.
[74] COA Decision, *supra* note 7 at para 177(ii), Brown JA, AR, Vol I, Tab5, pp 88-89.

> "whoever that may be from time to time". In consideration for such continuing access, the City undertook to maintain and repair the drainage system, indefinitely, for the benefit of the property owner.'[75]

90. Weyerhaeuser says "[t]he motion judge followed the approach set out in *Heritage Capital* and *Brown*."[76] In fact, His Honour's decision does not mention *Heritage Capital* at all. In any event, and as noted above, *Heritage Capital* is clearly distinguishable from this case.[77]

91. The errors in the motions judge's decision concerning *Brown* have been discussed. The "commercial reasonableness" argument Weyerhaeuser again raises has also been addressed above.[78] As stated, the most absurd interpretation of the 1985 Indemnity is one that would have Ontario pay for the costs of complying with regulatory obligations, such as those contained in the Director's Order. Further, the motions judge's conclusions as to commercial unreasonableness were based on fundamental errors. His Honour incorrectly found the WDS to be a source of discharge and incorrectly concluded that Great Lakes had agreed to contribute to further modernization at the time the 1985 Indemnity was given.

92. Weyerhaeuser again asserts that the Court applied a presumption.[79] Ontario repeats its submissions that no presumption was applied and that the use of the words "successors *and* assigns" in the enurement clause does not assist Weyerhaeuser.

93. The quote from the Court, referenced by Weyerhaeuser in paragraph 103 of its factum, demonstrates that the Court paid due regard to the factual matrix in its analysis of the motions judge's decision:

> "….Nor did he explain what language in the [1985] Indemnity, or what circumstances in the factual matrix, would justify departing from the general principle that the term "successor", when used in reference to a corporation, generally denotes a successor corporation that assumes the burdens and becomes vested with the rights of the prior corporation".[80]

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[75] *Ibid* at para 176, Brown JA, AR, Vol I, Tab 5, p 88.
[76] Weyerhaeuser's appeal factum, *supra* note 4 at para 100.
[77] COA Decision, *supra* note 7 at paras 179-83, Brown JA, AR, Vol I, Tab 5, pp 90-91.
[78] Weyerhaeuser's appeal factum, *supra* note 4 at para 101. See also paragraphs 52-59, above.
[79] Weyerhaeuser's appeal factum, *supra* note 4 at paras 102-09.
[80] COA Decision, *supra* note 7 at para 178, Brown JA, AR, Vol I, Tab 5, pp 89-90.

PART IV – COSTS

94. The motions judge awarded full indemnity costs to Weyerhaeuser and Resolute ($275,000 and $223,000, respectively) based on the 1985 Indemnity.[81] This Order was significantly altered by the Court of Appeal.

95. The award of costs in favour of Resolute was set aside and an award of costs to Ontario was substituted.[82]

96. As between Ontario and Weyerhaeuser, costs of the motions were left to be determined by the court hearing the Domtar issue. Costs of the appeal were ordered payable in the cause.[83]

97. Weyerhaeuser seeks to have the motions judge's full indemnity costs order reinstated if it is successful in this appeal.

98. In September 2011, Weyerhaeuser wrote to Ontario seeking indemnification under the 1985 Indemnity for the costs associated with responding to the Director's Order.[84] Ontario replied that the 1985 Indemnity does not cover the costs of regulatory proceedings.[85] As a result, Weyerhaeuser initiated this action against Ontario. As the determination of the issues in this action would have directly impacted Resolute (as a party to the 1985 Indemnity), at Ontario's suggestion, the parties notified Resolute of the pending litigation. Resolute sought leave to intervene, which it did, on consent.

99. The motions judge erred in failing to take the relevant principles set out in Rule 20.06 of the *Rules of Civil Procedure*[86] into account when deciding the issue of costs on the summary judgment motions.

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[81] *Ibid* at para 199, Brown JA, AR, Vol I, Tab 5, p 98.
[82] Order of the Ontario Court of Appeal, dated December 20, 2017 at para 6, AR, Vol I, Tab 6, p 129.
[83] *Ibid* at paras 7-8, AR, Vol I, Tab 6, pp 129-30.
[84] Douthwaite Affidavit, *supra* note 22 at Exhibit D, AR, Vol VI, Tab 28D.
[85] *Ibid* at Exhibit G, AR, Vol VI, Tab 28G.
[86] *Rules of Civil Procedure*, RRO 1990, Reg 194, r 20.06 [*Rules*]; *Règles de procédure civile*, RRO 1990, Règl 194, r 20.06 [Règles].

100. The motions raised legitimate questions of fact and law. In similar circumstances, the Court in *Coventree Inc. v Lloyds Syndicate 1221 (Millenium Syndicate)* found that parties should be permitted to raise such questions without the risk of full or substantial indemnity costs.[87]

101. In *Coventree*, the parties sought direction as to the interpretation of an insurance policy. Justice Lederer found that costs on a full indemnity or substantial indemnity basis were not justified and ordered costs on a partial indemnity scale. His Honour noted that the claim was a "claim", a "loss" or "cost of defence" as the terms were used in the relevant policy but that the insurer had raised a legitimate question as to the interpretation of the policy which it should be able to raise without the risk of full or substantial indemnity costs. [88]

102. As the motions raised legitimate questions as to the proper interpretation of the 1985 Indemnity and who is able to rely on it, the motions judge erred in ordering Ontario to pay each of Weyerhaeuser and Resolute's costs on a full indemnity scale. The motions judge ought to have exercised his discretion and awarded Weyerhaeuser and Resolute their costs in accordance with the tariffs to Rule 57 of the *Rules of Civil Procedure*.[89]

103. On a motion for summary judgment, Rule 20.06 provides that the court "may" order substantial indemnity costs where (a) a party has acted unreasonably in bringing or responding to the motion, or (b) the party acted in bad faith.[90] Such an award is generally reserved for circumstances where a court intends to express its disapproval of a party's conduct throughout the proceedings. Such circumstances are not present and Ontario has acted reasonably throughout the proceedings.

104. Ontario submits that in all the circumstances, the appropriate scale of costs ought to be partial indemnity.

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[87] 2011 ONSC 6660; 2011 CarswellOnt 15442 [*Coventree*], aff'd 2012 ONCA 341, 291 OAC 178 [*Coventree* CA].
[88] *Coventree, supra* note 75 at paras 4-5; *Coventree* CA, *supra* note 75 at paras 48-49.
[89] *Rules, supra* note 88, Tarrif A; Règles, *supra* note 88, Tarif A.
[90] *Ibid*, r 20.06; *Ibid*, r 20.06.

PART V – ORDER SOUGHT

105. Ontario asks that this appeal be dismissed with costs here and below.

Dated at the City of Toronto, in the Province of Ontario, this 22nd day of February 2019.

SIGNED BY:

Leonard F. Marsello

Tamara D. Barclay

Nansy Ghobrial

PART VI – IMPACT ON COURT'S DECISION

106. Ontario submits that there is no sealing or confidentiality order, publication ban, classification of information in the file as confidential under legislation or restriction on public access information that could impact the Court's reasons in this appeal.

PART VII – TABLE OF AUTHORITIES

	JURISPRUDENCE	PARAGRAPH(S)
1	*Aaron Ferer & Sons v Chase Manhattan Bank*, 731 F (2d) 112 (2d Cir 1984)	77
2	*Brown v Belleville (City)*, 2013 ONCA 148, 114 OR (3d) 561	8, 22-24, 31, 39, 78-79, 81-82, 85, 88-91
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6	*HL v Canada (Attorney General)*, 2005 SCC 25, [2005] 1 SCR 401	35
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8	*Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87	35
9	*Ledcor Construction Ltd. v Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 SCR 23	34, 45
10	*Milo Candy Co. v Browns Ltd*. (1915), 8 OWN 99, [1915] OJ No 398 (QL) (Ont CA)	70, 76
11	*National Trust Co. v Mead*, [1990] 2 SCR 410, 1990 CarswellSask 165 (WL Can) (SCC)	84, 86
12	*Nortel Networks Corp. (Re)*, 2012 ONSC 1213, 2012 CarswellOnt 3153, varied on other grounds, 2013 ONCA 599	73
13	*Orphan Well Association v Grant Thornton Ltd.*, 2019 SCC 5, 2019 CarswellAlta 141	59

14	*Peart v Peel (Regional Municipality) Police Services Board*, 217 OAC 269, [2006] OJ No 4457 (Ont CA)	35
15	*Rodaro v Royal Bank* (2002), 157 OAC 203, 2002 CanLII 41834 (Ont CA)	71
16	*Sattva Capital Corp. v Creston Moly Corp*., 2014 SCC 53, [2014] 2 SCR 633	25, 34

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17	*Companies' Creditors Arrangement Act*, RSC 1985, c C-36; Loi sur les arrangements avec les créanciers des compagnies, LRC 1985, c C-36.	20, 21
18	*Conveyancing and Law of Property Act*, RSO 1990, c C34, s 53(1); Loi sur les actes translatifs de propriété et le droit des biens, LRO 1990, c C34, s 53(1).	77
19	*Rules of Civil Procedure*, RRO 1990, Reg 194, r 20.06 [*Rules*]; *Règles de procédure civile*, RRO 1990, Règl 194, r 20.06 [Règles].	99, 103
20	*Rules of Civil Procedure*, RRO 1990, Reg 194, Tarrif A; Règles de procédure civile, RRO 1990, Règl 194, Tarif A.	102

	SECONDARY SOURCES	**PARAGRAPH(S)**
21	Bruce Ziff, *Principles of Property Law*, 5th ed (Toronto: Carswell, 2010).	73
22	Victor Di Castri, Registration of Title to Land (Toronto: Thomson Reuters Canada, 2016).	73