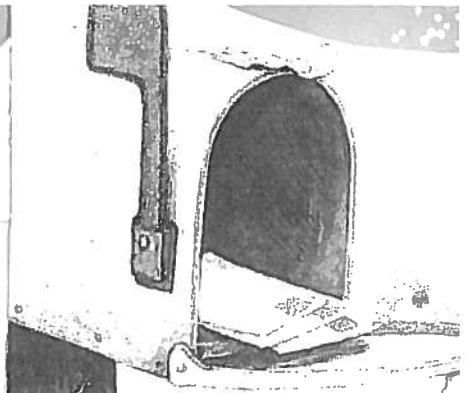
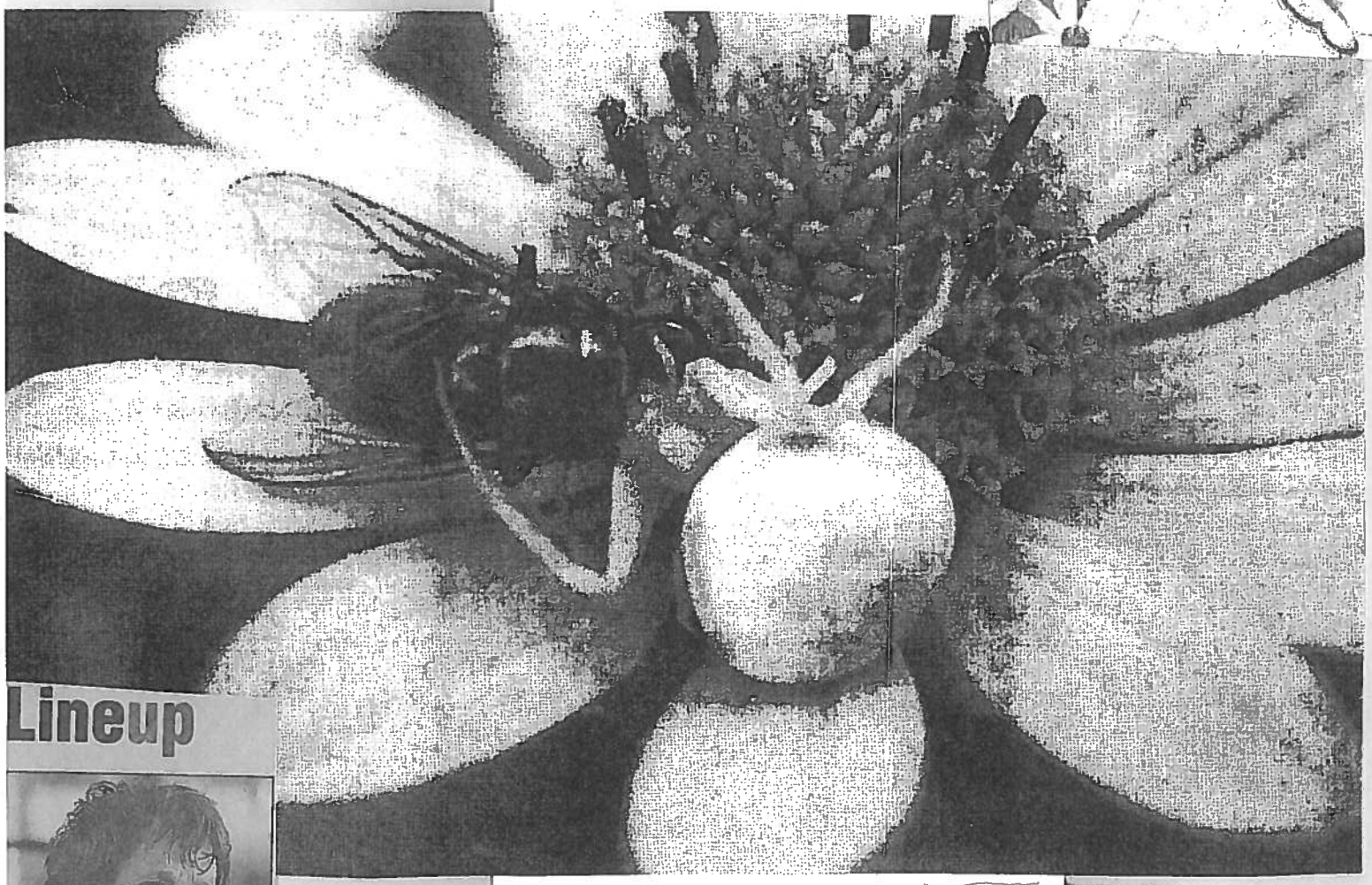








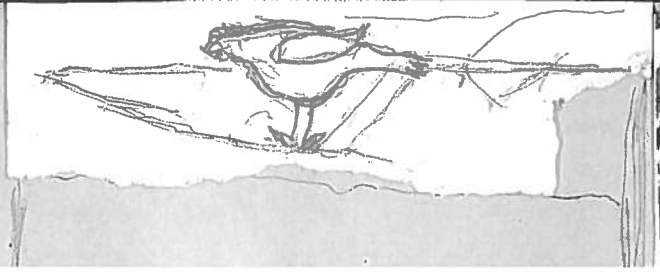


Lineup



Eddie Money is at the Ex.







Koss Affi Ex. B 1

Minutes – City Centre Community Committee – December 9, 2014

excerpt Reasons For C'tee Disposition

DECISION MAKING HISTORY:

The Winnipeg Public Service advised that all statutory requirements with respect to this application have been complied with.

The Chairperson called Councillor Orlikow to the Chair in order to move the following motion:

Moved by Councillor Gerbasi,

That the report of the Winnipeg Public Service be taken as read.

Carried

Moved by Councillor Gerbasi,

That the receipt of public representations be concluded.

Carried

Moved by Councillor Gerbasi,

That in accordance with Subsection 247(3) of The City of Winnipeg Charter, the Variance:

(a) [✓] is consistent [ ] is not consistent with Plan Winnipeg, and any applicable secondary plan;

(b) [✓] does not create [ ] does create a substantial adverse effect on the amenities, use, safety and convenience of the adjoining property and adjacent area, including an area separated from the property by a street or waterway;

(c) [✓] is [ ] is not the minimum modification of a zoning by-law required to relieve the injurious effect of the zoning by-law on the applicant's property; and

(d) [✓] is [ ] is not compatible with the area in which the property to be affected is situated.

Supporting Comments:

1. This is a very appropriate use in this location. It's subsidized, affordable housing right along the new Sherbrook bike path where we're seeing a real transformation in the City.

DECISION MAKING HISTORY (continued):

2. This is a really thriving neighbourhood and I know there has been a concerted effort to accommodate everybody but sometimes you do have to move forward.
3. Gardening is a significant part of this, and the agreement to have co-op car sharing is a really positive initiative on a relatively small project.
4. It's a non-profit organization and there's an effort to improve the community and provide the kind of housing that people want in this area.

Carried

Moved by Councillor Gerbasi,

That the recommendation of the Winnipeg Public Service be concurred in and the Variance be approved.

Carried

Moved by Councillor Gerbasi,

That the public hearing with respect to this application be concluded.

Carried

Councillor Gerbasi resumed the Chair.

TAB J Ross Affi. [redacted] 3 of May 15, 2015
City's Record

Minutes – Appeal Committee – February 26, 2015

L Variance Stuff only

DECISION MAKING HISTORY (continued):

Supporting Comments:

1. This mixed use project will provide some low income housing which will be a good fit for the area.

2. There is a designated parking spot for Peg City Car Co-op and the cycling is consistent with the area and OurWinnipeg, which addresses the neighbourhood needs.

3. Pleased to see the approach that a greenhouse or growing garden will be placed on top of the development.

Carried

Moved by Councillor Dobson,

That the appeal be denied, the decision of the City Centre Community Committee be concurred in and Variance Order DAV 157499/2014D be confirmed.

Carried

Moved by Councillor Dobson,

That the public hearing with respect to these appeals be concluded.

Carried

COUNCIL:

On January 28, 2015, Council concurred in the recommendation of the **Standing Policy** Committee on Property and Development and **approved the subdivision and rezoning of the** subject land under File DASZ 39/2014, to **an 'RMU PDO" Neighbourhood Main Streets** Residential Mixed Used – **Airport Vicinity District.**

Vol. 2 - 471 4

2-pg. excerpt from the Dec. 9/14 initial public hrng at City Hall. (Appellant's subm.)
CF Factum pg. 19 paras. 49-50

(Initially [illegible] via MAY 15/15 Ross Affi.)

lucrative site for development, for gentrification. And gardens that have been created over many, many years in that neighbourhood continually subside to the interest of the developers. Sherbrook is the last of one of these gardens that was started over twenty years ago by a group called Earth Core that I was not a part of, but I was aware of it. And it's a unique garden. It's in a great location. It has good soil. We have a lot of sustainable practices there. And West Broadway Development Corporation has been um, shepherding along it's own version of community green space management and the creation and supposed support of community gardens for residents. They do own the land, they have since 2002, but the garden was already there for ten years. They got a deal to buy that land because the garden was there. And I think I went into that some in the material that I filed in the discussion. So I thought I had brought a copy with me of an article that was put in a local independently produced book called Wild West Broadway several years ago by the -- by the name of Jill Winsowsky, who (ph) gardened -- with us one year -- about two years ago. And she was aware of the garden and she interviewed Rico John who was one of the original participants and catalyst to start Sherbrook and who stayed there the longest. And so she interviewed him for the book and he explained some of the background including the approach that was made by the

gardening group to Jenny Gerbasi as a councillor in the area at the time. To try and find a way to save the garden from being sold onto a developer. And because the landowner wanted to see, you know, the garden keep going, he didn't sell it to a developer at a market rate. He let the development corporation buy it with money from Neighbourhood's Alive to pay off the tax arrears and for an addition $20,000.00. So this garden didn't really cost the development corporation anything. And now they are talking about selling it to Westminster Housing Society. Nothing that happened at the design charrette in 2008 contemplated the possibility of selling the property. There were conditions put by Neighbourhoods Alive on West Broadway's management or stewardship of the land that I've provided in the Schedule A material which is in the first part of the brief.

And I don't want to use up too much time talking about the background, but I would just hope that the information that I've put together for the committee to review is going to be evaluated. And the interest isn't being fair to the community. There's too much that is already happening there that West Broadway Development Corporation and the Westminster Housing Society seem very unconcerned about the loss of. And the garden is really appreciated by a lot of people, but I think it's also

"Equity-based" lis of the Record Commentary

For the April 27/18 Appeal Hearing

the bold fonting is added as of January 29, 2019

For the purpose of facilitating adapting the below to SCC appeal projects

As prepared from the notes produced on Sunday, April 15th, Third Series (2nd attempt to type them up, after a wild-ishly digressive effort on Monday the 16th, which has become the "Possible Arguments" discussion...

It seems reasonable to propose that the Appellant/gardener's objects with the judicial review proceedings has always been to try to achieve the preservation of the Sherbrook St. Community Garden, located at what is now known as 198 Sherbrook St., and thus the subject property of the judicial review application. **This was her goal as of the City's series of public hearings in late 2014 and early 2015, as well.**

It is also true or fair to say that the lack of any formal reliance on equitable interests, or any stipulation of perhaps fraudulent usurpation of that equity by WBDC with NA!'s encouragement or collaboration since 2002, when WBDC acquired the property in reliance upon money disbursed by NA!, as of either the City's public hearings, or the filing of the Notice of Application on February 27, 2015, **is due to a lack of professional legal guidance or expertise on the part of this applicant.**

At the June 15/17 motion hearing, **Justice Keyser heard submissions outlining that deficiency of expertise, and it is observed to extend back to the 2002 timeframe** and the transfer of the land to WBDC from the former owner, known in these proceedings and to the applicant/appellant only as Ajanta Mgt.

Citations to transcript:

Citations to Factum:

Citations to Notice of Appeal:

Citations to other (Authorities):

Keyser J. recognized none of these issues in her short Reasons for Decision, or "Endorsement", if there is any material difference I remain unaware what it might be.

Late in the hearing, Ms. Altemeyer proposes that the pleadings, and the City's record more restrictively, do provide considerable basis from which to perceive that the facts or arguments presented to the City via the public hearings are capable of ratifying the expanded proposed scope of issues due 'official status' in the application which has been commenced.

CHAPTER 22

CONFLICT OF DUTY AND DUTY

580. To ensure a loyalty which is undivided the courts have prohibited a fiduciary from serving "two masters" at the same time in the same matter or transaction unless he has first obtained the informed consent of both "masters" to his so acting. As Donaldson J. observed in the agency case, *North & South Trust Co.* v. *Berkeley*,[1]

> Fully informed consent apart, an agent cannot lawfully place himself in a position in which he owes a duty to another which is inconsistent with his duty to his principal . . . .[2]

And even if informed consents are obtained, they will not absolve the fiduciary from liability to one master if he cannot properly discharge his duties to him because of conflicting duties owed to the other.[3] Despite the courts' inveighings against fiduciaries acting "two ways"—and the protests have been most sustained in the case of solicitors in conveyancing transactions[4]—the practice remains a common one occurring not only in agency transactions but also in dealings, for example, between trusts sharing common trustees[5] and between companies having common board members.[6]

581. The strictures imposed on double employments—or the conflict of duty and duty rule as it will be called—have a relatively narrow legal compass. They are premised, first, upon proof that the same person has made himself a "fiduciary" in more than one fiduciary relationship—and he becomes a fiduciary, as he does under the conflict of duty and interest rule, simply by undertaking to act for or on behalf of another in some particular matter or matters.[7] But the mere acceptance of multiple "fiduciary" engagements or employments is obviously not offensive in itself. It is the staple of the commission agent, the solicitor, the corporate trustee, the company director and the liquidator. The vice condemned by the courts only arises when the

[1][1971] 1 W.L.R. 470, at 484–485.
[2]See also *Fullwood* v. *Hurley* [1928] 1 K.B. 498, at 502; *Transvaal Lands Co.* v. *New Belgium (Transvaal) Land & Development Co.* [1914] 2 Ch. 488, at 503.
[3]See *Moody* v. *Cox & Hatt* [1917] 2 Ch. 71, at 81; *How* v. *Carman* [1931] S.A.S.R. 413.
[4]In Aust., see *Jennings* v. *Zilahi-Kiss* (1972) 2 S.A.S.R. 493, at 511; *In re A Practitioner* (1975) 12 S.A.S.R. 166, at 172; *Howell* v. *Bennett & Fisher* [1966] S.A.S.R. 188, at 194. In the U.K. a 1972 amendment to the *Solicitors Practice Rules* 1936, R.2., made it a disciplinary matter for the same solicitor or firm of solicitors to act for both parties in certain conveyancing transactions. This amendment, which has continuing effect by virtue of *The Solicitors Act* 1974, s.89(3), seems to have been prompted by repeated judicial criticism: see *Goody* v. *Baring* [1956] 2 All E.R. 11, at 12–13; *Smith* v. *Mansi* [1962] 3 All E.R. 857, at 859–860; *Neushul* v. *Mellish & Harkavy* (1967) 111 Sol. Jo. 399; *Spector* v. *Ageda* [1973] Ch. 30, at 47; see also *Minton* v. *Kirwood* (1866) L.R. 1 Eq. 449, at 454.
[5]See the comments of Madden C.J. in *Skinner* v. *Trustees, Executors & Agency Co.* (1901) 27 V.L.R. 218, at 227; *In re McIntosh* (No. 4) (1905) 5 S.R. (N.S.W.) 389; *In re Service* (1914) 31 W.N. (N.S.W.) 95.
[6]*Transvaal Lands Co.* v. *New Belgium (Transvaal) Land & Development Co.* supra, n.2; *Walker* v. *Wimborne* (1976) 50 A.L.J.R. 446.
[7]See § 467 et seq. on the definition of a fiduciary in this context.

3 Improper conduct by others

24.53 The final, and perhaps more controversial, category of case is the one where two persons, though in different ways, derive advantage from the transaction. In that event, if each used unconscientious means to obtain the advantage, or if one of them induced, or knowingly left, the other to exert influence over the weaker party, the presumption of influence or unfair advantage is made against each.[1] The basis on which the court interferes in such cases is not entirely settled. On one view of the matter they do not qualify for separate treatment at this point, but the point is an open one.

As has already been seen,[2] the English courts appear to have held that undue influence is personal to the stronger and weaker party, and the liability of third parties must depend on ordinary principles of notice and agency, or something closely analgous to them. It follows from this that the weaker party cannot succeed unless it is shown either (a) that the third party knew (actually or constructively) that undue influence or other unfair conduct had occurred;[3] or (b) that the third party had constituted the stronger party (often a husband or other relative of the weaker party) an agent for the purpose of having the appropriate documents executed, or " 'left it to the [stronger party]' either constructively or literally to effect the execution of the documents."[4]

This approach is predicated on the assumption that such undue influence or unfair advantage as arises in the situation, operates only as between the immediate parties to it; the third party (in the absence of grounds for imposing vicarious liability) is treated like any other purchaser of property affected by an equitable defect in title. On that view, there is no room for the proposition that the third party has in these cases personally taken "unfair advantage" of the weaker party; the only relevant law is the rule which protects a *bona fide* purchaser of a legal title, and the doctrine of vicarious liability.

However, there is a further possibility. Consistently with the principles discussed earlier in this section,[5] it may constitute "victimization" if a third party, knowing that undue influence or other unfair conduct is likely to occur, or is a reasonable possibility, acquiesces in a situation in which the stronger party is given both the motive and the opportunity to persuade the weaker party to sign the document in question, without taking proper steps to see that the weaker party's interests are adequately protected. Such an approach, which is suggested by several Australian authorities, requires the court to treat the third party as the one who is personally answerable for unfair advantage. "Passive victimization" here

659, at p. 666, per ROMILLY M.R. (previous offers, and reversionary value); *Tate* v. *Williamson* (1866), L.R. 1 Eq. 528, at pp. 539–540, per WOOD V.-C. (valuation); *Rees* v. *De Bernardy*, [1896] 2 Ch. 437, at pp. 443–445, per ROMER J. (value of property, and stronger party's own prior offers to a person whom he mistakenly thought was the owner).

6 *Harris* v. *Tremenheere* (1808), 15 Ves. 34, at pp. 39–40, per Lord ELDON L.C.; *Re Coomber, Coomber* v. *Coomber*, [1911] 1 Ch. 723, at p. 729, per FLETCHER MOULTON L.J.

7 See *Haygarth* v. *Wearing* (1871), L.R. 12 Eq. 320, at p. 329, per WICKENS V.-C.

8 *Davies* v. *Cooper* (1840), 5 My. & Cr. 270, at pp. 277–279, per Lord COTTENHAM L.C.

9 *Thornber* v. *Sheard* (1850), 12 Beav. 589, at p. 601, per Lord LANGDALE M.R.; *Billage* v. *Southee* (1852), 9 Hare 534, at p. 540, per TURNER V.-C.

(ii) The nature and effect of the transaction

25.35 Further, the stronger party must be prepared to establish that the fullest and most candid information was given as to the exact nature of the transaction, as well as of its subject-matter. The defence has accordingly failed where there has been no adequate explanation of the character of the instrument recording the transaction;[1] the purposes which it was designed to accomplish;[2] the weaker party's rights, liabilities, and position at the moment immediately preceding it, with reference to the matters proposing to be dealt with thereby;[3] or the right of the weaker party both to reject it when *in fieri*, and to repudiate it after execution.[4]

A not infrequent source of difficulty is the failure to ensure that the weaker party understands the effect which the transaction is calculated to achieve.[5] Where the document is clear and it is proved that it was read over to a competent weaker party, that may be sufficient;[6] but the position may be otherwise if it is unclear, and there is no such evidence.[7] With more complicated or unfavourable legal documents, full advice as to their meaning and effect may be required;[8] and the court may go further and require that the weaker party be "fully informed and duly and honestly advised, and that the price was just".[9]

Sometimes the stronger party seeks to fortify the arrangements by false recitals, or other misrepresentations of the nature of the transaction or its subject-matter, which are introduced into the instrument in the belief that the weaker party will not notice or appreciate their untruth. In such cases, of course, there is a double obligation of disclosure on the stronger party; the very thing on which hopes of salvation are founded, works to the contrary, and the fabricated recitals become "*scripta auctori perniciosa suo*".[10] Where, however, the stronger party succeeds in satisfying the court that there has been full disclosure in the above sense, the plea so far, but so far only, prevails.[11]

1 *Chaplin & Co., Ltd.* v. *Brammall*, [1908] 1 K.B. 233, at p. 237, per VAUGHAN WILLIAMS L.J. (guarantee).

2 *Willis* v. *Barron*, [1902] A.C. 271, at p. 276, per Earl of HALSBURY L.C., at pp. 280–281, per Lord MACNAGHTEN, H.L. (weaker party supposed that documents merely corrected earlier error).

RULES or BY-LAWS. As to what are "rules or by-laws of the employer" (s. 1 (4) of the Employers Liability Act 1880 (c. 42)), see *Whatley* v. *Holloway*, 6 T.L.R. 190. In that case Fry L.J., referring to the compromises manifest in the statute, said, "every word represents a conflict or struggle of thought"; and therefore, he said, the Act was to be construed with great care.

RUM. "Rum," sold simply as such, was not to be reduced more than 25 degrees under proof (Sale of Food and Drugs Act Amendment Act 1879 (c. 30), s. 6); but see GIN. See hereon *Dawes* v. *Wilkinson* [1907] 1 K.B. 278.

RUN. "Trains to run in conjunction" with other trains: see *Caledonian Railway* v. *Great Northern Railway*, 2 Ry. & Can. Tr. Cas. 383.

RUN OF THE PLAY. As to this phrase in the contract of a musician in the theatrical profession, see *Gubertini* v. *Waller* [1947] 1 All E.R. 746.

RUN WITH THE LAND. (1) "A covenant is said to 'run with the land' when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that land. A covenant is said to 'run with the reversion' when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that reversion" (Woodf. (24th ed.), 549, citing *Spencer's Case*, 5 Rep. 16 a; see thereon 1 Sm. L.C. 65).

(2) Under a lease, "no covenant runs with the land except it touch the thing demised" (per Martin B., *Stevens* v. *Copp*, L.R. 4 Ex. 25). See TOUCH. See further *Dewar* v. *Goodman* [1909] A.C. 72, and cases therein cited; *Ricketts* v. *Enfield Churchwardens* [1909] 1 Ch. 544, cited ASSIGNS.

(3) See as to what covenants run with the land, Platt Cov., Pt. 4, Chap. 1, s. 5; Pollock's Principles of Contract (7th ed.), 237 *et seq.*; Woodf. (24th ed.), 549 *et seq.*; *Rogers* v. *Hosegood* [1900] 2 Ch. 406, cited HOUSE; *Forster* v. *Elvet Colliery Co.* [1908] 1 K.B. 629, cited ASSIGNS; *Torbay Hotels* v. *Jenkins*, 137 L.T. 248; *Grant* v. *Edmonson* [1931] 1 Ch. 1; *Austerberry* v. *Oldham*, 29 Ch. D. 750, cited HIGHWAY; "privity of estate," PRIVY; ASSIGNS; SPIRITUOUS LIQUOR; *Shayler* v. *Woolf* [1946] Ch. 320; *Breams Property Investment Co.* v. *Stroulger* [1948] 2 K.B. 1; *Smith and Snipes Hall Farm* v. *River Douglas Catchment Board* [1949] 2 K.B. 500.

(4) As to covenants running with, or binding on, the reversion, see *Muller* v. *Trafford* [1901] 1 Ch. 61, and *Woodall* v. *Clifton* [1905] 2 Ch. 257, both cited PERPETUITY. The liability of a lessor or lessee is not extinguished by the assignment, in the one case, of the reversion, or, in the other, of the term (*Stuart* v. *Joy* [1904] 1 K.B. 362).

(5) As to the law of Scotland hereon, see per Lord Watson, *Zetland* v. *Hislop*, 7 App. Cas. 453 *et seq.*

(6) A purchaser with notice is charged with a covenant (*Tulk* v. *Moxhay*, 18 L.J. Ch. 83), if it be of restrictive character (*Haywood* v. *Brunswick Building Society*, 8 Q.B.D. 403; *Hall* v. *Ewin*, 37 Ch. D. 74; *London & South Western Railway* v. *Gamm*, 20 Ch. D. 562; *Mackenzie* v. *Childers*, 43 Ch. D. 265; *Andrew* v. *Aitken*, 22 Ch. D. 218; *Warton* v. *Robinson*, 29 S.J. 606, 607). See further *Osborne* v. *Bradley* [1903] 2 Ch. 446; see also *Elliston* v. *Reacher* [1908] 2 Ch. 665, cited INTENDED. But a purchaser is not charged if the covenant is merely personal and collateral (*Formby* v. *Barker* [1903] 2 Ch. 539). See RESTRICTIVE COVENANT; *Chambers* v. *Randall* [1923] 1 Ch. 149.

Thorson v. Attorney General of Canada, [1975] 1 SCR 138, 1974 CanLII 6 (SCC)

Add'l post-Suchi R&D April 23/16

Date: 1974-01-21
Other citations: 43 DLR (3d) 1; 1 NR 225; [1974] SCJ No 45 (QL); [1974] ACS no 45
Citation: Thorson v. Attorney General of Canada, [1975] 1 SCR 138, 1974 CanLII 6 (SCC), <http://canlii.ca/t/1twxf> retrieved on 2015-12-06

Supreme Court of Canada
Thorson v. Attorney General of Canada, [1975] 1 S.C.R. 138
Date: 1974-01-22

Joseph Thorarinn Thorson *(Plaintiff) Appellant;*

and

The Attorney General of Canada, The Secretary of State of Canada, The Receiver General of Canada, Keith Spicer, The Bilingual Districts Advisory Board, Roger Duhamel, Paul Fox and Roger St. Denis *(Defendants) Respondents.*

1973: June 6, 7; 1974: January 22.

Present: Fauteux C.J. and Abbott, Martland, Judson, Ritchie, Spence, Pigeon, Laskin and Dickson JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Actions—Status—Standing of taxpayer in class action—Interest no greater than that of any other taxpayer—Challenge of federal legislation—Official Languages Act, R.S.C. 1970, c. O-2.

The appellant, suing as a taxpayer in a class action, claimed that the *Official Languages Act,* 1968-69 (Can.), c. 54 and *Appropriation Acts* providing money to implement it were unconstitutional. The question of standing was raised as a preliminary question of law and was decided against the appellant, both at first instance and on appeal.

Held (Fauteux C.J. and Abbott and Judson JJ. dissenting): The appeal should be allowed.

Per Martland, Ritchie, Spence, Pigeon, Laskin and Dickson JJ.: A question of alleged excess of legislative power is a justiciable one, and it is open to the Court, in the exercise of a discretionary power, to allow a taxpayer to have such a

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question adjudicated in a class action, being in effect a class action by a member of the public, when otherwise it could be immune from judicial review because there is no person or class of persons particularly aggrieved and because of the unwillingness of the Attorney-General to institute proceedings or of the Government to direct a reference. Any attempt to place standing in a federal taxpayer suit on the likely tax burden is as unreal as it is in the case of municipal taxpayer suits. It is not the alleged waste of public funds alone but the right of citizenry to constitutional behaviour that

[Page 139]

CF Q pg. 593 of Borowski [1981] for full quote

will support standing. As a matter of discretion the appellant should be allowed to proceed to have the suit determined on the merits.

Per Fauteux C.J., Abbott and Judson JJ. *dissenting:* The ratio of the judgments in the Ontario courts is that an individual has no status to challenge the constitutional validity of an Act of Parliament unless he is specially affected or exceptionally prejudiced by it. Municipal taxpayer class actions are in a class of their own since municipal corporations and municipal councils are creatures of a statute and can only do those things which they are authorized to do.

[*MacIlreith v. Hart,* (1907), 1908 CanLII 64 (SCC), 39 S.C.R. 657; *Smith v. Attorney General of Ontario,* 1924 CanLII 3 (SCC), [1924] S.C.R. 331; *Dyson v. The Attorney General,* [1911] 1 K.B. 410, (2nd Dyson case) [1912] 1 Ch. 158; *Attorney General v. Independent Broadcasting Authority, ex parte McWhirter,* [1973] 1 All E.R. 689; *London County Council v. Attorney General,* [1902] A.C. 165; *Wallasey Local Board v. Gracey,* (1887), 36 Ch. 593; *Tottenham U.D.C. v. Williamson & Sons Ltd.,* [1896] 2 Q.B. 353; *Boyce v. Paddington Borough Council,* [1903] 1 Ch. 109; *Electrical Development Co. of Ontario v. Attorney General of Ontario,* [1919] A.C. 687; *B.C. Power Corpn. Ltd. v. B.C. Electric Co. Ltd.,* 1962 CanLII 43 (SCC), [1962] S.C.R. 642; *Attorney General for Victoria v. The Commonwealth* (1946), 71 C.L.R. 237; *Massachusetts v. Mellon,* (1923), 262 U.S. 447; Ref. Re ss. (1), (3), (4), s. 11, *Official Languages Act,* s. 14 *Official Languages Act* (N.B.), (1972), 5 N.B.R. (2d) 653; *Paterson v. Bowes,* (1853), 4 Gr. 170; *Toronto v. Bowes,* (1853), 4 Gr. 489 affd. (1856), 6 Gr. 1, affd. (1858), 11 Moo. P.C. 463, 14 E.R. 770; *Crampton v. Zabriskie,* (1879), 101 U.S. 601; *Bromley v. Smith,* (1826), 1 Sim. 8, 57 E.R. 482; *Prescott v. Birmingham,* [1955] Ch. 210; *Bradbury v. Enfield,* [1967] 1 W.L.R. 1311; *Holden v. Bolton,* (1887), 3 T.L.R. 676; *Collins v. Lower Hutt City Corporation,* [1961] N.Z.L.R. 250; *Bradford v. Municipality of Brisbane,* [1901] Queensland L.J. 44; *Frothingham v. Mellon,* (1923), 262 U.S. 447; *Flast v. Cohen,* (1968), 392 U.S. 83; *Everson v. Board of Education,* (1947), 330 U.S.1; *Doremus v. Board of Education,* (1952), 342 U.S. 429; *Sierra Club v. Morton,* (1972), 405 U.S. 727; *Anderson v. Commonwealth* (1932), 47 C.L.R.

[Page 140]

50; *R. v. Barker,* (1762), 3 Burr. 1265, 97 E.R. 823 referred to.]

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Community Garden Policy

The Community Garden Policy is intended to foster a positive climate for community gardening and identifies the principles used by city administration in its decision-making around the development, management and maintenance of community gardens on City-owned land.

For the purposes of this policy a *community garden* is defined as "*an open space that a group of citizens voluntarily manage where horticultural activities are practiced.*"[1]

There are two aspects to this Policy. The first is the statement of the City's Community Garden Policy, addressed under the five general headings. The second are potential implementation strategies following each policy statement. These implementation strategies may be clarified, adjusted or refined from time to time to effectively implement this Community Garden Policy.

Healthy Living /Active Living

The City of Winnipeg considers community gardens to be very beneficial in supporting healthy communities and improving the quality of life in neighbourhoods. They serve as a tool to achieve desirable and quantifiable goals such as food security, neighbourhood stabilization and revitalization, reduction of crime, job training, recreation, therapy, and community building.

what about ecological benefits?

Plan Winnipeg supports this by stating "Promoting healthy lifestyles including the provision of safe environments, education, recreation, arts, and culture to assist citizens in developing to their fullest potential." [2]

Potential Strategy

- Continue dialogue with community stakeholders in order that community gardens continue over time to contribute positively to Winnipeg neighbourhoods.

Community Directed

Resident involvement in the shaping of future strategies is a key to ensuring long term community garden success. This involvement requires collaboration, inclusion, communication, and participation. This also allows unique strategies to be tailored for different neighbourhoods which have different characteristics, resources, strengths, traditions, and leadership.

Plan Winnipeg supports this in stating "Encouraging citizens to shape decisions that affect their lives requires sharing of decision-making processes through citizen engagement, promoting local ownership and control, fostering strong local economy, and facilitating ongoing participation." [3]

Potential Strategies

- Ensure ongoing assessment of community need and collaborative planning.
- Address specific needs of neighbourhoods and communities balancing residential and other development with green space.
- Encourage neighbourhoods in their development of green plans for the use of existing and future green space.

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[1] Concise Oxford Dictionary – City Farmer, Community Gardening in Major Canadian Cities: Toronto, Montreal, and Vancouver Compared. Paper prepared for Urban Agriculture Policy in Southern Africa, International Conference, South Africa, March 1998.

[2] City of Winnipeg Plan Winnipeg 20/20 Vision. December 2001, page 10.

[3] Ibid

Affordability through Partnership and Collaboration

The City of Winnipeg recognizes community gardens as an asset to both the neighbourhood and the city. The City will work collaboratively with community groups to develop long term affordable plans for development and sustainability of community gardens. The establishment of creative strategic partnerships is key to identifying a wide range of opportunities and resources in support of community gardens.

Potential Strategies

- Determine current and long term management and maintenance/operating costs. The following factors must be considered in determining the costs and benefits in community garden development:
  - social
  - economic
  - financial
  - environmental.
- Explore public/public and public/private partnership opportunities to maximize resources.
  - Determine services, roles and responsibilities of the City and external organizations.

Effective & Efficient Service Delivery

The City of Winnipeg will utilize an integrated, inter-departmental administrative approach to ensure a coordinated, consistent and easily accessible system for the management of community gardens.

Potential Strategies

- Ensure a coordinated, consistent system using an inter-departmental administrative approach for management of community gardens. This includes:
  - Establishment of a one-stop community garden contact for land availability, educational information and related information.
  - Standardized agreements
  - Uniform fees and charges
  - Communication systems
  - Booking processes
- Continue to inventory current community gardens on city-owned land.
- Respond to community enquiries regarding the use of any city-owned land for community garden purposes.
- Ensure communication is clear and concise between the various departments, community networks, community garden organizations, and gardeners to reinforce a positive transparent working relationship.

Sustainable

A common understanding between civic government and the community will ensure a predictable environment for community garden development and support in the near and distant future. This predictable environment is vital to resolving competing land use interests, including the need for green space.

Potential Strategies

- Consult with the community garden network as a link to community garden issues and sustainability.
- Encourage training, networking, and technical assistance of individuals and groups to build self-reliance and interdependence.
- Recognize community gardens as an acceptable land use on appropriate City-owned land.
- Encourage environmentally sound practices.

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264 (Cond Ex. C)

DEVELOPMENT TO COMPLY

Requirement for Compliance with By-law

6. (1) No development or use of land or a building may take place or be maintained except in conformity with this By-law and with any development agreement, variance, conditional use approval, condition or permit issued under this By-law.[2] The duty to comply with this By-law is imposed on the owner of a parcel or a building and on any person who has charge or control of the parcel or building, whether as lessee, tenant, occupier, agent or otherwise. The City's approval of a development application, the issuance of a permit, the approval of drawings and specifications, or completion of inspections does not relieve a person from the responsibility to comply with this By-law or any other by-law.

(2) The Director may, upon receipt of such proof as the Director deems necessary, issue a Zoning Compliance Certificate in respect of a zoning lot confirming any one or more of the following as of the date of that certificate:

(a) that the described use or uses operated or proposed to be operated on the lot comply with the applicable zoning rules, agreements and orders;

(b) that the development on the lot complies with all zoning rules, agreements and orders affecting it; and

(c) that the location of the building or buildings on the lot complies with the applicable zoning rules, agreements and order (Zoning Memorandum).

(3) A request for a Zoning Memorandum shall be accompanied by a Building Location Certificate confirming the location of the building or buildings on a zoning lot.

Conflicting or Overlapping Provisions

7. If two or more provisions of this By-law contain conflicting or overlapping provisions, the most restrictive or highest standard is applicable, except that if the provisions of a zoning district conflict with the provisions of an overlay district as defined in section 57, *Planned Development Overlay Districts,* as they relate to the same parcel of land, the provisions of the overlay zoning district are applicable.

Development Permit Required

8. (1) No person shall undertake or permit the existence of a development that is subject to this By-law without first making application and obtaining a development permit for that purpose except for the following:

(a) subject to subsection 8(2), single level decks 24 inches or less in height above grade located in a side or rear yard of a single family or two-family dwelling;

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[2] NOTE: *The City of Winnipeg Charter* defines "building" as "a well, pipe line, conduit, cut, excavation, fill, transmission line and any structure or erection, and any part of any of those things, and also includes an addition to or extension of any building or any of those things and a chattel that is attached to, or installed in or on, any building or any of those things. *The City of Winnipeg Charter* defines "development" to be "the construction of a building or structure on, over or under land, a change in the use or intensity of use of a building or land, the removal of soil or vegetation from land, the deposit or stockpiling of soil or material on land, or the excavation of land."

zations covered by PIDA are required to appoint nated officer to receive complaints and to set up ures for receiving and handling disclosures of doing. After consultation with the Ombudsman, zations can be exempted from these ments if they are not practical, for example, e of the small size of the organization .

2012 we received a number of inquiries about g exceptions, for the most part, from small

To ensure that we employ a consistent approach when responding to these consultations, we developed guidelines that are publicly available on our website. A questionnaire is also available in order to assist chief executives in the consultative process with our office.

The Ombudsman agreed that an exception to the procedures required in PIDA was reasonable in only a small percentage of the consultations we received.

the chief executive that, as required by PIDA, they would serve as the designated officer and remain responsible for ensuring that information about PIDA and procedures regarding disclosures are widely communicated to the employees and ensuring that a report is prepared each year regarding any disclosures of wrongdoing that have been made within that organization.

idering gross mismanagement under : a case study

2, under PIDA, we investigated and made mendations related to disclosures of wrongdoing rsonal care home.

sclosures made to our office contained tions of conflict of interest, as well as numerous tions of questionable expenditure management. tial review by the Winnipeg Regional Health rity also identified possible wrongdoing related rd governance.

end of our investigation we determined rongdoing had occurred and we made mendations for corrective actions, not only to me but also to the Winnipeg Regional Health rity and to Manitoba Health. Subsequent to our ; Manitoba Health placed the home under a third administrator.

of the "wrongdoing" alleged and confirmed investigation fell into the category of "gross anagement." So what is that?

ramework for assessing gross mismanagement

mismanagement must be mismanagement ; both significant and serious. It occurs when a decision, act, or omission results (or could result) in a serious and significant breach of public interest, or risk to public safety. Gross mismanagement can also involve, but is not limited to, the misuse of public funds or public assets.

We view gross mismanagement as being more than an ordinary breach of a duty or policy. For mismanagement to be considered "gross", the management act, decision, or omission must be a very marked departure from established standards.

Some of the factors that we consider when assessing whether alleged acts, decisions, or omissions constitute gross mismanagement are as follows:

- the seriousness and significance of the deviation from standards, policies or practices;
- the functions and responsibilities of the public servant alleged to be responsible for the gross mismanagement;
- the seriousness and willfulness of the acts, decisions or omissions in question;
- the repetitive or systemic nature of the acts, decision or omissions;
- the impact or potential impact of the mismanagement on the organization's ability to carry out its mandate;
- the impact or potential impact on the organization's employees, clients and the public trust.

In order to determine if an alleged act, decision, or omission may constitute gross mismanagement, we assess where it falls in the spectrum of each of these factors. This is not a checklist (nor an exact science), but rather a manner in which to consider multiple facets and circumstances of the alleged act, decision, or omission in order to assess its level of significance and seriousness. Not all factors are relevant to every case and, of course, each case is considered within its own particular context.

Our framework for assessing gross mismanagement allows us to carry out thorough and structured analyses of disclosures and assists us in making reasonable determinations as to how best to handle these types of disclosures under PIDA. This framework is also used in the analysis of the evidence in ongoing PIDA investigations, allowing us to draw conclusions as to whether particular acts, decisions, or omissions actually constitute "gross mismanagement".

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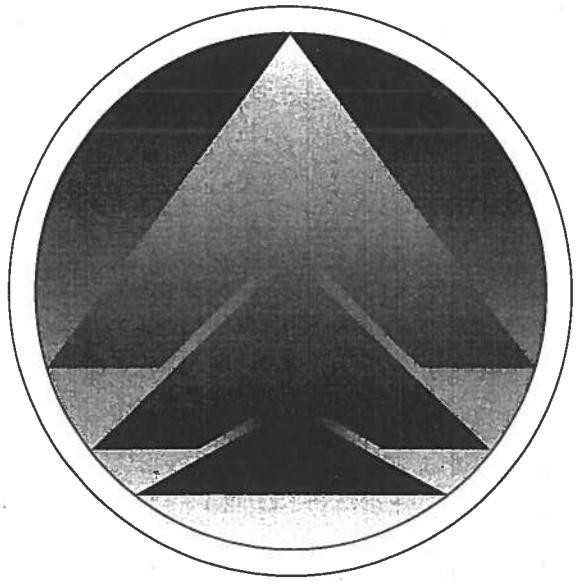
Caring for the Earth

A Strategy for Sustainable Living



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Annotations circa March 6, 2020 Re EPC Brief.

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Action 8.7. Ensure that national policies, development plans, budgets and decisions on investments take full account of their effects on the environment.

Governments could accomplish this by:

- ensuring that environmental quality and natural resources are properly valued in national accounting (see Box 14);
- incorporating sustainability in national and other economic development plans to ensure harmony of economic and environmental objectives;
- adopting a set of sustainability indicators and using them to monitor progress (see Annex 6);
- examining existing monetary and fiscal policies (such as subsidies, taxes, exchange rates), for their impacts on sustainable resource management and environmental protection, correcting those that damage ecosystems or resources;
- evaluating the environmental costs and benefits of public investment and expenditure programmes before these are approved (see Action 8.3).

Le "initiatives" such as DASZ 30/2014

Action 8.8. Use economic policies to achieve sustainability.

Both lower-income and higher-income countries should use economic instruments as a flexible and efficient means of promoting sustainability. The precise approach will depend on national circumstances, but the general arguments in the following paragraphs are widely relevant.

A key step for governments is to adopt and implement the Polluter Pays Principle and its variant, the User Pays Principle. The former requires that market prices reflect the full costs of environmental damage arising from pollution (for example, a mine or chemical factory

cont at pg. 72

Box 12. Full social cost

The full social cost of a product includes the cost of production plus the "environmental" and "user" costs. "Environmental" cost is the cost imposed on society through any damage to ecosystems and other resources as a result of degradation and pollution. "User" cost is the value of future resource benefits foregone because they have been reduced by current use.

Uses that are sustainable can still impose a user cost if they involve harvesting at non-optimal levels. If users of a fishery or a forest alter its ecological structure so that it yields less than before, they reduce both its present and future availability. The value of that extra increment for future generations, foregone by harvesting today, is the user cost of harvesting today. If the resource is harvested unsustainably, the user cost will be even higher, depending on how much the stock available for future users is reduced.

Box 13. Economic instruments to promote conservation and sustainable development

A number of instruments are available to promote conservation and sustainable resource use.

Resource taxes are useful for limiting demand when it is not important to establish a maximum level of aggregate resource use. Since their purpose is to be an incentive for sustainable behaviour, such taxes should become revenue neutral after a period of adjustment. That is, they could replace existing taxes; or the money they raise could be returned to the taxpayer as subsidies for more sustainable technologies and practices (for example, investment in better pollution control equipment).

Resource taxes should be introduced gradually to avoid economic disruption. A pre-announced schedule of increasing the taxes over a period of 10 or more years would give the private sector time to adapt. Matching declines in the rates of other taxes would make resource taxes more acceptable. It is more important that resource taxes are equitable, easy to modify, and steer the economy in directions that are in society's interest, than that they are based on unattainably exact measures of social cost. The aim is to raise taxes on behaviour we want less of, such as depletion and pollution; and reduce them on what we want more of, such as employment of labour.

Taxes should also be differentiated to discriminate between products in the same product-group but with different environmental impacts (see Action 5.4).

Charges. Charges apply the User Pays Principle. They are useful for regulating access to shared resources. Examples are: pollution charges; tourism fees for protected areas; and water charges for irrigation. Pollution charges per unit of pollutant should be set at a higher level than the cost of removing that unit in an environmentally sound way. This would both motivate the industry concerned to prevent pollution and promote the development of anti-pollution technology.

Subsidies. Subsidies can cover costs of achieving sustainability above the amount that resource users can be expected to pay. Also, accelerated depreciation of capital investments and credits for research and development can encourage the adoption of efficient technologies. Subsidies that encourage resource depletion and environmental degradation, for example grants or taxbreaks to drain wetlands or clear forests, should be removed. Such subsidies often contradict the policies of other government sectors, and impose a double cost on society — the subsidy itself plus the cost of the damage it promotes.

Deposit/refund schemes and performance bonds. Under a deposit/refund scheme a deposit is charged on environmentally harmful or undesirable inputs and products, and refunded once the item has been disposed of appropriately. Deposit/refund works well at individual, community and industry levels. It is a useful means of ensuring that the economic cost of environmental protection reflects the true social cost; and it reduces the risk of people avoiding high charges through illegal dumping (provided the deposit is more expensive than the cost of disposing of the material in an approved way). It also provides a way of dealing with toxic wastes, when proof of guilt is difficult or expensive and proof of innocence easy.

A performance bond is a kind of deposit/refund scheme. A deposit is charged to ensure sustainable resource management and refunded on fulfillment of the management objectives. Performance bonds can be used to ensure restoration of sites of extractive and other industries having major local impacts. For example, timber companies could pay reforestation bonds, refundable once the forest had regenerated satisfactorily and reached a specified age.

continued . . .

Box 13 continued

Tradeable permits. Permits to pollute or use a resource up to an allowable level are created by law and allocated by auction or on the basis of existing use. Enterprises are authorized to buy and sell permits. Tradeable permits are better than taxes in cases when it is important to establish a maximum level of aggregate emissions or resource use. Any tradeable permit system must be based on adequate and sustainable standards with respect to ambient environmental quality and the health of renewable resource stocks. Tradeable permits are not effective when the pollutant being controlled accounts for a very small proportion of the cost of the product, since then there is no incentive to participate. Nor are they appropriate for hazardous wastes, which should be dealt with stringently. They are usually considered as a transition technique to avoid economic dislocation until stricter standards can be attained.

Before a tradeable permit system is adopted, who should be allowed to participate in the market, who will gain and who will lose from it should be considered. To avoid controversy over this "polluter-buys" mechanism, money raised in this way is best earmarked for compensation for environmental damage, clean up of pollution, and restoration of degraded ecosystems.

should pay the costs of ensuring that its effluents and emissions do not damage fisheries or create a hazard to health). The result is that a strong incentive for pollution control is created. The User Pays Principle requires that prices reflect the full social cost of use or depletion of a resource (Box 12). This in turn provides an incentive for sustainable use and discourages needless depletion (for example a timber industry should pay the costs of soil loss, irregular water run-off, and loss of biological diversity that it causes, as well as the direct cost of timber extraction). Both principles also imply the removal of subsidies and other economic distortions that encourage resource depletion and environmental degradation. It may be necessary to shelter certain sections of society, especially the very poor or elderly, from the full impact of such costs through carefully targeted support schemes.

Charges, resource taxes, tradeable permits, subsidies and performance bonds can be incentives to industry to meet environmental standards in the most cost-effective way (Box 13). In effect, they use market forces so that both producers and consumers are moved toward environmental objectives. They are progressive in that they stimulate the development of sustainable technology and practice. They promote efficiency, reduce the costs of enforcement and generate revenue.

Pricing policies, standards and subsidies can be used to encourage industry to adopt technologies that use resources more efficiently. High prices for energy, water and raw materials can stimulate resource conservation. Phasing the introduction of standards that exceed the present capacity of the regulated industry, so that it can develop the necessary technology before the effective date of the legislation, is a useful procedure. Subsidies, funded by taxes on high-input technologies, provide a further means of moving industry towards low-input (and non-polluting) processes.

Finally, if governments are to understand the effects of their policies, they will need to adopt procedures for environmental and resource accounting. The standard measures of economic performance and national income are dangerously misleading. They take no account of the depreciation or depletion of natural assets or the social costs of pollution. They count expenditures to counteract environmental damage as income rather than costs. What is needed is to include the costs of environmental damage and resource depletion to derive a statement of true (sustainable) income. A problem lies in converting the values of certain natural assets to monetary terms so that they can be properly compared with values resulting from market transactions. Until there is further progress in solving this problem, sustainability indicators will need to be used (see Box 14 and Annex 6).

Action 8.9. Provide economic incentives for conservation and sustainable use.

Regulatory and economic instruments, such as taxes, charges, subsidies, tradeable permits, etc., help to correct biases caused by the underpricing of life-support systems and natural resources. They can enable industry and other resource users to meet environmental standards in the most cost-effective way, to do better than the standards require, and to add their resources to those of government to protect the environment. Incentives can also:

- harness market forces to encourage producers and consumers to achieve environmental objectives;
- stimulate the development of new environmentally-sound products and pollution-control technologies;
- reduce costs of enforcement;
- generate revenue.

Various economic and regulatory instruments can serve as incentives; none is suitable for all circumstances. Suitability should be assessed case by case. A description of the instruments available, and of the ways they work, is given in Box 13.

The knowledge base

Without a sound basis of scientific knowledge, and public understanding of its implications, policies for sustainability are unlikely to be as well formulated or widely supported as they should be. Action is needed on four broad points: strengthening research capacity; establishing machinery for monitoring the state of the environment and progress towards sustainability; improving the availability of information about the environment to the public; and ensuring that there is an effective transfer of new knowledge about the environment into the educational and training system.

Action 8.10. Strengthen the knowledge base, and make information on environmental matters more accessible.

The information needed to integrate human development and environmental conservation depends on research. National research capacity should be reviewed, and research institutions enabled to:

- identify and define key tasks;
- plan and carry out appropriate investigations;
- create a stimulating environment for research;
- participate in international programmes;
- disseminate and apply research results.

Universities and research institutions in many parts of the world have suffered from diminishing support in recent years, and this trend needs to be reversed, particularly in the environmental sciences. It is especially important to build research capacity in lower-income countries. International scientific cooperation should be strengthened for this reason.

Freedom of information should be guaranteed. Governments should:

- make information about the environment freely available;
- inform people immediately about any environmental accident that might affect them;
- open records of pollutant discharges and other monitored activities for public inspection, giving people the right to take copies for their own use at reasonable times and reasonable cost. This right should be subject to exception only in genuine cases of national interest;
- regard environmental data as a public resource, not as a financial asset.

Box 14. Including environmental cost in measures of economic performance

Sustainability is embodied in the standard definition of income: it is the maximum amount that a person or nation could consume in a given period and still be as well off at the end of the period as at the beginning. Thus income means not "current earnings" but "current earnings plus asset gains minus asset losses". Income, thus defined, equals maximum sustainable consumption. Growth in true income is by definition sustainable, because any consumption that is not sustainable cannot be counted as income.

The standard measures of national economic performance (GNP, gross national product) and of national income (NNP, net national product) do not take account of depreciation of natural assets. Yet reduction of oil and mineral reserves, deforestation, and losses of fertile soil, are likely to raise the cost of production or result in lower yields. They also record expenditures to counteract environmental damage as income, not as expenses. Thus they give an illusion of economic health. This illusion is reinforced if environmental damage increases current human medical and production costs, since these expenditures add to the income of suppliers. Finally, environmental damage can reduce production. In this case conventional accounting deals with it correctly by reducing income only if it reduces current production or increases the cost of current production. Other environmental damage (for example, the costs of ill health or reduced future productivity), is not reflected in GNP.

Natural wealth is drawn on to finance investments in industrial capacity, infrastructure, education, and so on — but the accounting process does not reflect the fact that one kind of asset has been exchanged for another. Hence it does not provide a means of assessing whether, or to what extent, the exchange has been positive or negative. A country may be heading for bankruptcy — depleting its mineral reserves, destroying its forests, polluting its air and waters, and spending the proceeds on current consumption — and still think its economy is performing well because the GNP and NNP figures look so good. This anomaly reinforces the false dichotomy between "economy" and "environment".

A new statement of true national income is needed. It might be:

True (sustainable) income = Net National Product (Gross National Product minus depreciation of human-made capital) plus increases in natural assets minus depreciation of natural assets minus defensive expenditures against environmental damage minus the costs of unmitigated environmental damage.

To enable true income to be calculated, indicators of sustainability need to be defined (Annex 6), and regular assessments made of the sustainability of economic sectors, and of environmental quality. The information could be published in the form of state-of-the-environment reports or sustainability reports and should be organized so that it can be related to the national accounts.

Information expands opportunities. It is an essential commodity, and one of the key ways to empower people, as long as it is communicated in forms that are easily understood by the people concerned.

Agencies managing information can help by:

- working together to develop standards and protocols to ensure the comparability and transferability of information between databases;
- collaborating to help establish and develop local and national databases, to meet the needs of the local users;
- paying particular attention to the need to present decision-makers and their advisers with relevant information in a comprehensible and useable form, with confidence limits clearly stated;
- developing and participating in networks for the free two-way flow of information.

Governments should establish, and continually review and improve, national monitoring systems. Continuous, long-term series of data are essential.
Monitoring should cover:

- key physical, chemical and biological features of the environment, major parameters of human development and the status of natural resources, all important in their own right or as indicators of environmental well-being and the quality of life;
- performance of policies, laws and other institutional arrangements as a prerequisite for their improvement;
- the progress of environmental protection measures, as compared with stated national plans;
- land-use changes, again in relation to stated plans and objectives;
- changes in public behaviour and attitudes, to give a better picture of political support for policy change.

International collaboration is needed to develop standard methods, identify key indicators, and promote the establishment of national monitoring and data centres, particularly in lower-income countries. A global network for environmental monitoring with information transfer points is required so that national data sets can contribute to the global overview, which can in turn provide the context for the interpretation of national results.

At the international level, satellite-based systems are needed for continuous monitoring of the distribution of major ecological formations like forests and deserts, the biomass and productivity of vegetation, and changes in land-use patterns. Although expensive and not always easy to interpret, these systems are the cheapest way of obtaining a broad overview of the state of the Earth's ecosystems. The systems should be complemented by well coordinated ground observations and the results should be evaluated by international facilities such as the UNEP Global Environmental Monitoring System (GEMS), the IUCN/UNEP/WWF World Conservation Monitoring Centre (WCMC) and the Environmental Early Warning Mechanism proposed by UNEP.

A programme of national environmental auditing should be established, with governments reporting on a regular basis on the state of their environments. This reporting should include assessment of performance in achieving targets for improved environmental quality and standard of living. It should be subject to independent scrutiny.