SUPREME COURT OF CANADA

CITATION: Castonguay Blasting Ltd. *v.* Ontario (Environment), 2013 SCC 52.

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BETWEEN:

Castonguay Blasting Ltd.
Appellant
and
Her Majesty The Queen in Right of the Province of Ontario as represented by the Minister of the Environment
Respondent
- and -
Canadian Environmental Law Association and Lake Ontario Waterkeeper
Interveners

CORAM: McLachlin C.J. and LeBel, Abella, Rothstein, Cromwell, Karakatsanis and Wagner JJ.

REASONS FOR JUDGMENT: (paras. 1 to 41)
Abella J. (McLachlin C.J. and LeBel, Rothstein, Cromwell, Karakatsanis and Wagner JJ. concurring)

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Castonguay Blasting Ltd. *Appellant*

v.

Her Majesty The Queen in Right of the Province of Ontario as represented by the Minister of the Environment *Respondent*

and

Canadian Environmental Law Association and Lake Ontario Waterkeeper *Interveners*

Indexed as: Castonguay Blasting Ltd. *v.* Ontario (Environment)

2013 SCC 52

File No.: 34816.

2013: May 17; 2013: October 17.

Present: McLachlin C.J. and LeBel, Abella, Rothstein, Cromwell, Karakatsanis and Wagner JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Environmental law — Offences — Obligation to report to Ministry of Environment discharge of contaminant into natural environment — Subcontractor's blasting operations propelling rock debris into air, damaging home and car — Subcontractor failing to report to Ministry of Environment discharge of contaminant — Whether reporting requirement triggered in this case — Environmental Protection Act, R.S.O. 1990, c. E.19, s. 15(1).

The appellant C was conducting blasting operations for a highway-widening project when the operation went awry and rock debris known as "fly-rock" was propelled into the air by an explosion. The fly-rock shot approximately 90 metres in the air and damaged a home and a car. A significant amount of rock also landed in the yard. C did not report the incident to the Ministry of the Environment ("Ministry") and was subsequently charged with failing to report to the Ministry the discharge of a contaminant into the natural environment contrary to s. 15(1) of the *Environmental Protection Act* ("*EPA*"). C was acquitted by the Ontario Court of Justice. The Ontario Superior Court of Justice set aside the acquittal and entered a conviction. A majority in the Court of Appeal dismissed C's appeal.

Held: The appeal should be dismissed.

Ontario's *Environmental Protection Act* requires that the Ministry of the Environment be immediately notified when a contaminant is discharged into the environment. There are two pre-conditions to this reporting requirement — the discharge must have been out of the normal course of events and it must have had —

or was likely to have — an adverse environmental impact. The purpose of the requirement is to let the Ministry know about potential environmental damage so that any consequential remedial steps can be taken in a timely way.

The *EPA* is Ontario's principal environmental protection statute. Its status as remedial legislation entitles it to a generous interpretation. Environmental protection is a complex subject matter — the environment itself and the wide range of activities which might harm it are not easily conducive to precise codification. As a result, environmental legislation embraces an expansive approach to ensure that it can adequately respond to a variety of environmentally harmful scenarios, including ones which might not have been foreseen by the drafters of the legislation. Because the legislature is pursuing the objective of environmental protection, its intended reach is wide and deep.

The overall purpose of the *EPA* is set out in s. 3: "The purpose of this Act is to provide for the protection and conservation of the natural environment". The *EPA* also protects those who *use* the natural environment by protecting human health, plant and animal life, and property. The *EPA* seeks to achieve its goal of protecting the natural environment and those who use it through a series of regulations, prohibitions and reporting requirements. It also provides for a wide range of inspection, enforcement, preventative and remedial powers.

One of the means by which the *EPA* promotes its protective and preventative purposes is through the prohibition in s. 14(1) against discharging a

contaminant into the natural environment where it is likely to have an "adverse effect". This purpose is reinforced by the related requirement in s. 15(1) that any such discharge which is out of the normal course of events be reported to the Ministry of the Environment.

When a contaminant is discharged, the discharger may not know the full extent of the damage caused or likely to be caused. The purpose of the reporting requirement in s. 15(1) is to ensure that it is the Ministry, and not the discharger, who decides what, if any, further steps are required. Moreover, many potential harms may be difficult to detect without the expertise and resources of the Ministry. As a result, the statute places both the obligation to investigate and the decision about what further steps are necessary with the Ministry and not the discharger. Notification provides the Ministry with the opportunity to conduct an inspection as quickly as possible and to obtain information in order to take any necessary remedial action and to fulfill its statutory mandate. This enables the Ministry to respond in a timely way to the discharge of a contaminant into the natural environment and to be involved in determining what, if any, preventative or remedial measures are appropriate.

"Adverse effect" is defined in s. 1(1) of the *EPA*. It has eight definitional components. These eight branches of the definition reflect a statutory recognition that protecting the natural environment requires, among other strategies, maximizing the circumstances in which the Ministry of the Environment may investigate and

remedy environmental harms. Each of the eight branches provides an independent trigger for the duty to report.

Section 15(1) of the *EPA* was clearly engaged in the circumstances of this case and C was required to report the discharge of fly-rock forthwith to the Ministry of the Environment. C "discharged" fly-rock into the "natural environment", and there is no doubt that fly-rock meets the definition of "contaminant". The discharge was "out of the normal course of events", and it caused an "adverse effect" under the definition of that term in s. 1(1), namely, it caused injury or damage to property and loss of enjoyment of the normal use of property. The adverse effects were not trivial. The force of the blast, and the rocks it produced, were so powerful they caused extensive and significant property damage, penetrating the roof of a residence and landing in the kitchen. A vehicle was also seriously damaged. The fly-rock could easily have seriously injured or killed someone. Accordingly, C was required to report the discharge of fly-rock forthwith to the Ministry of Environment under s. 15(1) of the *EPA*.

Cases Cited

Referred to: *Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031; *R. v. Dow Chemical Canada Inc.* (2000), 47 O.R. (3d) 577; *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241.

Statutes and Regulations Cited

Environmental Protection Act, R.S.O. 1980, c. 141, s. 13(1).

Environmental Protection Act, R.S.O. 1990, c. E-19, ss. 1(1) "adverse effect", "contaminant", "discharge", "natural environment", 3, 6, 7, 8, 14, 15(1), 17, 18, 91.1, 92, 93, 94, 97, 132, 156, 157, 157.1.

Legislation Act, 2006, S.O. 2006, c. 21, Sch. F, s. 64.

Occupational Health and Safety Act, R.S.O. 1990, c. O.1, s. 53.

Authors Cited

McIntyre, Owen, and Thomas Mosedale. "The Precautionary Principle as a Norm of Customary International Law" (1997), 9 *J. Envtl. L.* 221.

APPEAL from a judgment of the Ontario Court of Appeal (MacPherson, Simmons and Blair JJ.A.), 2012 ONCA 165, 109 O.R. (3d) 401, 289 O.A.C. 146, 65 C.E.L.R. (3d) 1, 10 C.L.R. (4th) 165, [2012] O.J. No. 1161 (QL), 2012 CarswellOnt 2199, affirming a decision of Ray J., 2011 ONSC 767, 57 C.E.L.R. (3d) 142, 226 C.R.R. (2d) 180, [2011] O.J. No. 364 (QL), 2011 CarswellOnt 467, which set aside a decision of Hunter J., 53 C.E.L.R. (3d) 140, [2010] O.J. No. 5713 (QL), 2010 CarswellOnt 6245. Appeal dismissed.

J. Bruce McMeekin, Andrea Farkouh and Marie-France Major, for the appellant.

Sara Blake, Paul McCulloch and *Danielle Meuleman*, for the respondent.

Joseph F. Castrilli and *Ramani Nadarajah*, for the interveners.

The judgment of the Court was delivered by

ABELLA J. —

[1] Ontario's *Environmental Protection Act*, R.S.O. 1990, c. E. 19 ("*EPA*"), requires that the Ministry of the Environment be immediately notified when a contaminant is discharged into the environment. There are two pre-conditions to this reporting requirement — the discharge must have been out of the normal course of events and it must have had — or was likely to have — an adverse environmental impact. The purpose of the requirement is to let the Ministry know about potential environmental damage so that any consequential remedial steps can be taken in a timely way.

[2] The interpretive exercise engaged in this appeal is to determine when the reporting requirement is triggered. In my view, there is clarity both of legislative purpose and language: the Ministry of the Environment must be notified when there has been a discharge of a contaminant out of the normal course of events without waiting for proof that the natural environment has, in fact, been impaired. In other words: when in doubt, report.

Background

[3] In 2007, Castonguay Blasting Ltd. was hired as a subcontractor to conduct blasting operations for a highway-widening project commissioned by the Ontario Ministry of Transportation.

[4] On November 26, 2007, Castonguay was blasting rock when the operation went awry and rock debris known as "fly-rock" was propelled into the air by an explosion. Had the blast been carried out according to plan, the force of the blast would have been contained and concentrated inwards, reducing the risk of shattered rock becoming airborne. In this case, however, the fly-rock shot approximately 90 metres in the air and crashed through the roof of a home, damaging the kitchen ceiling, the siding and the eavestroughs. Some of the fly-rock hit a car, breaking the windshield and damaging the hood. There was also a significant amount of rock in the yard.

[5] Castonguay immediately reported the incident to the contract administrator, who in turn reported it to the Ministry of Transportation (which had commissioned the project) and the provincial Ministry of Labour in accordance with the requirements in s. 53 of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1. Further blasting on the project stopped until the site was inspected and remedial steps were agreed to with the Ministry of Labour.

[6] Castonguay did not report the incident to the Ministry of the Environment. That Ministry was not notified until May 2008, when it was told about the incident by the Ministry of Transportation.

[7] In September 2009, Castonguay was charged with failing to report the "discharge of a contaminant into the natural environment" to the Ministry of the Environment contrary to s. 15(1) of the *EPA*. Castonguay was acquitted by the Ontario Court of Justice. The Ontario Superior Court of Justice set aside the acquittal and entered a conviction (2011 ONSC 767, 57 C.E.L.R. (3d) 142). Castonguay appealed on the basis that s. 15(1) was not triggered in these circumstances.

[8] In the Court of Appeal (2012 ONCA 165, 109 O.R. (3d) 401), MacPherson J.A., writing for the majority, concluded that the plain meaning of the relevant provisions of the *EPA*, the relevant case law, and a proper understanding of the broad purposes of the *EPA* confirmed that the discharge of the fly-rock in this case was covered by s. 15(1) of the *EPA* and that Castonguay was therefore required to report the incident to the Ministry of the Environment. In dissent, Blair J.A. found no breach of s. 15(1) in these circumstances. I agree with the majority that Castonguay was required to report the incident.

Analysis

[9] The *EPA* is Ontario's principal environmental protection statute. Its status as remedial legislation entitles it to a generous interpretation (*Legislation Act, 2006*, S.O. 2006, c. 21, Sch. F, s. 64; *Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031, at para. 84). Moreover, as this Court recognized in *Canadian Pacific*, environmental protection is a complex subject matter — the environment itself and the wide range of activities which might harm it are not easily conducive to precise

codification (para. 43). As a result, environmental legislation embraces an expansive approach to ensure that it can adequately respond "to a wide variety of environmentally harmful scenarios, including ones which might not have been foreseen by the drafters of the legislation" (para. 43). Because the legislature is pursuing the objective of environmental protection, its intended reach is wide and deep (para. 84).

[10] The overall purpose of the *EPA* is set out in s. 3: "The purpose of this Act is to provide for the protection and conservation of the natural environment". "[N]atural environment" is defined in s. 1(1) as the "air, land and water, or any combination or part thereof, of the Province of Ontario". The *EPA* also protects those who *use* the natural environment by protecting human health, plant and animal life, and property. This purpose was aptly summarized by MacPherson J.A. in *R. v. Dow Chemical Canada Inc.* (2000), 47 O.R. (3d) 577 (C.A.), as being "to protect the natural environment and the people who live, work and play in it" (para. 49).

[11] The *EPA* seeks to achieve its goal of protecting the natural environment and those who use it through a series of regulations, prohibitions and reporting requirements. It also provides for a wide range of inspection, enforcement, preventative and remedial powers, such as the authority to issue control orders (s. 7), stop orders (s. 8), orders requiring the repair of damage (s. 17), preventative measure orders requiring steps to ensure that a discharge does not occur or recur (s. 18), or contravention orders requiring a discharger to take compliance steps (s. 157).

[12] One of the means by which the *EPA* promotes its protective and preventative purposes is through the prohibition in s. 14(1) against discharging a contaminant into the natural environment where it is likely to have an adverse effect, and the related requirement in s. 15(1) that any such discharge which is out of the normal course of events be reported to the Ministry of the Environment.

[13] The issue in this appeal is the proper interpretation of the reporting requirement in s. 15(1). This provision states:

> **15.** — (1) Every person who discharges a contaminant or causes or permits the discharge of a contaminant into the natural environment shall forthwith notify the Ministry if the discharge is out of the normal course of events, the discharge causes or is likely to cause an adverse effect and the person is not otherwise required to notify the Ministry under section 92.

[14] The terms "discharge", "contaminant", "natural environment" and "adverse effect" are defined in s. 1(1) of the *EPA*, as follows:

> "**natural environment**" means the air, land and water, or any combination or part thereof, of the Province of Ontario;
>
> "**discharge**", when used as a verb, includes add, deposit, leak or emit and, when used as a noun, includes addition, deposit, emission or leak;
>
> "**contaminant**" means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect;
>
> "**adverse effect**" means one or more of,
>
> (a) impairment of the quality of the natural environment for any use that can be made of it,

(b) injury or damage to property or to plant or animal life,
(c) harm or material discomfort to any person,
(d) an adverse effect on the health of any person,
(e) impairment of the safety of any person,
(f) rendering any property or plant or animal life unfit for human use,
(g) loss of enjoyment of normal use of property, and
(h) interference with the normal conduct of business;

[15] Castonguay conceded that the discharge of fly-rock caused property damage, but argued that injury or damage to private property alone is insufficient to engage the reporting requirement. Since the discharge did not impair the natural environment — the air, land or water — Castonguay was not required to report the incident to the Ministry.

[16] Castonguay's argument is, in essence, an argument that while the definition of "adverse effect" has eight components — (a) to (h) — paragraph (a) is an umbrella clause. In other words, there *must* be, in the language of (a), "impairment of the quality of the natural environment for any use that can be made of it" before any of the other seven elements come into play. They are not stand-alone elements and only constitute an "adverse effect" if they are accompanied by the impairment to the quality of the natural environment set out in paragraph (a). An adverse effect as defined in paragraph (b) through (h) *without* any accompanying impairment to the quality of the natural environment under paragraph (a) will not be sufficient to trigger s. 15(1).

[17] The Minister of the Environment, on the other hand, argued that if the discharge caused or was likely to cause *one or more of* the adverse effects listed in

paragraphs (a) to (h) of the statutory definition, the obligation to report the discharge of a contaminant under s. 15(1) materializes. Each of the eight listed components is a separate impact that can trigger the requirement to report.

[18] The Minister's position is demonstrably supported by the language of s. 15(1) and the relevant definitions in the *EPA*. The purpose of the reporting requirement in s. 15(1) is to ensure that it is the Ministry of the Environment, and not the discharger, who decides what, if any, further steps are required. When a contaminant is discharged, the discharger may not know the full extent of the damage caused or, in the words of s. 15(1), likely to be caused. Moreover, many potential harms such as harm to human health, or injury to plants and animals, and even impairment of the natural environment, may be difficult to detect without the expertise and resources of the Ministry. As a result, the statute places both the obligation to investigate and the decision about what further steps are necessary with the Ministry and not the discharger.

[19] Notification provides the Ministry with the opportunity to conduct an inspection as quickly as possible and to obtain information in order to take any necessary remedial action and to fulfil its statutory mandate. This enables the Ministry to respond in a timely way to the discharge of a contaminant into the natural environment and to be involved in determining what, if any, preventative or remedial measures are appropriate.

[20] As the interveners Canadian Environmental Law Association and Lake Ontario Waterkeeper pointed out in their joint factum, s. 15(1) is also consistent with the precautionary principle. This emerging international law principle recognizes that since there are inherent limits in being able to determine and predict environmental impacts with scientific certainty, environmental policies must anticipate and prevent environmental degradation (O. McIntyre and T. Mosedale, "The Precautionary Principle as a Norm of Customary International Law" (1997), 9 *J. Envtl. L.* 221, at pp. 221-22; *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241, at paras. 30-32). Section 15(1) gives effect to the concerns underlying the precautionary principle by ensuring that the Ministry of the Environment is notified and has the ability to respond once there has been a discharge of a contaminant out of the normal course of events, without waiting for proof that the natural environment has, in fact, been impaired.

[21] Parsing the language of s. 15(1) illuminates its clear preventative and protective purposes. First, a person must discharge a *contaminant*. Second, the contaminant must be discharged *into the natural environment*. Third, the discharge must be *out of the normal course of events*. Fourth, the discharge must be one that *causes or is likely to cause an adverse effect*. Finally, the person must not be otherwise required to notify the Ministry under s. 92, which refers to the spill of pollutants from a structure, vehicle or container and is therefore not applicable to the circumstances of this case.

[22] Taking each phrase in turn, the full scope of the reporting requirement is revealed. Section 15(1) applies to the discharge of "contaminant[s]" as defined by the *EPA*. The definition of contaminant in s. 1(1) of the *EPA* includes "any solid liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect". The reference to human activities in the definition of contaminant, when read in the context of s. 15 and the *EPA* as a whole, recognizes that the *EPA* applies only to those activities which engage the natural environment – the air, land or water in the province. This ensures that the definition of contaminant and s. 15 of the *EPA* maintain a nexus to the statutory objective of environmental protection.

[23] The discharge must be *into the natural environment*, defined as the air, land and water of Ontario. Section 15(1) does not impose any restrictions on the length of time the contaminant remains in the natural environment, nor does it require that the contaminant become part of the natural environment.

[24] Only discharges that are *out of the normal course of events* are required to be reported to the Ministry. This restricts the application of s. 15(1) by excluding many everyday, routine activities. Although driving a car, for example, discharges fumes into the natural environment, the discharge is not out of the normal course of events and no report to the Ministry is required.

[25] The key, in my view, to understanding s. 15(1) is that the discharge of the contaminant caused or was likely to cause an "adverse effect". As previously noted, adverse effect is defined as:

> "**adverse effect**" *means one or more of*,
> (a) impairment of the quality of the natural environment for any use that can be made of it,
> (b) injury or damage to property or to plant or animal life,
> (c) harm or material discomfort to any person,
> (d) an adverse effect on the health of any person,
> (e) impairment of the safety of any person,
> (f) rendering any property or plant or animal life unfit for human use,
> (g) loss of enjoyment of normal use of property, and
> (h) interference with the normal conduct of business;

[26] There is already a jurisprudential trail from this Court and the Ontario Court of Appeal to guide our interpretation. In *Canadian Pacific*, this Court considered an earlier version of the *EPA*, which did not specifically mention the term "adverse effect". The appeal focused on what was then s. 13(1) of the *EPA*, R.S.O. 1980, c. 141, which stated:

> **13.** — (1) Notwithstanding any other provision of this Act or the regulations no person shall deposit, add, emit or discharge a contaminant or cause or permit, the deposit, addition, emission or discharge of a contaminant into the natural environment that,
>
> (*a*) causes or is likely to cause impairment of the quality of the natural environment for any use that can be made of it;
>
> (*b*)causes or is likely to cause injury or damage to property or to plant or animal life;
>
> (*c*)causes or is likely to cause harm or material discomfort to any person;

> (*d*)adversely affects or is likely to adversely affect the health of any person;
>
> (*e*)impairs or is likely to impair the safety of any person;
>
> (*f*)renders or is likely to render any property or plant or animal life unfit for use by man;
>
> (*g*)causes or is likely to cause loss of enjoyment of normal use of property; or
>
> (*h*)interferes or is likely to interfere with the normal conduct of business.

[27] The first part of s. 13(1) is now s. 14(1).[1] Paragraphs (a) to (h) now form part of the definition of "adverse effect" found in s. 1(1) of the *EPA*.

[28] The issue in *Canadian Pacific* was whether the words "for any use that can be made of it" in para. (*a*) of s. 13(1) were unconstitutionally vague or overbroad. Although the Court's reasoning was focused on the constitutional issues raised in that case, the Court made several statements about the interpretation of s. 13(1)(*a*) of the *EPA* which are helpful in resolving the interpretive issue in this appeal. Notably, in finding that the provision was neither vague nor overbroad, Gonthier J., writing for the majority, held that the application of s. 13(1)(*a*) was confined to the discharge of

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[1] Section 14(1) of the *EPA* states:

> **14.** (1) Subject to subsection (2) but despite any other provision of this Act or the regulations, a person shall not discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment, if the discharge causes or may cause an adverse effect.

contaminants that cause, or are likely to cause, *non-trivial* impairment of the quality of the natural environment for any use that could be made of it.

[29] Lamer C.J., in concurring reasons which were not endorsed by the majority, was of the view that para. (*a*) should be interpreted as an umbrella clause so that harm to the quality of the natural environment was independently required before the rest of the provisions in (*b*) to (*h*) of s. 13(1) were engaged.

[30] Castonguay advocates that we adopt the minority approach of Lamer C.J. in *Canadian Pacific*. This, with respect, is an argument that cannot survive the amended language in the *EPA* after *Canadian Pacific* was decided. The most significant change to the *EPA* was the creation of a separate statutory definition of "adverse effect". The definition included the words "*means one or more of*" the eight components set out in (a) through (h). None of these components is said to be an overriding requirement, and each is stated to be an adverse effect. As a result, all eight branches of "adverse effect" provide independent triggers for liability. Castonguay's interpretation reads out these crucial legislative directives that *each* effect is deemed to be adverse.

[31] To interpret "adverse effect" restrictively not only reads out the plain and obvious meaning of the definition, it narrows the scope of the reporting requirement, thereby restricting its remedial capacity and the Ministry's ability to fulfill its statutory mandate.

[32] *Canadian Pacific* was interpreted and applied by the Ontario Court of Appeal in *Dow Chemical.* In that case, Dow Chemical, like Castonguay, argued that, in order to establish an adverse effect under the *EPA,* "impairment of the quality of the natural environment" under para. (a) *must* be made out *in addition* to any of the other effects set out in (b) through (h). MacPherson J.A. rejected this approach, concluding instead that:

> [Paragraph] (*a*) is just one of eight defined adverse effects. It relates to the natural environment, which is defined in the Act as "the air, land and water" (s. 1(1)). The other seven [paragraphs] set out other forms of adverse effect. Some relate to plants and animals [para.] (*b*) and (*f*)); some relate to people [para.] (*c*), (*d*) and (*f*)) and their property [para.] (*g*)) and business [para.] (*h*)) [para. 29]

[33] Applying Gonthier J.'s language in *Canadian Pacific*, MacPherson J.A. accepted that each of the eight enumerated adverse effects must be more than trivial but that any of them was sufficient to satisfy the definition (para. 30).

[34] The effects set out in paragraphs (a) to (h) are designed to capture a broad range of impacts. Some are limited to impacts on animals, people or property and do not require any impairment of the air, land or water in Ontario. Since the *EPA* protects the natural environment *and those who use it*, this is consistent with the broader protections the *EPA* was intended to provide. Paragraphs (a) through (h) also reflect a statutory recognition that protecting the natural environment requires, among other strategies, maximizing the circumstances in which the Ministry of the

Environment may investigate and remedy environmental harms, including those identified in paragraphs (a) to (h).

[35] Moreover, it is important to note that the words "adverse effect" appear in many provisions of the *EPA*. Sections 6, 14, 18, 91.1, 93, 94, 97, 132, 156, 157.1, and 188.1 deal with a range of environmental concerns such as when an order to take preventative measures may be issued or the development of spill prevention and contingency plans. Restricting the definitional scope of "adverse effect" would therefore also limit the scope of the *EPA*'s protective and preventative capacities and, consequently, the Ministry's ability to respond to the broad purposes of the statute.

[36] In summary, the requirement to report "forthwith" in s. 15(1) of the *EPA* is engaged where the following elements are established:

i. a "contaminant" is discharged;

ii. the contaminant is discharged into the natural environment (the air, land and water or any combination or part thereof, of the Province of Ontario);

iii. the discharge is out of the normal course of events;

iv. the discharge causes, *or is likely to cause*, an adverse effect, namely one or more of the effects listed in paragraphs (a) to (h) of the definition;

v. the adverse effect or effects are not trivial or minimal; and

vi. the person is not otherwise required to notify the Ministry under s. 92, which addresses the spill of pollutants.

[37] Applying these elements to this case, s. 15(1) was clearly engaged. Castonguay "discharged" fly-rock, large pieces of rock created by the force of a blast, into the "natural environment". There is also no doubt that fly-rock meets the definition of "contaminant". The discharge in this case was "out of the normal course of events" — it was an accidental consequence of Castonguay's blasting operation. Had the blast been conducted routinely, the fly-rock would not have been thrust into the air.

[38] Finally, the discharge of fly-rock caused an "adverse effect" under paras. (b) and (g) of the definition, namely, it caused injury or damage to property and loss of enjoyment of the normal use of the property. Because the reporting requirement is also engaged when the discharge is "likely to cause an adverse effect", para. (e) is also applicable since the potential existed for "impairment of the safety of any person".

[39] The adverse effects were not trivial. The force of the blast, and the rocks it produced, were so powerful they caused extensive and significant property damage, penetrating the roof of a residence and landing in the kitchen. A vehicle was also seriously damaged. The fly-rock could easily have seriously injured or killed someone.

[40] Accordingly, s. 15(1) of the *EPA* applied and Castonguay was required to report the discharge of fly-rock forthwith to the Ministry of the Environment.

[41] I would therefore dismiss the appeal. In accordance with the Minister of the Environment's request, there will be no order as to costs.

Appeal dismissed.

Solicitors for the appellant: Miller Thomson, Markham; Supreme Advocacy, Ottawa.

Solicitor for the respondent: Attorney General of Ontario, Toronto.

Solicitor for the interveners: Canadian Environmental Law Association, Toronto.