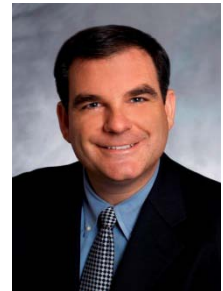


Castonguay Convicted Again: Ontario Courts Continue To Recognize Section 15(1) EPA “Duty to Report”

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The Ontario Court of Justice has added a couple of expensive postscripts to a landmark legal case that confirmed the incident reporting requirements under section 15(1) of Ontario’s Environmental Protection Act. Castonguay Blasting Ltd. was found guilty (yet again) of failing to report the discharge of a “contaminant” (fly rock from its blasting operations) that caused or is likely to cause an “adverse effect” (damage to a movie theatre, parked cars and a garage) in three separate incidents.

In a case that went to the Supreme Court of Canada,¹ Castonguay Blasting Ltd. (Castonguay) was charged by the Ministry of the Environment (MOE) for failing to report the discharge of fly rock in a blasting accident. The fly rock severely damaged a private residence and a parked car during road work near the town of Marmora in November 2007 (see “[Castonguay decision: Appeal Court clarifies and broadens Ontario’s spill reporting requirements](#)”). Castonguay was convicted by the Ontario Court of Appeal and fined \$25,000.

Supreme Court Says “When in Doubt, Report”

In its [decision](#) released on October 17, 2013, the Supreme Court ultimately dismissed Castonguay’s final appeal of the conviction. The Supreme Court found that

- ♦ fly rock meets the definition of “contaminant” under the *Environmental Protection Act* (EPA)
- ♦ the discharge was “out of the normal course of events” and caused an “adverse effect” (namely, injury or damage to property), and
- ♦ the adverse effects were not trivial.

The Supreme Court dismissed Castonguay’s argument that a discharge must cause more than minimal harm to the “natural environment” and that damage to private property alone was not sufficient to trigger the reporting requirement. According to the Supreme Court

[T]here 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.

¹ *Castonguay Blasting Ltd. v. Ontario (Environment)*, [2013 SCC 52](#).

Castonguay Convicted in Two New Cases

The courts have found Castonguay guilty once again for further discharges of fly rock causing adverse effects

- ◆ On January 10, 2014, the Sudbury Court of Justice fined Castonguay \$175,000 (plus a victim fine surcharge of \$43,750) for another two blasting incidents that occurred while a Castonguay crew was breaking up oversized rocks during site development for a retail store in Sudbury. In September 2008, fly rock damaged the nearby SilverCity movie theatre. In October 2008, more flying debris scratched, dented or broke the windows of several cars in an adjoining parking lot. Castonguay pled guilty to two counts of discharging a contaminant beyond the limits of a work site causing adverse effects and failing to report the first event to the MOE for almost seven hours after it occurred
- ◆ On March 31, 2014, the [Parry Sound Court fined Castonguay](#) \$75,000 (plus a victim fine surcharge of \$18,750) for failing to notify the MOE about the discharge of fly rock that caused damage to a garage in Magnetawan in May 2010. Castonguay had been hired to do blasting at a nearby quarry located on Old Hwy Road West.

The 2013 Supreme Court of Canada Castonguay case sparked considerable debate in the legal community. Some commenters suggested that the MOE had overstepped its traditional environmental mandate. They questioned whether a hunter must report the “discharge of a contaminant” (i.e., the bullet) that kills a nearby deer, or a player report the “discharge” of a baseball that breaks a window.

These latest convictions show, however, that the original charge was not an aberration and that the Courts will continue to require the reporting of contaminant discharges that occur out of the normal course of events and cause more than a trivial adverse effect.

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