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Accidental discharges: the duty to notify

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On October 17th, 2013, the Supreme Court of Canada released its long-awaited decision in *Castonguay Blasting*, commonly referred to as the fly-rock case. To summarize, Castonguay was doing some blasting work and rock was unexpectedly projected outside the work site, landing on someone's property and damaging a home and a vehicle. No one was hurt and there was no environmental damage. The contractor notified the site manager who notified the provincial ministry of transport and the ministry of labour. A month later, the ministry of transport mentioned the incident to the ministry of the environment which then charged Castonguay with the discharge of a contaminant in violation of the Ontario *Environmental Protection Act* (**EPA**) and for the offense of failing to report the discharge. At issue before the courts was whether a discharge that causes damage to property but not the environment must be reported. The Ontario Court of Justice acquitted Castonguay. The Supreme Court of Ontario entered a conviction and the conviction was upheld by the Ontario Court of Appeal and the Supreme Court of Canada. This article deals with whether this judgment has an impact in Quebec.

In order to trigger a duty to report under the EPA, there must be a discharge of a contaminant into the environment out of the ordinary course of events. Under the EPA, a 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", and

"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 ("conséquence préjudiciable")

In Quebec, under the *Environment Quality Act* (**EQA**), whoever is responsible for the accidental presence of a contaminant in the environment must report the accident to the environment ministry without delay. A contaminant is "a solid, liquid or gaseous matter, a microorganism, a sound, a vibration, rays, heat, an odour, a radiation or a combination of any of them likely to alter the quality of the environment in any way."

We believe that *Castonguay* brings Ontario closer to the Quebec reporting standard. In both provinces, the environment ministry must be notified when there is a discharge of a contaminant into the environment out of the ordinary course.

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