

LEGAL IMPLICATIONS OF RADON CONTAMINATION IN PORT HOPE MARCH 3, 1976
GIVEN TO A PUBLIC MEETING AT OISE, TORONTO

My name is Heather Mitchell and I am from the Canadian Environmental Law Association. CELA was founded in 1970 by a group of lawyers and scientists who were concerned about the environment and environmental protection. The Association does basically three things.

1. It does a great deal of public education, making speeches, preparing educational material for high schools, for universities. It works with other lawyers who are suddenly faced with an environmental case.
2. CELA undertakes major law reform projects which involve a great deal of legal research and at the end, usually a public education campaign about the way the law should be.
3. CELA undertakes litigation for people with environmental problems who are unable to afford a member of the private bar.

As a representative from an environmental law organization, I have been asked today to talk about the legal implications of the pollution in some areas of Port Hope by radon gas.

Firstly let me say that all the fact situations in the 130 or so cases where radon gas has been found are different and therefore my remarks today are of a general nature as I have certainly not interviewed all 130 persons who might be involved. The facts on which I am basing these remarks are these: In the process of creating fuel for nuclear reactors, radioactive wastes were created and were dumped in the Port Hope area. Some of the wastes have been trucked to various sites to be included in land fill on which houses and other buildings have been built. Some people have suffered health problems as a result of living in houses with high radon counts, others have suffered property damage and others have been inconvenienced by having to send their children to hastily improvised alternative educational facilities when St. Mary's School was closed.

Whenever damage is suffered by one person which has been caused by the actions or the failure to act of another person the damaged person has the right to sue and to recover damages, usually money.

So who in Port Hope might be able to sue?

There are four possible groups:

1. People who have already suffered property damage, for example, people who have been told that they must move out of their houses.
2. People who anticipate property damage, for example, people with high radon levels in their houses, although less than 50 picocuries. This fact might decrease the value of the property or

it might mean the owner could not resell as no person might be willing to buy.

3. People with health problems caused by living or working in a contaminated area, whether they own houses or not.
4. Problems due to general contamination - Children not able to keep up their school work in temporary school accommodation. Losses if, for example, beaches are closed, inability to get mortgages on new houses, etc.

Probably there are lots of possible problems, for some of which however, it would be impossible to sue.

Assuming a member of one of the four groups I have just mentioned sues, who is he or she going to sue?

The most likely defendants in such an action would be:

1. Eldorado Nuclear, which is claimed to be the source of the problem, although Eldorado has said it is not responsible.
2. The Atomic Energy Control Board for not regulating what was happening in Port Hope adequately enough to prevent radon contamination.
3. The Ontario Ministry of Health for not insuring that health of the people in Port Hope was safeguarded.
4. The builders of new homes who sold houses built on radioactive land fill without warning purchasers.
5. The contractors who dumped the land fill in the first place then sold the property without warning purchasers.

Please understand that I am not saying that the people above are responsible for the damage, because we certainly do not have enough facts to say that. I am simply pointing out that these are the most likely to be sued.

In suing anybody or any company, one has to explain why the person sued is supposed to be responsible for the damage. There are several possible reasons which could be put forward in the Port Hope situation.

1. Generally speaking, the law says that if you bring a dangerous substance onto your property and it escapes, then you are liable for the damage caused by the substance once it has escaped. This would apply to radioactive material, just as it would to escaping tigers.

2. The law also says that if one person owes a duty to another person and he or she does not fulfill the duty and the other person is injured as a result, then the person who owed the duty is liable for the damage which is caused. In Port Hope, it might be considered a breach of duty for the Ministry of Health to have allowed health problems to arise by reason of radon contamination; it might be considered a breach of duty for the AECB to have failed to regulate the industries so as to provide safety to the public; it might have been a breach of duty for builders not to warn purchasers that they were buying a house built on radioactive land fill.

Again, all of this depends on the facts in each situation and more information is needed.

In any Court action, the person suing is responsible for proving everything that he said is the case. In this situation, as you can see, it might be difficult to prove that it was a breach of duty for Eldorado to have allowed radioactive material to be taken away as land fill. Indeed it might be difficult to prove that Eldorado did allow the material to be taken away at all. It might be difficult to prove that the health problems of some Port Hope people were caused by the radioactive material -- certainly, anyone who was sued would argue that the damage was not caused by radioactive material but that it was caused by other things -- for example, smoking might cause lung cancer just as exposure to radiation would cause lung cancer.

It might be difficult to find the health problems today which have been caused by radioactive material, but which may not show up for ten years or more. It seems that almost no chromosome scans have been done in Port Hope and we do not have this information.

The last, but probably the most important thing I am going to say today is the problem of when to sue.

If one wants to sue the government, one is supposed to give notice within seven days after the event causing the damage occurred. Then one is supposed to sue within six months. Assuming that the event causing the damage was first brought to the attention of Port Hope residents last October, (which is the month during which some people were told they had to move out of their houses), then anyone who wants to sue, should contact a lawyer and sue before the end of March. If one does not sue in time, one loses all rights to sue later. You cannot sue the government unless you do it within six months. In the case of Port Hope, "the government" means the Ministry of Health, the Atomic Energy Control Board or Eldorado Nuclear since it is a Crown corporation.

I therefore urge you most strongly to go and see your lawyers in Cobourg or in Port Hope and consult with them to see whether you are one of the people who ought to be suing for the damage caused. I am not suggesting by any means that everybody in Port Hope should be suing, I am simply saying that if you think you may have a cause of action, then you have got to do something about it immediately.

Thank you for your attention.