

FACT SHEET

Crown Witness #1 – Officer Allard

Officer Allard is an environmental officer with the Ministry of the Environment in the Northville area. S/he has an honours degree in chemistry and environmental studies and has worked in various capacities for the Ministry of the Environment for five years. Allard has been the senior Environmental Officer in the area for the past eight months. His/her job involves reviewing the environmental impact of industrial activities in Northville, monitoring industries and investigating violations of the ENVIRONMENTAL PROTECTION ACT (EPA). This is Officer Allard's first investigation of a major discharge.

Allard had been reviewing the activities of two Northville companies for approximately six months: Blue's Bicycle Manufacturers Limited. (BBM) and Free Wheel Sportsraft Ltd. (Free Wheel). Both companies are located on the banks of the Moon River and manufacture sporting equipment.

On Saturday, May 26 1990, at approximately 12:00 noon, Allard received a telephone call from a fire department dispatcher advising him/her that there was an unusual substance floating down the river from the BBM factory. Allard immediately went to the Moon River near the BBM factory and observed a sludgy blue material floating down the river. S/he investigated and determined that the sludgy substance emanated from a storm sewer located on the BBM premises. Allard also waded into the river and took several samples in clean test tubes. One sample is produced in Court and marked as Exhibit "1". This sample was sent to a lab and was proven to contain (a) contaminant(s). The Certificate of Analysis is produced and marked as Exhibit '2'.

That evening Allard visited Blue at home to find out what he knew about the discharge. He warned Blue that anything said might be used as evidence in court. Then s/he told Blue about his/her discovery in Moon River. Blue laughed and said "So you finally caught us!" Allard admits that Blue later denied that s/he had anything to do with the incident.

Allard interviewed Barber and found him/her to be extremely co – operative in the investigation.

Allard says that s/he also reviewed Blue's records and discovered a letter dated May 16th 1990 to Acme Disposal Co. terminating its services and based upon this information as well the information provided by Barber, Allard decided to charge Blue and BBM with offences under the EPA. The letter is marked as Exhibit '3'.

Under cross – examination Allard will admit that Blue’s records for the previous year showed that Acme Disposal Co. had picked up waste from BBM on a monthly basis for the three years previous to the incident.

NOTE: In a real trial an officer is not allowed to testify as to the statements of the defendant without a ruling that the statements are admissible. For the purpose of this trial, assume that statements of the defendant have been ruled admissible.

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Crown witness #2 – Pat Barber

Pat Barber was employed as shop foreman and painter for BBM for one year before this incident occurred. Barber is 25 years old and previously worked for Free Wheel but went to work for BBM because the job was paying better.

Barber's responsibilities were to oversee the assembly of mountain bikes and to supervise the spray-painting operations. Barber had a lot of experience in this area from past employment and was aware that the paints and solvents used in the process contained harmful substances and had to be disposed of through a licensed waste disposal company.

Barber says that two days before the discharge was discovered, Blue gave specific instructions to dispose of all waste materials down the sewer grate located at the back of the plant. Barber claims that Blue said not to tell anyone that this was being done, but that it was becoming too expensive to arrange for waste products to be transported away and that this would have to be done for a short while, at least until business improved. Previously, Barber was required to place the waste materials in a large storage drum, which was picked up once a month by a licensed waste haulage company.

Barber knew that it was wrong to dispose of the waste in this manner, however s/he was afraid of being fired if s/he disobeyed Blue's instructions. Barber estimates that 30 gallons of waste paint and solvents were poured down the sewer grate on the day in question. S/he says this was done on a Saturday, so that the other employees would not find out, as Blue had instructed. Barber estimates that s/he was at work for approximately one hour and that s/he left the parking lot quickly because s/he was afraid of getting caught. Barber told all of this Inspector Allard and claims s/he was fired by Blue only after s/he "blew the whistle".

Barber says that when s/he came into work that Saturday, s/he had a brief conversation with Blue in his/her office at the front of the BBM building, which Barber describes as "not unfriendly". Barber denies that there was an argument.

Under cross – examination, Barber admits that s/he is suing BBM for wrongful dismissal. Barber also admit s/he had been promised by Inspector Allard that if s/he cooperated full in Blue's trial, s/he will not face prosecution for being involved in this incident.

FACT SHEET

Defence witness #1 – J. R. Blue – the Defendant

J.R. Blue is the sole shareholder and the director of Blue's Bicycle Manufacturing Limited (BBM). Blue lives in a modest home in Northville, and BBM is located on the outskirts of town beside Moon River. Blue is 45 years old.

Blue was trained as a teacher and still volunteers with the local youth group instructing in nature craft and survival skills. Blue purchased BBM three years earlier and went into the business full – time. Business has been very slow recently and s/he is considering returning to teaching as a profession.

On May 26th 1990, Blue says s/he went to the plant, as was the routine on Saturdays, to do some paperwork. S/he had expected to see Barber at the plant, since Barber often came in on a Saturday morning when s/he had gotten behind in work. Blue was dissatisfied with Barber's job performance in the past few months. Barber was not working hard enough and had developed a belligerent attitude. When Blue saw Barber that day s/he stated to tell Barber that his/her performance would have to improve however as soon as s/he started to say something Barber made some insolent remark (which Blue can't specifically remember) and Blue fired Barber on the spot. Barber left Blue's office in a very angry state. Blue did not see where Barber went after s/he left the officer but saw Barber's car tear out of the parking lot about a half hour later.

Blue believes that Barber deliberately poured the substance down the sewer grate to get Blue in trouble. Blue believes Barber was upset about being fired and was capable of doing such a thing.

Blue states that for the past three years a waste haulage company called Acme Disposal Company picked up waste substances from BBM. Blue will identify Exhibit "3" as a letter s/he wrote on May 16th 1990 to the Acme Disposal Co. terminating their services because they had become too expensive. Blue states that s/he was in the process of making arrangements to have another company (We – Haul) transport the waste and that s/he would not have terminated the services of Acme Disposal unless s/he were confident another company could be lined up. This company was recommended by Lee Dixon, the owner of Free Wheel. Under cross – examination Blue will admit that by May 26th, s/he had not gotten around to calling We – haul.

Blue specifically denies that s/he ever instructed Barber to pour waste materials down the sewer grate.

Blue will state that Inspector Allard had been "nosing" around the plant and believes that Allard is over zealous. Blue cannot remember saying "So, you finally caught us out" to Allard, but speculates that if these words were, spoken, they were in jest.

FACT SHEET

Defence witness #2 – Lee Dixon

Lee Dixon is the owner of Free Wheel Sportscraft Ltd. Which is located on the banks of Moon River across the river from BBM. Dixon is 50 years old and is planning to take early retirement, in part because the market for Dixon's specialty bikes has declined. Dixon's has manufactured bicycling equipment in Northville for the past 25 years.

Dixon says that, although Blue's business competes with Free Wheel, the two have a cordial relationship. Blue competed so aggressively with Dixon that at one time s/he believed that Blue was going to drive Free Wheel out of business. Now that the market is bad they are both suffering and have had to lay off staff.

Dixon states that when Barber worked for Free Wheel, Barber was an excellent work but could not get along with other employees and was a "hot head". Barber said s/he was leaving Free Wheel to work for Blue for more money, however Dixon suspected that the real reason was a nasty disagreement with Barber's supervisor.

Dixon recalls a discussion with Blue about two weeks before the May 26th discharge, which occurred in the parking lot of the local grocery store. They were discussing the downturn in the bicycle market. Dixon recalls that Blue was very concerned about the amount of money s/he was spending for waste disposal. Dixon's business had started using a few months earlier. Blue had reacted positively and had thanked Dixon for the suggestion and later called Dixon by telephone to ask for We – Haul's number.

Dixon is unsure exactly when the conversation with Blue took place and under cross – examination admits that it may have been after May 16th, the date of Blue's letter to Acme Disposal. Dixon will also admit under cross – examination that Free Wheel has been charged and convicted of three offences in connection with polluting the Moon River. These occurred five years earlier. They almost went bankrupt paying the fines. Dixon now maintains s/he has "cleaned up the shop" and that s/he found Allard's continual snooping around the premises extremely annoying.

APPLICABLE LAW

Here is the relevant section of the Environmental Protection Act under which J.R. Blue is charged:

Section 147a.

1. Every director or officer of a corporation that engages in an activity that may result in the discharge of a contaminant into the natural environment contrary to this Act or the regulations has a duty to take all reasonable care to prevent the corporation from causing or permitting such unlawful discharge.
2. Every person who has a duty under subsection (1) and who fails to carry out that duty is guilty of an offence.
3. A director or officer of a corporation is liable to conviction under this section whether or not the corporation has been prosecuted or convicted.

Subsection 13 (1) reads:

Notwithstanding any other provision of this Act or the regulations, no person shall discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment that causes or is likely to cause an adverse effect.

“Contaminant” is defined by subsection 1.1(c) as:

“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 may cause an adverse effect...”

“Discharge” is defined by subsection 1.1(ca) to include:

“...Add, deposit, leak or emit and, when used as a noun, includes addition, deposit, emission or leak”

A discharge of contaminant in contravention of subsection 13 (1) is an “unlawful” discharge for the purpose of an offence under subsection 147a.

Note that it is not necessary to prove that an adverse effect on the environment in fact resulted from the discharge, as long as the contaminant itself is likely to cause an adverse effect. This will not be at issue in this case.

Provincial offences differ from offences under the Criminal Code of Canada in certain ways. Most offences under the Environmental Protection Act fall within a class of

offences known as “strict liability offences”. Although the law in this area is currently unsettled, please assume for the purpose of this case that the law is as follows: unlike criminal offences, it is not necessary for the Crown to prove a guilty intent. If the Crown can prove that the act occurred (in this case failing to prevent a discharge), then the onus will shift to the defendant to prove that s/he exercised all reasonable care, to ensure that the corporation prevented the offence. If the defendant can prove that all reasonable care was exercised, on a balance of probabilities, then an acquittal will result.

Whether or not reasonable care was exercised will depend in this case on whether or not Blue knew or should have known that the employer, Barber was pouring the waste down the sewer grate. The issue is NOT whether Blue exercised reasonable diligence in preventing the alleged sabotage by Barber, you should not, therefore, examine the safety standards of BBM, other than the evidence provided in the witness statement.

In conclusion:

1. If it can be proved that an unlawful discharge took place that J.R. Blue failed to prevent, and if J.R. Blue does not prove on a balance of probabilities that all reasonable care was taken, then J.R. Blue will be guilty of the offence.
2. If J.R. Blue can establish that s/he took all reasonable care to prevent the unlawful discharge, then J.R. Blue must be acquitted.

ENTERING EXHIBITS

The Crown Counsel will want to introduce exhibits during the trial. In order to do this, the Crown will question this appropriate witness about the exhibit (s) involved. These questions will be asked in this case of Officer Allard. For example, when Officer Allard says that s/he discovered a letter in J.R. Blue’s records, the Crown will ask Officer Allard to identify the letter.

Q. Is this the letter that you found in J.R. Blue’s records?

A. Yes, this is the letter he handed me. He identified the letter as one he had written on May 16th 1990.

The Crown will refer to the sample taken from Moon River.

Q. Did you take this sample?

A. Yes, I took the sample on May 26th 1990 at 12:15 pm.

The Crown will refer to the Certificate of Analysis.

Q. Did you take this sample for analysis to the Laboratory Services Branch?

A. Yes, on May 28th 1990.

Q. Is this the Certificate of Analysis you received?

A. Yes.

The Court Clerk will mark and record exhibits for the trial. In this trial there are three exhibits:

1. Sample from Moon River (use a test tube with a thick blue coloured substance)
2. Certificate of Analysis
3. Letter dated May 16th 1990.

Ministry of the Environment
Ministere de l' Environnement

Ontario

Laboratory Services Branch
125 Resources Road
Rexdale, ON
M9W 5L1
(416) 235- 6015

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(Fictional) **Certificate of Analysis**

Submission Number: CE99562

Laboratory Sample Number: CC20-0002

Seal Number: LS24896

Analysis

All sample were extracted and analysed by the standard methods currently in use by the Ontario Ministry of the Environment

CC20 – 0002

Analysis of the above samples by headspace capillary gas chromatography for targeted volatile compounds indicated the presence of the chlorinated aliphatic solvents:

PARAMETER	CC20 – 0002
LEAD	3.49 mg/L
ARSENIC	0.0305 mg/L
ZINC	2.07 mg/L

Certified at Queensview, this 1st day of June 1990.



T.L SHAH

Provincial Analyst
Ontario Ministry of Environment

Exhibit "3"

BLUE'S BICYCLE MANUFACTURING LIMITED

May 16th 1990

Acme Disposal Limited
50 Progress Street
Douglasville, ON
D0G 0G0

Dear Sirs;

Please be advised that effective today BBM no longer requires the services of your company for the transportation and disposal of its hazardous waste products. We have made other arrangements.

Yours truly,



J.R. Blue
President