

Quick Facts

Grassy Narrows v. Ontario - case against mercury impacts from clearcut logging

What is happening?

The Grassy Narrows First Nation is applying to the Ontario Divisional Court for judicial review of a provincial decision approving clearcut logging activities on their homeland and refusing to order an individual environmental assessment (“IEA”) regarding potential mercury contamination and adverse human health effects, arising from the clearcut logging. A judicial review is a legal proceeding that asks the Court to rule on whether a government decision violates the applicable law.

Why is Grassy Narrows suing Ontario?

Clearcut logging and mercury have a severe impact on Grassy Narrows’ health, culture, and livelihood. Grassy Narrows has tried repeatedly to convince Ontario to stop this clearcut logging plan, through meetings, petitions, prayers, protests, and open letters, but Ontario has refused. However, Ontario ministries (Ministry of Natural Resources and Forestry and Ministry of the Environment and Climate Change) have used provincial laws to approve the plan and refused to study the mercury impacts beforehand in an IEA.

What is the legal argument?

Grassy Narrows argues that clearcut logging under the approved plan will hurt their health and their culture by increasing the levels of mercury in local water and fish. More specifically, Grassy Narrows contends that this violates the following laws:

1. Section 7 of the Canadian Charter of Rights and Freedoms protects the right to life, liberty, and security of the person. The Charter is the highest law in Canada. Grassy Narrows alleges that the clearcut logging plan violates Section 7 because increasing mercury levels in local fish will harm the health of Grassy Narrows people who eat the fish.
2. Section 15 of the Charter protects from discrimination. The clearcut logging plan violates section 15 because it will have a disproportionate impact and disadvantage on Anishinaabe people who practice their traditional way of life, which includes fishing, in Grassy Narrows.
3. The Ontario Crown Forest Sustainability Act requires that logging plans must be sustainable with regard for water quality and fish. The federal Fisheries Act prohibits the release of harmful substances into waters frequented by fish. Grassy Narrows alleges that the clearcut logging plan violates these laws by causing or permitting mercury to be released into waterways and bioaccumulated in fish.

(see the notice of application for more details)

How does clearcut logging raise mercury levels in fish?

Mercury from industrial emissions (e.g. coal power plants and incinerators) falls from the sky onto the earth everywhere. In a healthy forest the mercury is held in the soil. However, when the forest is clearcut the mercury flows into lakes and rivers where it builds up in the fish as methylmercury – a potent neurotoxin. The fish become unsafe to eat.

In a natural boreal forest periodic fires release mercury into the air which carries it away. The soil is cleaned and the fish stay safe to eat. (see the clearcut-mercury fact sheet)

How does this relate to the mercury that was dumped in the 1960s?

9 tonnes of mercury were dumped into Grassy Narrows' Wabigoon River between 1962 and 1970 by a paper mill in Dryden with permission from Ontario. Japanese and Canadian mercury experts have confirmed that Grassy Narrows people have been made sick by this mercury. The mercury was never cleaned up or removed and many people are sick to this day, including children. (see the fact sheets on Dr. Harada's work in Grassy Narrows for more details)

Clearcut logging under the plan would add even more mercury into Grassy Narrows' river, and would add mercury to lakes and rivers in Grassy Narrows' homeland that were not impacted by the dumping in the 1960s. This would prolong and deepen the ongoing tragedy of mercury poisoning in Grassy Narrows.

What remedy is Grassy Narrows asking for?

In its application for judicial review, Grassy Narrows is not asking for money, or other forms of compensation. Instead, Grassy Narrows representatives are asking the Court to protect their health and their culture by cancelling the clearcut logging plan, and ordering an individual environmental assessment. (see the notice of application for more details)

How is this different from Grassy Narrows' recent Supreme Court case (Keewatin v. MNR)?

The recent decision of the Supreme Court of Canada in Keewatin was based on interpretation of provisions in Treaty 3. In that case, all levels of court decided to look only at the specific legal question of whether Ontario had the legal authority to issue licences for logging on Crown land, or if Ontario needed to first obtain approval from Canada. The Supreme Court ruled that Ontario did not need Canada's prior approval.

The judicial review brought today does not ask the court to interpret Treaty 3. Instead, this case is based on laws of general application that are intended to protect all people, and the environment from harm. It could become the first case to successfully use the Charter to protect people from harm and discrimination caused by environmental degradation.

What happens next?

After being served with the judicial review application, Ontario will have an opportunity to respond to Grassy Narrows' arguments and affidavit evidence. Upon completion of the necessary paperwork and other preliminary steps, an oral hearing will be scheduled in Ontario Divisional Court and a panel of three judges will hear arguments from both sides before making a decision on the legal issues in dispute.

More info: FreeGrassy.net

