CITATION: *Cytec Canada Inc. v. The Corporation of the City of Niagara Falls,* 2026 ONSC 1463
COURT FILE NO.: DC-25-00000408-0000
DATE: 20260310

2026 ONSC 1463 (CanLII)

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Schreck, Shore and Brownstone JJ.

BETWEEN:	
CYTEC CANADA INC.	*A. Burton and S. Floras,* for the appellant
Appellant	
– and –	*P. DeMelo,* for the respondent the Corporation of the City of Niagara Falls
THE CORPORATION OF THE CITY OF NIAGARA FALLS and 800460 ONTARIO LTD.	*T. Richardson and S. Premi,* for the respondent 800460 Ontario Ltd.
Respondents	
	HEARD: January 26, 2026

REASONS FOR JUDGMENT

On appeal from the decision of the Ontario Land Tribunal, dated April 9, 2025 with reasons reported at 2025 LNONLT 342.

SCHRECK J.:

[1] Land use planning by municipalities can affect many interests in a variety of ways. As a result, the *Planning Act,* R.S.O. 1990, c. P.13, creates a mechanism whereby certain parties can appeal some types of municipal planning application decisions, such as zoning by-law amendments and official plan amendments, to the Ontario Land Tribunal. Prior to 2024, appeals of this type could be initiated by anyone who had made oral or written submissions to the municipality prior to the granting of the application. Consequently, appeals of these decisions could be commenced by practically anybody with an interest in the application, regardless of whether their rights were directly affected.

[2] In 2024, the Ontario Government enacted the *Cutting Red Tape to Build More Homes Act, 2024,* S.O. 2024, c.16 ("*CRTA"*), which amended the appeal provisions of the *Planning Act.* Appeals could no longer be commenced by anybody who made submissions to the municipality, but rather only by someone who met the definition of a "specified person" in s. 1 of the *Planning Act.* As a result, many parties who would have had the right to appeal some types of planning application decisions on the basis that they had made submissions were no longer able to do so.

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[3] One such party was Cytec Canada Inc. ("Cytec"), a chemical manufacturer in Niagara Falls. In 2023, Cytec commenced appeals against a zoning by-law amendment and an official plan amendment that the City of Niagara Falls ("the City") had granted to a corporation, 800460 Ontario Limited ("the developer") which wished to develop a residential subdivision near Cytec's property. Cytec had a right of appeal because it had made submissions to the municipality before the applications were granted. However, when Cytec attempted to appeal new planning instruments obtained by the developer in 2024, the developer argued that it did not meet the definition of a "specified person" in s. 1 of the *Planning Act.*

[4] Cytec took the position that it met one definition of a "specified person" in s. 1 of the *Planning Act,* which applies to the holder of an environmental compliance approval to engage in certain activities involving the discharge of contaminants on lands that are within 300 metres of the proposed development. The northern boundary of the land owned by Cytec and on which its manufacturing plant is located is within 300 metres of the proposed development, although the plant itself where the contaminants are discharged is not.

[5] The City and the developer took the position that because Cytec's manufacturing plant is not within 300 metres of the proposed development, it was not a "specified person" and had no right of appeal. They brought a preliminary motion for directions before the Tribunal for an order to that effect. The Tribunal agreed that Cytec was not a "specified person" within the meaning of s. 1 of the *Planning Act* and precluded it from proceeding with the 2025 appeals.

[6] Cytec appeals the decision of the Tribunal to this court. It takes the position that the Tribunal failed to apply the correct principles of statutory interpretation, incorrectly interpreted the relevant terms of the statutory provision, failed to consider relevant evidence and came to a decision that is inequitable and unjust.

[7] I would dismiss the appeal. Contrary to Cytec's submission, the Tribunal engaged in a proper application of the relevant legal principles and came to a correct interpretation of the provision consistent with the legislative intent behind it. The clear purpose of the amendments created by the *CRTA* was to restrict appeal rights in order to simplify the approval process and thereby accelerate the construction of residential housing. The Tribunal did not fail to consider any relevant evidence, nor was its decision inequitable or unjust.

[8] The following reasons explain these conclusions.

I. FACTS

A. The Evolution of *Planning Act* Appeal Rights

[9] Prior to 2024, ss. 17(24), 17(36) and 34(19) of the *Planning Act* provided that appeals of zoning by-law amendments and official plan amendments to the Tribunal could be initiated by a variety of categories of parties, including “A person or public body who, before the plan was adopted [or, in the case of s. 34(19), “before the by-law was passed”], made oral submissions at a public meeting or written submissions to the council.”

[10] In 2024, the Ontario Government introduced Bill 185 resulting in the enactment of the *CRTA*, which received royal assent on June 6, 2024. It amended ss. 17(24), 17(36) and 34(19) of the *Planning Act* by replacing the term “person” with “specified person.” The term “specified person” is defined in s. 1 of the *Planning Act* and includes a number of categories of individuals and companies which are described in subsections (*a*) to (*n*) and which are reproduced in Appendix A. The relevant ones for the purposes of this appeal and which Cytec claims apply to it are subsections (*l*) and (*n*):

> 1. “specified person” means,
>
> . . . .
>
> (*l*) the holder of an environmental compliance approval to engage in an activity mentioned in subsection 9(1) of the *Environmental Protection Act* if any of the lands on which the activity is undertaken are within an area of employment and are within 300 metres of any part of the area to which the relevant planning matter would apply, but only if the holder of the approval intends to appeal the relevant decision or conditions, as the case may be, on the basis of inconsistency with land use compatibility policies in any policy statements issued under section 3 of this Act,
>
> . . . .
>
> (*n*) the owner of any land described in clause (*k*), (*l*) or (*m*).

[11] Subsection 9(1) of the *Environmental Protection Act,* R.S.O. 1990, c. E.19 (“*EPA*”)*,* which is referred to in the definition, provides as follows:

> 9. (1) No person shall, except under and in accordance with an environmental compliance approval,
>
> > (*a*) use, operate, construct, alter, extend or replace any plant, structure, equipment, apparatus, mechanism or thing that may discharge or from which may be discharged a contaminant into any part of the natural environment other than water; or
> >
> > (*b*) alter a process or rate of production with the result that a contaminant may be discharged into any part of the natural

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> environment other than water or the rate or manner of discharge of a contaminant into any part of the natural environment other than water may be altered.

B. Cytec Canada Inc.

(i) Cytec's Property

[12] Cytec operates a chemical manufacturing plant which manufactures a number of hazardous chemicals. The plant is located within a large property owned by Cytec consisting of 18 distinct but contiguous parcels of land occupying over four square kilometres (about 1000 acres) within the boundaries of the respondent City of Niagara Falls. An east-west roadway called Brown Road runs through the property. Garner Road runs southward from Brown Road and Beechwood Road runs north from Brown Road, beginning just west of Garner Road. A curving road, Chippewa Creek Road, is along the southern boundary of the property running roughly east to west and just north of the Welland River. An aerial photograph of the Cytec property and surrounding area is attached to these reasons as Appendix B.

[13] Cytec's manufacturing plant and its offices, which are located just north of Chippewa Creek Road and west of Garner Road, have the municipal address of 9061 Garner Road. A landfill site called the Brown Road Landfill is north of the plant and south of and adjacent to Brown Road between Beechwood Road and Garner Road.

[14] All of Cytec's land north of Brown Road is unoccupied without buildings or structures on it. The most northern parcel, known as the Beechwood lands, have been designated "provincially significant wetlands" on which no development is permitted.

(ii) Cytec's Environmental Compliance Approvals

[15] Cytec's manufacturing process results in the discharge of contaminants into the natural environment. This is permitted by virtue of a number of environmental compliance approvals ("ECA") issued by the Ministry of the Environment, Conservation and Parks pursuant to the *EPA* and which impose various conditions Cytec must follow. Three of the ECAs, issued in 2021, 2022 and 2024 respectively, were introduced into the record as examples.

[16] The 2021 ECA identifies the site location to which it applies as "9061 Garner Road" and states that it "applies to both effluent streams that discharge continuously and to effluent streams that discharge intermittently." Among other things, it requires that any effluent discharged from Cytec's plant flows past specified sampling points so that samples can be analyzed to determine the concentration of certain contaminants and so that various tests, including "rainbow trout acute lethality" and "seven-day fathead minnow growth" tests, can be conducted. The sampling points are not on the Beechwood lands.

[17] The 2022 ECA also identifies the site location as "9061 Garner Road" and provides approval for the use of certain specific equipment, including natural gas fired burner systems and thermal oxidizers. Among other things, it requires Cytec to ensure that certain "compounds of

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concern" are not discharged into the air and to employ procedures to prevent and/or minimize odourous emissions and the emission of nitrous oxides.

[18] The 2024 ECA identifies the site location as "9061 Garner Road (Brown Road Landfill)" and permits Cytec to operate "a waste disposal site (landfill)." The ECA specifies that it applies to "the Brown Road Landfill that is located on the northern 600 foot section of Lots 203 and 204" in the Township of Stamford."[1] Among other things, the ECA requires Cytec to "take steps to minimize and ameliorate any adverse effect on the natural environment of water quality resulting from the site," to implement groundwater and surface water monitoring programs and to identify and maintain buffer zones. There is no evidence that any of this takes place on the Beechwood lands.

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C. The Developer's Property

[19] As shown on Appendix B, the respondent developer owns property north of the Cytec property located at 9304 McLeod Road ("the McLeod property") in Niagara Falls. It intends to develop this land as a residential subdivision.

[20] The Beechwood Lands at the northern boundary of Cytec's property are within 300 metres of the McLeod property. Cytec's manufacturing plant at 9061 Garner Road and the Brown Road Landfill site are approximately 850 metres or more from the McLeod Property.

D. The Planning Instruments

(i) The 2023 Applications

[21] In 2023 the developer applied to the City for a zoning by-law amendment and a draft plan of subdivision. The by-law amendment was approved (ZBA-78), as was the draft plan of subdivision. At the same time, the City adopted an official plan amendment (OPA 147). The effect of all of these was to rezone the McLeod property such that it could be developed for residential use.

[22] In September 2023, Cytec initiated appeals of ZBA 78 and OPA 147. There is no issue that it had a right to do so at time. Cytec had no right of appeal in relation to the draft plan of subdivision.[2]

(ii) The 2024 Applications

[23] In November 2024, the developer submitted new applications which were intended to supersede those which had been approved in 2023. The City granted the applications, resulting in a new zoning by-law amendment (ZBA-2025-21), a new official plan amendment (OPA 179) and

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[1] Evidence in the record shows that Lots 203 and 204 are bounded by Brown Road to the north, Garner Road to the east, Chippewa Creek Road to the south, and a north-south road allowance running parallel to Garner Road to the west.

[2] Third party appeal rights with respect to draft plans of subdivision had been limited by amendments to the *Planning Act* in 2019 resulting from the enactment of the *More Homes, More Choice Act, 2019,* S.O. 2019, c. 9.

a new draft plan of subdivision. In response, Cytec initiated new appeals in February 2025. Whether it had a right to do so is the central issue on this appeal.

E. The Decision Under Appeal

(i) The Issue

[24] There is no dispute that Cytec is "the holder of an environmental compliance approval to engage in an activity mentioned in subsection 9(1) of the *Environmental Protection Act."* The northern boundary of Cytec's property, where the Beechwood lands are located, is within 300 metres of the McLeod property boundary and therefore "any part of the area to which the relevant planning matter would apply." However, the area south of Brown Road, where Cytec's manufacturing plant and the Brown Road Landfill are located, are not within 300 metres of that area.

[25] The issue before the Tribunal was whether the "lands on which the activity [mentioned in subsection 9(1) of the *EPA*] is undertaken" in the definition of a "specified person" is restricted to the location of Cytec's ECA-regulated activity or whether it includes all of Cytec's property, including the Beechwood lands.

(ii) The Tribunal's Decision

[26] After Cytec commenced its 2025 appeals, the Tribunal directed a written motion to resolve the issue of whether Cytec met the definition of a "specified person."[3] Cytec, the City and the developer were afforded an opportunity to make submissions and file evidence on the motion.

[27] The Tribunal released a decision on April 9, 2025 in which it concluded as follows (at paras. 25-26):

> In the Tribunal's view, as opposed to the interpretations urged by Cytec's counsel, the plain and ordinary construction of this language in keeping with the overall purposes of Bill 185 requires the ECA activity under subsection 9(1) of the *EPA to be undertaken on lands that are within 300 metres* of the area to which the planning instruments apply (there is no controversy here concerning whether they are in an employment area). The Tribunal's opinion is that Cytec is unable to demonstrate this based on its materials filed. Thus, there is no need to expound further on principles of statutory interpretation in an effort to extrapolate this provision to take into account Cytec's lengthy recital of the planning history concerning its much larger other land holdings and no doubt valuable manufacturing operations.

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[3] Section 9(1) of the *Ontario Land Tribunal Act* gives the Tribunal "authority to make orders or give directions as may be necessary or incidental to the exercise of the powers conferred on the Tribunal under this or any other Act."

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> Cytec does not point to any specific provisions of the example ECAs referred to in its supporting affidavit that govern what the City has defined as the Beechwood Lands (that are within 300 metres of the relevant planning area). The Tribunal agrees with the City that only the Cytec parcels at 9061 Garner Road, not the Beechwood Lands, are subject to the ECAs shown in that affidavit. [Emphasis in original].

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II. ANALYSIS

A. Jurisdiction and Standard of Review

[28] Section 24(1) of the *Ontario Land Tribunal Act, 2021,* S.O. 2021, c. 4, provides that a decision of the Tribunal can be appealed to the Divisional Court with leave of the court, "but only on a question of law."[4] The parties agree that the tribunal's decision is to be reviewed on a standard of correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65, [2019] 4 S.C.R. 654, at paras. 36-37.

B. Principles of Statutory Interpretation

[29] The central issue on this appeal is one of statutory interpretation. The principles which a court must apply in interpreting a statutory provision are well established and can be summarized as follows:

- The words of a statutory provision must be considered "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *R. v. Carignan,* 2025 SCC 43, at para. 55; *Piekut v. Canada (Minister of National Revenue),* 2025 SCC 13, 502 D.L.R. (4th) 1, at para. 42; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *Vavilov*, at para. 117.

- The meaning of a provision is determined "by reference to its text, context and purpose, " although these need not be considered separately or in a formulaic way, as they are often interdependent: *Telus Communications Inc. v. Federation of Canadian Municipalities,* 2025 SCC 15, 502 D.L.R. (4th) 59, at para. 30; *Auer v. Auer,* 2024 SCC 36, 497 D.L.R. (4th) 381, at para. 64; *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, 498 D.L.R. (4th) 316, at para. 24; *Piekut,* at para. 43.

- The court's focus must be on the text of the legislation, which is "the anchor of the interpretative exercise," but the court must bear in mind that "plain meaning alone is not determinative and a statutory interpretation analysis is incomplete without considering the context, purpose and relevant legal norms": *R. v. Rousselle,* 2025 SCC 35, at para. 183; *R.*

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[4] Cytec was granted leave to appeal on September 19, 2025.

v. Alex, 2017 SCC 37, [2017] 1 S.C.R. 967, at para. 31; *La Presse inc. v. Québec*, 2023 SCC 22, at para. 23; *Québec (Commission des droits de la personne et des droits de la jeunesse),* at para. 24; *R. v. Kim,* 2025 ONCA 478, 178 O.R. (3d) 266, at para. 32; *Piekut,* at para. 45.

- "Statutory interpretation is centred on the intent of the legislature at the time of enactment and courts are bound to give effect to that intent": *Telus Communications,* at para. 32; *Kim,* at para. 32.

- In considering the intent of the legislature at the time of the enactment, the court should bear in mind that legislation "shall be interpreted as being remedial": *Legislation Act, 2006,* S.O. 2006, c. 21, Sched. F., s. 64(1); *Metrolinx v. Amalgamated Transit Union, Local 1587,* 2024 ONSC 1900, 172 O.R. (3d) 457 (Div. Ct.), at para. 54.

C. The Tribunal's Focus on Ordinary Meaning

(i) Overview

[30] The appellant submits that the Tribunal failed to properly apply the correct principles of statutory interpretation by simply relying on the ordinary meaning of the words in the enactment without considering the broader context and, in particular, legislative intent. In the appellant's submission, this is made evident by the tribunal's statement that "there is no need to expound further on principles of statutory interpretation" in order to take into account various other factors submitted by Cytec to be relevant.

[31] Although the appellant is correct that proper statutory interpretation requires more than determining the "plain and ordinary construction" of the words used in the provision, as noted earlier, the text is "the anchor of the interpretative exercise": *Rousselle,* at para. 183; *Québec (Commission des droits de la personne et des droits de la jeunesse),* at para. 24. Because of this, considering the ordinary meaning of the words is a useful starting point, as long as the court goes on to engage in a contextual and purposive analysis to determine whether there is any reason to depart from the ordinary meaning: R. Sullivan, *The Construction of Statutes,* 7th ed. (Toronto: LexisNexis, 2022), at § 3.01; *iGaming Ontario (Re),* 2025 ONCA 770, at paras. 137-138; *Oakville (Town) v. Clublink Corp. ULC,* 2019 ONCA 826, 148 O.R. (3d) 513, at para. 44; *Belwood Lake Cottagers Assn. Inc. v. Ontario (Ministry of the Environment),* 2019 ONCA 70, 431 D.L.R. (4th) 218, at para. 41.

(ii) The Three Components of "Specified Person"

[32] The definition of "specified person" in s. 1 of the *Planning Act* has three components. A "specified person" must be (1) the holder of an ECA to engage in an activity mentioned in s. 9(1) of *EPA*; (2) the person's "lands on which the activity is undertaken" must be within an area of employment and be within 300 metres of the area where the planning matter would apply; and (3) the person must intend to appeal the decision in question on the basis of an inconsistency with land use compatibility policy statements issued under s. 3 of the *Planning Act.* The first and third component are not at issue on this appeal.

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(iii) The Meaning of "Activity"

[33] The "activity" which the "specified person" must have an approval to engage in is described in s. 9(1) of the *EPA* as "use, operate, construct, alter, extend or replace any plant, structure, equipment, apparatus, mechanism or thing that may discharge or from which may be discharged a contaminant into any part of the natural environment other than water" as well as "alter a process or rate of production with the result that a contaminant may be discharged" or which may alter the rate and manner of discharge. To put it simply, the "activity" is the authorized discharge of contaminants into the natural environment other than water.

[34] The appellant submits that the "activity" mentioned in the definition of "specified person" includes not only the discharge of contaminants, but also activities required by the ECA, such as monitoring, testing and identifying and maintaining buffer zones.[5] With respect, this confuses activity which the ECA *permits* with that which it *requires*. An ECA *permits* certain types of activity that results in the discharge of contaminants, and *requires* other types of activity, such as monitoring and testing.

[35] As noted below, a central focus of the *Planning Act* is to ensure land use compatibility, which provides further support for the conclusion that the "activity" in question is the discharge of contaminants and not other activities required to comply with the ECA. Proximity between the discharge of contaminants and residential housing raises obvious issues of land use compatibility, which is why the legislature defined "specified person" in terms of the distance (in this case 300 metres) between that activity and the area at issue. The proximity of monitoring, testing and other activities required by the ECA does not raise such issues.

(iv) "Lands on Which the Activity is Undertaken"

[36] If the "activity" is the discharge of contaminants, then the ordinary meaning of "lands on which the activity is undertaken" is the land where the contaminants are discharged. This must be within 300 metres of the area at issue in order to meet the definition of a "specified person." It is the distance between the location of the contaminant discharge authorized by the ECA and the area at issue which matters.

[37] The Tribunal concluded that since the ECAs authorized Cytec to discharge contaminants at its manufacturing plant at 9061 Garner Road and this was more than 300 metres from the McLeod property, Cytec was not a "specified person" within the meaning of the *Planning Act.*

[38] Having determined the ordinary meaning of the term in question, the issue that must next be considered is whether a contextual and purposive analysis provides some reason to depart from that meaning. This requires consideration of the legislative intent behind the provision being interpreted.

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[5] The appellant raises the Tribunal's failure to consider activities required by the ECA as a distinct ground of appeal in its factum, which this portion of the reasons is intended to address.

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D. Contextual and Purposive Analysis

(i) The Purpose of the Planning Act

[39] As the appellant points out, one of the purposes of the *Planning Act* as set out in s. 1.1(b) is "to provide for a land use planning system led by provincial policy." Provincial policy is set out in the *Provincial Planning Statement, 2024,* OIC 1099/2024 (ON) ("*PPC*"), which was issued pursuant to s. 3(1) of the Act and s. 3.5 of which provides as follows:

> 3.5 Land Use Compatibility
>
> 1. *Major facilities* and *sensitive land uses* shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential *adverse effects* from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term operational and economic viability of *major facilities* in accordance with provincial guidelines, standards and procedures.
>
> 2. Where avoidance is not possible in accordance with policy 3.5.1, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other *major facilities* that are vulnerable to encroachment by ensuring that the planning and *development* of proposed adjacent *sensitive land uses* is only permitted if potential *adverse affects* to the proposed *sensitive land use* are minimized and mitigated, and potential impacts to industrial, manufacturing or other *major facilities* are minimized and mitigated in accordance with provincial guidelines, standards and procedures. [Emphasis in original].[6]

[40] The appellant submits that the policy objectives in the *PPC* of minimizing risks to public health and safety and ensuring the long-term viability of major facilities such as Cytec require that the statutory provision at issue be given a broad and liberal interpretation that best achieves those objectives, which is inconsistent with an unduly narrow interpretation of the terms "lands on which the activity is undertaken."

(ii) The Purpose of the Amendment

[41] While the appellant's argument holds some attraction, in my view its flaw is that while it considers some of the relevant context, it does not do so broadly enough. The definition of a "specified person" is the result of a statutory amendment. While minimizing risks to public safety and ensuring the long-term viability of major facilities are undoubtedly legislative objectives of the *Planning Act,* the statutory interpretation issue that arises in this case requires a consideration of the objectives of the amendment, that is, why the legislature has chosen to attempt to achieve

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[6] The emphasized terms are those which are defined in s. 8 of the *Provincial Planning Statement, 2024.*

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its objectives by limiting those who can appeal planning decisions to "specified persons" rather than the wider category that existed before the amendments.

[42] As noted earlier, the *CRTA* must be interpreted as being remedial, which requires that the mischief it was intended to remedy be identified. As its name suggests, one of the primary objectives of the *Cutting Red Tape to Build More Homes Act* is to accelerate the construction of residential housing by reducing "red tape." The *CRTA's* preamble states that "unnecessary red tape too often delays shovels from getting in the ground" and that one of the measures the government intends to use to remedy this is "streamlining municipal approvals." A preamble is an integral part of a statute and intrinsic evidence of its purpose: *R. v. Kloubakov,* 2025 SCC 25, 505 D.L.R. (4th) 197, at para. 70; *Reference re An Act Respecting First Nations, Inuit and Métis children, youth and families,* 2024 SCC 5, 488 D.L.R. (4th) 189, at para 39; *References re Greenhouse Gas Pollution Pricing Act,* 2021 SCC 11, [2021] 1 S.C.R. 175, at para. 51.

[43] How amending the definition of "specified person" achieves the objective of "cutting red tape" and accelerating the construction of residential housing can be determined by considering the law as it existed prior to the amendment in order to discern what it was that the legislature intended to change: *M. v. H.,* [1999] 2 S.C.R. 3, at para. 323. Prior to the amendment, virtually anybody who took an interest in certain types of planning instruments could appeal their approval by a municipality. After the amendment, the category of people who could launch such an appeal was significantly circumscribed. Clearly, the purpose of the amendment was to reduce the number of appeals of planning approvals by restricting rights of appeal, as the Tribunal concluded. This would obviously have the effect of "streamlining municipal approvals."

[44] It is clear from the foregoing that the amendments were designed to balance the objectives of the *Planning Act* with the objective of accelerating the construction of residential housing. The flaw in the appellant's argument is that it considers only the former objective. A purposive and contextual analysis requires that both be considered.

(iii) The Amendment Was Not Intended to Expand Appeal Rights

[45] The appellant submits that the purpose of the amendment was not to restrict appeal rights, but rather to expand them. This submission is based on earlier versions of Bill 185 and comments made when the bill was being debated in the legislature. The version of Bill 185 introduced at first reading restricted the definition of "specified person" to include only utility companies, telecommunications operators and railways. However, the bill was amended such that the definition was broadened to include the current categories of "specified persons." At third reading, the Minister of Municipal Affairs and Housing said:

> So the bill has taken a step in the right direction by limiting third-party appeals, while at the same time amendments were brought in that allow us to preserve the rights of landowners to appeal amendments that may be made that disadvantage them, Mr. Speaker.

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> This is something we heard from individual landowners, and we made that move in committee to address that challenge.[7]

[46] The appellant submits that because the category of people who had rights of appeal was narrower at first reading than it was in the final version, the purpose of the amendment was to "preserve (or expand) appeal rights for major industries, but only on the grounds of inconsistency with land use compatibility policies in the PPS."[8]

[47] With respect, comparing earlier versions of the bill with the final version is of little assistance in discerning legislative intent in this case. It seems that at one point, the legislature considered restricting appeal rights much more than it eventually did, but this does not change the fact that the legislature intended that far fewer people have a right of appeal than was the case before the *Planning Act* was amended. This is evident from what the Minister said immediately following what was relied on by the appellant:

> The move of limiting third-party appeals, in and of itself, will unleash some 67,000 applications that are stalled before the board right now, and that will make a huge difference in helping us get shovels in the ground faster.[9]

(iv) Restricting Appeal Rights to Those With a Direct Interest

[48] An examination of the various categories of "specified person" in s. 1 of the *Planning Act* makes it clear that appeal rights have been restricted for the most part to those whose activities create immediate and obvious land use compatibility issues and who are directly affected by the planning instrument in question, rather than those who merely have an interest in it or who could be affected at some time in the future.

[49] Some of the categories include various types of utility companies operating in the municipality or planning area, such as electric, gas, oil and telecommunications (subsections (*a*), (*d*), (*e*) and (*h*)) and some specific public agencies, such as Ontario Power Generation, Hydro One and NAV Canada (subsections (*b*), (*c*) and (*i*)).

[50] The rest of the categories are all defined in terms of certain activities and the proximity of the activity to the area to which the planning decision applies. They include a company operating a railway line within 300 metres of the area (subsection (*g*)), the operator of an airport which affects the use of land within the area (subsection (*j*)), those licenced to engage in certain excavation activities within 300 metres of the area (subsection (*k*)), and those engaged in activities regulated under the *EPA* where those activities are undertaken within 300 metres (subsections (*l*) and (*m*)).

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[7] Ontario, Legislative Assembly of Ontario, *Official Report of Debates (Hansard),* 43rd Parl., 1st Sess. (3 June 2024), at 9460 (Hon. Paul Calandra).
[8] Appellant's Factum, at para. 60.
[9] *Hansard, supra,* note 4, at 9460.

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[51] In this case, the appellant engages in one of the types of the activities that are listed, but does not do so within the required proximity of 300 metres. While it does own land within 300 metres, the land is vacant and not used for any of the enumerated activities. It is difficult to see how the fact that Cytec happens to own vacant land near the area in question raises the type of immediate and obvious land use compatibility issue that is required to create a right of appeal.

[52] During oral argument, counsel for the appellant submitted that the expansive definition of "specified person" the appellant urges this court to adopt would "save lives" because it allows Cytec to have some say in whether there is a residential development close to the location where it produces hazardous chemicals. However, if Cytec had never acquired the Beechwood lands, it would clearly not be a "specified person" even though its operations would be no less hazardous.

[53] The untenability of the appellant's position is evident if one considers a hypothetical situation in which the Beechwood lands were far larger than they are and Cytec owned vacant and unused land that was 100 kilometres in length between the manufacturing plant and the McLeod property. As counsel acknowledged in oral argument, on the appellant's interpretation of the definition of a "specified person," Cytec would have a right of appeal in these circumstances, even though the hazardous activity it engaged in was over 100 kilometres from the proposed subdivision.

[54] It follows from the foregoing that the reason Cytec does not meet the definition of a "specified person" has nothing to do with the fact that its property comprises several distinct parcels of land, as the appellant submits.[10] As explained, it is the location of the lands where the activity in question, the discharge of contaminants, takes place that matters, not the location of other property which may belong to the same owner. Whether Cytec's property consists of one parcel or several is of no moment.

(v) Conclusion

[55] It is evident from the foregoing that that a purposive and contextual analysis does not provide any reason to depart from the ordinary meaning of the definition of "specified person." The Tribunal was correct in concluding that the ordinary meaning of the provision was consistent with the purpose of the legislation and the context in which it was enacted.

E. Alleged Failure to Consider Relevant Evidence

[56] The appellant also submits that the Tribunal failed to consider relevant evidence, namely, the existence of the 2024 Brown Road Landfill ECA and the activities Cytec has to undertake to comply with it. That ECA requires the appellant to engage in certain sampling and monitoring and to identify and maintain buffer areas, which the appellant submits are activities that take place on the Beechwood Lands. There are four reasons why the 2024 ECA does not assist the appellant.

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[10] The appellant raises this as a distinct ground of appeal in its factum which this portion of the reasons is intended to address.

[57] First, this is an appeal on a question of law alone respecting an issue of statutory interpretation. The correct interpretation of the provision does not depend on the contents of the Brown Road Landfill ECA, nor could the Tribunal's interpretation depend on whether Cytec had engaged in sampling and monitoring. The evidence respecting the Brown Road Landfill may be relevant to how the definition of "specified person" applies to the facts of this case, but this is an issue of mixed fact and law that is not properly before this court.

[58] Second, the 2024 ECA approves the operation of a "waste disposal site." Operating a waste disposal site is *not* an activity mentioned in s. 9(1) of the *EPA,* but rather in s. 27(1) which prohibits the operation of a waste disposal site except in accordance with an ECA. Furthermore, as counsel for the respondent developer points out, the 2024 Brown Road Landfill ECA appears to relate to contaminants being released into *water*. The definition of "specified person" at issue includes holders of ECAs permitting activity mentioned in s. 9(1) of the *EPA,* which relates to the discharge of contaminants "into any part of the natural environment *other than water*."

[59] Third, as explained earlier, there is a distinction between activities permitted by an ECA and those required by it. Sampling, monitoring and identifying and maintaining buffer zones fall into the latter category.

[60] Finally, while the 2024 ECA requires Cytec to identify and maintain buffer zones, there is no evidence as to what zones have been so identified and whether they include the Beechwood lands.

F. The Tribunal's Decision Was Not Inequitable

[61] The appellant submits that the Tribunal's decision was "inequitable and applied retrospectively to prevent a determination of the Cytec 2023 appeals." The appellant's complaint is that the Tribunal's decision has the effect of preventing Cytec from pursuing the appeals it filed in 2023 against zoning by-law ZBA 78 and official plan amendment OPA 147. According to the appellant, s. 17(24.0.2) of the *Planning Act* provides that restrictions on third-party appeals resulting from the enactment of the *CRTA* are not to have retrospective effect, but the Tribunal's interpretation would have this effect. The appellant submits that this is unfair and therefore inconsistent with the legal requirement that the result of any statutory interpretation be "reasonable and just": *Piekut,* at para. 49.

[62] The planning instruments that are the subject of this appeal are zoning by-law ZBA-2025-21 and official plan amendment OPA 179, which were the subject of appeals initiated by Cytec in 2025. The 2023 Cytec appeals are not before this court. The appellant's argument is, in effect, an allegation that the 2025 planning instruments were the result of an improper attempt to render the 2023 appeals moot to prevent Cytec from pursuing its appeal rights. The developer disagrees with this characterization and takes the position that the new applications were made to incorporate improvements to the earlier applications. The Tribunal was not asked to resolve this dispute, nor can this court do so on an appeal from its decision.

[63] In any event, even if the appellant was correct that it would be unfair to retrospectively apply the amendments, the appropriate remedy would not be to interpret the new definition of

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"specified person" in such a way as to effectively undermine the legislature's intention to narrow appeal rights. Rather, the correct approach would be to allow the appellant to pursue its 2023 appeals relying on the transitional provisions that would apply. Those appeals apparently remain outstanding and are not before this court.

III. DISPOSITION

[64] The appeal is dismissed.

[65] If the parties cannot agree on costs, the respondents shall file written submissions on the issue of costs of no more than two double-spaced pages in length within five business days of the release of this judgment and the appellant shall file written submissions of the same length within five business days of receiving those of the respondents.

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Schreck J.

I agree. ___________________________

Shore J.

I agree. ___________________________

Brownstone J.

Released: March 10, 2026

APPENDIX A – DEFINITIONS OF "SPECIFIED PERSON" IN THE *PLANNING ACT*

Planning Act, R.S.O. 1990, c. P.13

Section 1.

"specified person" means,

(*a*) a corporation operating an electric utility in the local municipality or planning area to which the relevant planning matter would apply,

(*b*) Ontario Power Generation Inc.,

(*c*) Hydro One Inc.,

(*d*) a company operating a natural gas utility in the local municipality or planning area to which the relevant planning matter would apply,

(*e*) a company operating an oil or natural gas pipeline in the local municipality or planning area to which the relevant planning matter would apply,

(*f*) a person required to prepare a risk and safety management plan in respect of an operation under Ontario Regulation 211/01 (Propane Storage and Handling) made under the *Technical Standards and Safety Act, 2000*, if any part of the distance established as the hazard distance applicable to the operation and referenced in the risk and safety management plan is within the area to which the relevant planning matter would apply,

(*g*) a company operating a railway line any part of which is located within 300 metres of any part of the area to which the relevant planning matter would apply,

(*h*) a company operating as a telecommunication infrastructure provider in the area to which the relevant planning matter would apply;

(*i*) NAV Canada,

(*j*) the owner or operator of an airport as defined in subsection 3(1) of the *Aeronautics Act* (Canada) if a zoning regulation under section 5.4 of that Act has been made with respect to lands adjacent to or in the vicinity of the airport and if any part of those lands is within the area to which the relevant planning matter would apply,

(*k*) a licensee or permittee in respect of a site, as those terms are defined in subsection 1(1) of the *Aggregate Resources Act*, if any part of the site is within 300 metres of any part of the area to which the relevant planning matter would apply,

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(*l*) the holder of an environmental compliance approval to engage in an activity mentioned in subsection 9(1) of the *Environmental Protection Act* if any of the lands on which the activity is undertaken are within an area of employment and are within 300 metres of any part of the area to which the relevant planning matter would apply, but only if the holder of the approval intends to appeal the relevant decision or conditions, as the case may be, on the basis of inconsistency with land use compatibility policies in any policy statements issued under section 3 of this Act,

(*m*) a person who has registered an activity on the Environmental Activity and Sector Registry that would, but for being prescribed for the purposes of subsection 20.21(1) of the *Environmental Protection Act*, require an environmental compliance approval in accordance with subsection 9(1) of that Act if any of the lands on which the activity is undertaken are within an area of employment and are within 300 metres of any part of the area to which the relevant planning matter would apply, but only if the person intends to appeal the relevant decision or conditions, as the case may be, on the basis of inconsistency with land use compatibility policies in any policy statements issued under section 3 of this Act, or

(*n*) the owner of any land described in clause (*k*), (*l*) or (*m*);

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APPENDIX B – AERIAL PHOTOGRAPH OF RELEVANT AREA

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CITATION: *Cytec Canada Inc. v. The Corporation of the City of Niagara Falls,* 2026 ONSC 1463
COURT FILE NO.: DC-25-00000408-0000
DATE: 20260310

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ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Schreck, Shore and Brownstone JJ.

BETWEEN:

CYTEC CANADA INC.

Appellant

– and –

THE CORPORATION OF THE CITY OF NIAGARA FALLS and 800460 ONTARIO LTD.

Respondents

REASONS FOR JUDGMENT

Released: March 10, 2026