




## Toronto's Packaging Waste Reduction Forum

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Powers available to Municipalities to regulate in-store packaging \*

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\* This presentation and the opinion expressed herein are of the Author and do not necessarily represent the views of the City of Toronto Legal Department or the views of Toronto's City Council



## What powers are available to Ontario Municipalities?

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- Increasing number of cities engaging in some form of regulation of in-store packaging
  - E.g. Banning or taxing
- Does the City of Toronto Act, or the Municipal Act, 2001 provide the ability to regulate in-store packaging?



## City of Toronto Act, 2006 (“COTA”), Municipal Act, 2001 (“MA”)

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- Purpose of both acts to create a framework of broad powers and for municipalities/Toronto to respond to the needs of the municipality/Toronto
- Both acts specifically recognize that powers are to be interpreted broadly
- Supreme Court also recognizes that powers of a municipality are to be interpreted broadly



## City of Toronto Act, 2006 (“COTA”), Municipal Act, 2001 (“MA”) continued

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- Toronto/Municipalities may pass by-laws respecting, among others:
  - Economic, social and environmental well-being
  - Health, safety and well-being of persons
- Scope of the by-law may include:
  - Regulating or prohibiting a matter
  - Require persons to do things respecting the matter



## Given the broad powers, what can Municipalities do then?

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- The \$1 million dollar question
- Chance for Ontario municipalities to be creative and daring with policy
  - Won't know the full limits until we test these powers
- Potential for banning in-store packaging
- Does this mean we have unlimited power?



## Limitations created by Statute

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- No – Limitations created by statute and by case law
- COTA and MA have the following limitations:
  - By-laws can't conflict with other levels of governments' legislation
  - Province can pass regulations
  - Specific statutory provisions in COTA, MA or other Acts that apply



## Limitations expressed by the Supreme Court of Canada

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- Supreme Court noted limitations in *Hudson v. Spraytech*
- Justice L'Heureux-Dubé stated that:
  - “courts faced with an impugned by-law enacted under a [general welfare] provision...must be vigilant in scrutinizing the true purpose of the by-law. In this way, a municipality will not be permitted to invoke the implicit power granted under a "general welfare" provision as a basis for enacting by-laws that are in fact related to ulterior objectives, whether mischievous or not.”



## Limitations expressed by the Supreme Court of Canada continued

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- Justice Lebel stated:
  - “It is not enough that a particular issue has become a pressing concern in the opinion of a local community. This concern must relate to problems that engage the community as a local entity, not a member of the broader polity. It must be closely related to the immediate interests of the community within the territorial limits defined by the legislature in a matter where local governments may usefully intervene.”



## Limitations expressed by the Supreme Court of Canada continued

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- From Spraytech we should be mindful of:
  - If using power related to environmental well-being, policy should be directed to that purpose
  - Must relate to immediate interests of the community



## Can Municipalities tax in-store packaging?

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- Can't use a power like environmental well-being
- Toronto has a unique taxing power
- Toronto has utilized this section to impose two new taxes



## COTA Taxing Powers

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- For Toronto to utilize tax powers, the tax in question must:
  - be a direct tax; and
  - not fall into 13 exclusions
  - Tax can only apply within the City boundaries
- Toronto cannot pass a sales tax on items such as EPS or plastic bags



## Conclusions

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- Municipalities have broad tools available to do more environmental regulation
  - Not unlimited tools
- Toronto has additional tool - taxing powers
- Only way to discover the limits of these new powers is to start using them