

TORONTO STAFF REPORT

May 27, 2005

To: Board of Health
Administration Committee

From: City Solicitor

Subject: Croplife v. City of Toronto

Purpose:

To report on the outcome of proceedings before the Court of Appeal for Ontario in the Croplife Canada challenge of the City of Toronto's Pesticide By-law.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendations:

It is recommended that this report be forwarded to Council for information.

Background:

At its meeting of May 23, 2003, Council of the City of Toronto enacted a Pesticide By-law by adopting Clause 1 of Report No. 3 of the Board of Health. The By-law was in substantially the same form as the Town of Hudson's Pesticide By-law, which was approved by the Supreme Court of Canada in a case called *114957 Canada Ltée (Spraytech) v. Town of Hudson*.

One month after its enactment, Croplife Canada, a trade association representing various pesticide manufacturers, started an application challenging the Pesticide By-law on the basis that the by-law was not authorized by section 130 of the new *Municipal Act*. The application was heard on November 10, 2003 by Justice Somers of the Ontario Superior Court. The City's position was presented by my staff. On December 8, 2003, Justice Somers released his decision upholding the Pesticide By-law and awarding the City its costs, which were settled in the amount of \$59,000.00.

On January 7, 2004, Croplife appealed the Superior Court decision to the Court of Appeal for Ontario. The appeal was “as of right”. The appeal was argued by my staff on November 4, 2004.

The Canadian Environmental Law Association and the Sierra Legal Defence Fund were both granted intervener status at both the Superior Court and Court of Appeal proceedings on behalf of a number of groups including the Toronto Environmental Alliance, Canadian Association for Physicians for the Environment, Ontario College of Family Physicians, World Wildlife Fund, Federation of Canadian Municipalities, and others.

Comments:

The Court of Appeal, in a unanimous decision dated May 13, 2005, rejected the Croplife appeal and upheld the City’s By-law. The City was also awarded costs in the amount of \$50,000.

The decision is an important one in terms of the Pesticide By-law, and the City’s authority to use its health and welfare power (section 130 of the *Municipal Act*). It also confirms the recent trend of the Canadian courts to interpret municipal powers generously and in a “broad and purposive” fashion.

i) Pesticide By-law

The court concluded that the Pesticide By-law was validly enacted as discussed below. The decision confirms that Toronto, like many other major Canadian municipalities such as Vancouver, Montreal and Halifax, has jurisdiction to enact by-laws to reduce the non-essential use of pesticides within its municipal boundaries.

In addition to confirming the validity of the City By-law, the decision provides guidance to many other Ontario municipalities that have already enacted pesticide by-laws, or are contemplating the enactment of such by-laws.

ii) The Approach in Interpreting Municipal Powers

The Court reviewed recent trends in municipal legislation (including Ontario’s *Municipal Act, 2001*) and jurisprudence, and noted the trend toward a generous approach with deference to municipal councils. The Court rejected the Croplife argument that the section should be interpreted restrictively as “retrograde”. The Court noted that:

Absent an express direction to the contrary in the *Municipal Act, 2001*, which is not there, the jurisprudence from the Supreme Court is clear that municipal powers, including general welfare powers, are to be interpreted broadly and generously within their context and statutory limits, to achieve the legitimate interests of the municipality and its inhabitants.

(iii) *The Limiting Language in Section 130*

The Court went on to examine the language of section 130. That section states:

130. A municipality may regulate matters not specifically provided for by this Act or any other act for purposes related to the health, safety and well-being of the inhabitants of the municipality.

The Court considered the phrase “matters not specifically provided for in this Act or any other act” in detail, to determine whether the by-law was invalid, as Croplife argued, on the basis that the matter of pesticides was, in fact, specifically provided for in both the provincial *Pesticides Act* and the federal *Pest Control Products Act*. The Court rejected this argument noting that the limiting language was simply intended to prevent the use of a general power to embellish specific, but limited, by-law making powers that have been provided to municipalities elsewhere. The Court concluded that “a matter can be regulated by by-law so long as there is no other specifically related by-law making power elsewhere in the new Act or in any other act.” As no such specifically related by-law making powers exist elsewhere, section 130 could be used.

(iv) *Conflict between the by-law and other legislation*

The Court also considered whether the by-law could be said to be in conflict with the federal or provincial legislation and concluded that it was not. The Court noted that:

Had either parliament or the Ontario legislature intended to occupy the field of pesticide regulation with the federal *PCPA* or the provincial *Pesticides Act*, they would have used very clear language to say so. Furthermore, had the Ontario legislature intended to prevent municipalities in Ontario from having the authority to enact by-laws limiting the use of pesticides following the Supreme Court’s decision in *Spraytech*, it could have done so explicitly either in the *Municipal Act, 2001*, which was enacted after the *Spraytech* decision, or by including a provision prohibiting municipalities from enacting pesticide by-laws in the provincial *Pesticides Act*.

The Court of Appeal also reviewed the two-prong test stemming from the recent Supreme Court of Canada decision of *Rothmans, Benson & Hedges Inc. v. Saskatchewan* to determine the issue of conflict. The Supreme Court noted that there is conflict only where:

1. Simultaneous compliance is not possible; or
2. The legislative purpose of the “higher” level of government is frustrated.

The Court of Appeal noted that both branches of the test were satisfied in the Croplife case and that tri-level regulation was valid and appropriate with respect to pesticides.

(v) *The precautionary principle*

The Court also commented briefly on the role of the precautionary principle in statutory interpretation. The Court concluded that it did not need to address this issue as the City

otherwise had the power to enact the by-law. Nevertheless, the Court did indicate that if there was “no credible research basis for enacting the by-law and if the municipality did not otherwise have the power to enact the by-law, the precautionary principle could not be used”. Although the Court placed no reliance on the precautionary principle in the *Croplife* case, the Medical Officer of Health did, in fact, conduct considerable research on the uncertainties associated with pesticide use and public health.

In summary, the Court of Appeal concluded that the purpose of the by-law, aimed primarily at the matter of the health, safety and well-being of the City of Toronto’s inhabitants, fell squarely within the authority granted by section 130 of the *Municipal Act, 2001*. Further, as no specific municipal power to regulate pesticide use is contained in the *Municipal Act, 2001* or in any other Ontario statute, the limiting words of section 130 do not preclude enactment of the Pesticide By-law. Finally, as was the case in *Spraytech*, the by-law does not conflict with federal or provincial legislation.

As outlined above, the Court of Appeal has reinforced recent decisions from the Supreme Court of Canada indicating that “municipal powers, including general welfare powers, are to be interpreted broadly and generously within their context and statutory limits, to achieve legitimate interests of the municipality and its inhabitants.”

Conclusions:

The *Croplife* decision is a significant win for the City of Toronto and Ontario municipalities in general for three reasons. It provides clarity with respect to pesticide by-laws and confirms the validity of the City by-law. It provides an analysis of the general welfare power contained within section 130 of the new *Municipal Act, 2001*, and confirms that this power should be interpreted generously. Finally, it reinforces the trend toward a broad and purposive interpretation of municipal powers and a deferential approach to the action of municipal councils within their statutory limits.

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