



Submission to the Board of Health for the City of Toronto

ITEM HL8.5: UPDATE ON EXTREME HEAT AND MAXIMUM INDOOR TEMPERATURE
STANDARD FOR MULTI-UNIT RESIDENTIAL BUILDINGS

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November 30, 2015

We are pleased to appear before you today on behalf of the Canadian Environmental Law Association (“CELA”) to support the Medical Officer of Health’s recommendation that the feasibility of implementing a health-based maximum indoor temperature standard of 26 ° C for rental multi-unit residential buildings be explored.

Background on CELA

CELA was established in 1970 to use legal tools to increase environmental protection and safeguard communities. As an Ontario legal aid clinic, CELA’s top priority is to represent low income individuals and communities, including on environmental health issues.

CELA has taken a significant interest in municipal authority over matters pertaining to environmental health; for example, by way of our intervention at the Supreme Court of Canada in *Hudson*¹, where a Quebec municipality’s pesticides by-law was upheld, at the Court of Appeal for Ontario in *Croplife*², where the City of Toronto’s pesticides by-law was upheld, and in respect of the City of Toronto’s *Environmental Reporting and Disclosure By-law*.

CELA is a member of the Low-Income Energy Network (“LIEN”). LIEN aims to ensure universal access to adequate, affordable energy as a basic necessity while minimizing the impacts on health and on the local and global environment. LIEN has particular concern about heat island effects and their impact on vulnerable members of the community. We recall the tragic death of Richard Howell, a psychiatric survivor living in a boarding house, who died for heat-related reasons during extreme hot weather in Toronto in 2005.

¹ 114957 *Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)*, 2001 SCC 40 (“*Hudson*”)

² *Croplife Canada v Toronto (City)* (2005), 75 OR (3d) 357 (CA) (“*Croplife*”)

Legal authority for a by-law establishing a maximum indoor temperature

Toronto Public Health and Municipal Licensing and Standards have convened a Technical Advisory Group to explore the legal and regulatory context for establishing a maximum indoor temperature of 26 ° C.³

We note that there are two potential sources of legislative authority for a City of Toronto by-law that would set a maximum allowable indoor temperature, namely:

- 1- Paragraph 8(2)(6) of the *City of Toronto Act*, SO 2006, c11 (“*City of Toronto Act*”)
- 2- Subsection 15.1(3) of the *Building Code Act*, SO 1992, c23 (“*Building Code Act*”)

We also provide a brief overview of the relevant law on conflict between federal or provincial legislation and municipal by-laws.

The City of Toronto Act

The *City of Toronto Act* provides broad authority for the City of Toronto to enact by-laws addressing health issues. Paragraph 8(2)(6) of the *City of Toronto Act* provides that the City of Toronto may enact by-laws respecting the “health, safety and well-being of persons”.⁴ The City of Toronto may “regulate or prohibit respecting the matter” or may “require persons to do things respecting the matter”.⁵ Subsection 6(1) of the *City of Toronto Act* also ensures that the City’s powers are interpreted “to confer broad authority on the City to enable the City to govern its affairs as it considers appropriate and to enhance the City’s ability to respond to municipal issues”.⁶

A municipal by-law enacted under paragraph 8(2)(6) of the *City of Toronto Act* would comply with the ruling of the Supreme Court of Canada in *Hudson* by addressing public health issues within the territorial limits of the city. The Court held in *Hudson* that a municipal by-law restricting the use of pesticides was authorized by a provision “to secure peace, order, good government, health and general welfare in the territory of the municipality.”⁷ The Court scrutinized the “true purpose” of the by-law and confirmed that it furthered the goals of public health.⁸ The concurring judgment stressed that this matter fell within municipal authority because it related to the immediate interests of the community within the territorial limits defined by the enabling legislation.⁹

³ Medical Officer of Health, *Update on Extreme Heat and Maximum Indoor Temperature Standard for Multi-unit Residential Buildings*. Toronto, Ontario: November 16, 2015, p 7

⁴ *City of Toronto Act*, SO 2006, c11 (“*City of Toronto Act*”), para 8(2)(6)

⁵ *City of Toronto Act*, s 8(3)

⁶ *City of Toronto Act*, s 6(1)

⁷ *Cities and Towns Act*, RSQ, c C-19, s 410(1); *Hudson*, p 258-259, paras 18-19

⁸ *Hudson*, pp 259-260, 264, paras 20, 27

⁹ *Hudson*, p 278, para 53

In *Croplife*, the Court of Appeal for Ontario adopted the same broad, generous interpretation of municipal by-law making authority in the context of the *Municipal Act, 2001*. The Court upheld the City of Toronto's by-law to limit the application of pesticides and found that "absent an express direction to the contrary", municipal powers should be interpreted broadly and generously within their context and statutory limits.¹⁰

The Building Code Act

Another source of authority for a City of Toronto by-law addressing a maximum indoor temperature is the *Building Code Act*. Subsection 15.1(3) of the *Building Code Act* allows a municipality to prescribe standards for the maintenance and occupancy of property:

15.1(3) The council of a municipality may pass a by-law to do the following things if an official plan that includes provisions relating to property conditions is in effect in the municipality or if the council of the municipality has adopted a policy statement as mentioned in subsection (2):

1. Prescribing standards for the maintenance and occupancy of property within the municipality or within any defined area or areas and for prohibiting the occupancy or use of such property that does not conform with the standards.
2. Requiring property that does not conform with the standards to be repaired and maintained to conform with the standards or the site to be cleared of all buildings, structures, debris or refuse and left in graded and levelled condition.¹¹

The City of Toronto enacted by-law No. 930-2000 (*Municipal Code* chapter 629) under the authority of subsection 15.1(3). Paragraph 629-38(F) of by-law No. 930-2000 addresses the maximum temperature in apartments with air-conditioning units and states that "all air-conditioning systems shall be operated from June 2 to September 14 so as to maintain an indoor temperature of not more than 26 degrees Celsius".¹²

There is no conflict with provincial or federal legislation

Although paragraph 11(1)(a) of the *City of Toronto Act* provides that any "city by-law is without effect to the extent of any conflict with ... a provincial or federal Act or a regulation made under such an Act"¹³, there is currently no provincial or federal legislation that would conflict with a new City of Toronto by-law outlining a maximum indoor temperature.

The *City of Toronto Act* codifies the impossibility of dual compliance test outlined in the case law and requires that there be an "actual conflict in operation as where one enactment says 'yes'

¹⁰ *Croplife*, para 37

¹¹ *Building Code Act*, SO 1992, c23 ("*Building Code Act*"), s 15.1(3)

¹² City of Toronto by-law No. 930-2000 (*Municipal Code* chapter 629), s 629-38(F)

¹³ *City of Toronto Act*, s 11(1)(a)

and the other says 'no'".¹⁴ The Court of Appeal for Ontario in *Croplife* also confirmed that a by-law cannot frustrate the purpose of Parliament or the Ontario Legislature.¹⁵

We disagree with the observation at page 34 of Toronto Public Health's July 2011 report, *Protecting Vulnerable People from Health Impacts of Extreme Heat*, that the *Residential Tenancies Act*, 2006, SO 2006, c 17 restricts the City's ability to enact a by-law on indoor maximum temperatures.¹⁶ Section 216 of the *Residential Tenancies Act* enables municipalities to enact by-laws with respect to vital services. It does not restrict the municipality's authority under other legislation to enact by-laws falling outside of that category.

Conclusion

We urge the Board of Health to adopt the Medical Officer of Health's recommendation. There is a clear inequity in requiring buildings with air-conditioning to maintain an indoor temperature of 26 ° C, but not creating a similar standard for buildings without air-conditioning.

Toronto Public Health has found that individuals who do not have access to in-home air-conditioning are more vulnerable to extreme heat. They are more often low-income, born in another country and rent their place of residence. One third of people without in-home air-conditioning reported difficulties in accessing cooling.¹⁷

People living in multi-residential high-rises may be at particular risk from heat. These buildings house some of Toronto's most vulnerable groups, including lower-income groups and newcomers to Canada.¹⁸ Lower-income individuals are more likely to suffer from chronic diseases, mental health or addictions, other medical risk factors, language or literacy barriers, cognitive disorders, mobility limitations, homelessness or marginalization related to experiences of discrimination or social exclusion.¹⁹

Thank you very much for your consideration of these submissions. We would be pleased to answer any questions.

¹⁴ *Multiple Access Ltd v McCutcheon*, [1982] 2 SCR 161 at p 191; *Hudson*, paras 36-39; *Croplife*, paras 52, 58

¹⁵ *Croplife*, para 63

¹⁶ Toronto Public Health, *Protecting Vulnerable People from Health Impacts of Extreme Heat*. Toronto, Ontario: July 2011 ("*Protecting Vulnerable People*"), p 34

¹⁷ *Protecting Vulnerable People*, p 19

¹⁸ *Protecting Vulnerable People*, p 32

¹⁹ *Protecting Vulnerable People*, pp 8-9