

MUNICIPAL JURISDICTION OVER ENVIRONMENT GETS BOOST

A recent decision of the Ontario Court of Appeal has upheld a broad reading of municipal powers to pass by-laws in the environmental sphere, and by extension, other areas as well.

Croplife Canada v. City of Toronto, decided by the Court last week, addressed the question of whether the City of Toronto had the authority to enact a by-law limiting the application of pesticides within the City. The by-law in question provides that, subject to defined exceptions, no person shall apply or cause or permit the application of certain pesticides in Toronto. This by-law was enacted relying on s.130 of the *Municipal Act, 2001*, under which by-laws may be passed by a municipality to provide “for the protection of the health, safety and well-being of residents in the municipality”.

The appellant, a pesticide producers’ industry association, argued that the relevant provision (section 130) in question should be interpreted as a “specific health power” rather than a general welfare power. The Court rejected this and instead followed the Supreme Court of Canada decision in *Spraytech v. Hudson (Town)* (*Spraytech*) which held that the Town of Hudson had the authority to enact a bylaw regulating the use of pesticides under a general welfare provision of Quebec’s *Cities and Towns Act*. *Croplife* had argued that the new Ontario *Municipal Act*, which was enacted after the *Spraytech* decision and structured differently from the Quebec legislation was intended to “cure” the Supreme Court’s *Spraytech* decision.

The Court of Appeal largely followed the reasoning of the Supreme Court in *Spraytech* and rejected the appellant’s argument that this section of the Ontario Municipal Act should be interpreted narrowly. Further, it rejected the argument that the existing federal and provincial legislation dealing with pesticides prohibited a municipal by-law on the same matter. The Court also found that the existence of the Federal *Pest Control Products Act* (the PCPA) and Ontario *Pesticides Act* do not preclude a municipal by-law addressing pesticides. Rather, the Court adopted the Supreme Court’s approach from *Spraytech*, finding that there was no impossibility of “dual compliance”.

In its reasons, the Court affirmed that a broad and purposive approach should be taken to interpreting municipal powers, such as the general welfare power granted under s.130. In light of the Supreme Court's clear adoption of such an approach in past decisions, and the trend towards broad enabling Municipal statutes by the provinces, the Ontario Court of Appeal found that it would take clear language to demand otherwise. The Court, however, did note that while a general welfare provision is sound policy for the flexibility it affords modern municipalities, it is not an unlimited grant of provincial powers. It may only be applied to concerns that are not only pressing within the community, but also relating to "problems that engage the community as a local entity, not a member of the broader polity".

One interesting side issue in this matter was the Court's view of the "precautionary principle", which stands for the proposition that, where there is the threat of serious or irreversible damage, lack of full scientific certainty should not be used to postpone measures preventative against environmental degradation. Rather, measures must be anticipatory and prevention oriented where there is the threat of serious damage. The Court expressly declined to address the precautionary principle on the basis that the lower court decision had not relied on it to reach its decision. However, the Court did note that if there had been no credible policy basis behind the by-law and had the municipality not otherwise had the power to enact such a by-law, the precautionary principle, on its own, could not be used to uphold the by-law.

With or without the help of the precautionary principle, Canadian courts appear generally predisposed to giving law makers a large degree of latitude in the exercise of their powers when it comes to protecting human health and the environment.

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