

Subject: RE: Municipalities Have The Power To Restrict Pesticide Use

Date: Fri, 29 Jul 2005 09:18:10 -0700

From: "Ernie Crist" <ernie_crist@dnv.org>

To: "Mike Christie" <mikechristie@rogers.com>

CC: <fonvca@fonvca.org>

Dear Mike Christie:

Yes, municipalities do indeed have the power to ban pesticides but in the District of North Vancouver this will not happen unless the public demands it. So far, with the exception of a very few individuals, the majority don't seem to care that they are accessories to the unabated poisoning of the planet. Never mind that there are safe methods to achieve the same results.

The bottom line is that if the "I don't give a damn people" can organize and go before Council to prevent the banning of poisons then so can responsible people organize and appear before Council as a delegation to speak up when the item comes before Council again.

Ernie Crist

-----Original Message-----

From: Mike Christie [<mailto:mikechristie@rogers.com>]

Sent: Friday, July 29, 2005 3:29 AM

To: Recipient List Suppressed

Subject: Municipalities Have The Power To Restrict Pesticide Use

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Ban stands: Canadian municipalities have the power to restrict pesticide use thanks to the Supreme Court and Hudson, Quebec.

by Cooper, Kathleen; McClenaghan, Theresa.

WHEN the Supreme Court of Canada unanimously decided in June of 2001 that the small community of Hudson, Quebec, had the legal power to ban pesticide use, community activists from coast to coast celebrated a sweet victory.

The court denied an appeal (that had already lost in two levels of the Quebec courts) by two lawn care companies. The court confirmed that Hudson had the power, as do most municipalities in Canada, to set by-laws that respond to community concerns and that protect the general welfare of the public.

The motivation for the Hudson by-law, and the efforts of thousands of others across Canada, came primarily from mothers of young children. During the 1980s, this constituency of concerned parents had objected to pesticide spraying in parks and school grounds. The occasional headaches, nausea or rashes were difficult to trace to pesticide use. More seriously, those affected with chemical sensitivities could not go outside. For the most part, health effects were not directly evident, just worrisome. Especially galling was the fact that the spraying seemed completely unnecessary.

Throughout the 1990s, authoritative scientific reports drew attention to the special vulnerability of children to environmental pollution. Pesticides were particularly singled out for posing risks of birth defects, cancer, developmental delays, motor and nervous system dysfunction and immunotoxicity. People questioned placing children at risk for the sake of lawn care.

Many local authorities began to restrict pesticide use. Some acted

merely to cut costs. More often, with health and environmental goals in mind, pesticides on public lands were dramatically reduced, in some cases by 90 to 100 percent. Hudson, Quebec, was the first to go after the sacred ground of private property in 1991.

The Hudson by-law bans pesticide use across the board. It does allow for a series of exceptions. For example, the ban ensures that public health officials can approve the use of pesticides to protect public safety for situations like water purification or insect outbreaks. The end result is a ban on the outdoor use of pesticides on public and private property for cosmetic purposes.

With the final resolution of Hudson's ten-year court battle, municipalities across the country have come under more pressure than ever to enact pesticide by-laws. Many have taken the plunge--over 70 pesticide by-laws are now in place in Quebec, Nova Scotia, New Brunswick, Ontario and British Columbia. Dozens more are actively under consideration in those and other provinces.

However, after Hudson's ten-year ordeal, municipalities are afraid of their by-laws being challenged in the courts. So far, Hudson-style by-laws, like the one passed by the City of Toronto, have withstood such challenges. CropLife, a pesticide industry lobby group, has challenged the City of Toronto's by-law, but both the trial-level court and the Ontario Court of Appeal have upheld it as valid. The three judges of the latter court unanimously rejected all arguments advanced by CropLife and echoed the Supreme Court decision in Hudson.

The Appeal Court concluded 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." In other words, despite the fact that Ontario amended its Municipal Act following the Hudson decision, those amendments did nothing to change the ability of the City of Toronto to exercise the by-law-making powers that were confirmed in the Hudson decision.

When an issue is headed for the courts, citizens or community groups can apply to organizations like Canadian Environmental Law Association (CELA) or Sierra Legal Defence Fund (SLDF) for representation. To get involved in lawsuits such as these by-law challenges, the court's permission must be sought to intervene. Prospective intervenors must demonstrate that they have a serious interest in the matters before the court, as well as a unique perspective not already represented by the main parties to the matter. In the Hudson case, the main parties were two lawn care companies and the town of Hudson. In Toronto, the main parties are the City and CropLife. The intervenors ensure that a broader scope of issues can be considered than the main parties alone can bring before the court.

Many of the same health, environmental and community organizations involved in the Supreme Court consideration of the Hudson by-law have intervened in the ongoing legal challenge of the Toronto by-law. In both cases, the interventions occurred with legal representation from CELA and SLDF. While the interests and perspectives on pesticide spraying from environmental and community groups may be obvious to some, it takes time, money and legal representation to convince the courts of the value and legitimacy of these interventions. Once in the door, it takes more time, money and legal counsel to actually intervene.

Given the time and expense of legal proceedings, the decision of CELA or SLDF to take on such cases is not made lightly. The matter must meet their respective Board of Directors' criteria and priorities, and if the organization has the resources given other competing priorities, only then may the matter be taken on. While there is still considerable expense for their clients for disbursements like transcripts, copies of

evidence, filing fees, etc., the cost to the intervening groups is minimized by their combined mutual resources and expertise. However, there are few such legal clinics in the country and both the legal clinics and the client community are forced to use discretion in choosing which environmental issues to tackle in the courts.

In the Hudson case, CELA intervened on its own behalf and also represented grassroots community groups from across Ontario, including the Toronto Environmental Alliance, Sierra Club of Canada, Parents' Environmental Network, Healthy Lawns--Healthy People, Pesticide Action Group Kitchener, Working Group on the Health Dangers of the Urban Use of Pesticides, Environmental Action Barrie, Breast Cancer Prevention Coalition, Vaughan Environmental Action Committee, and pesticides by-law pioneer Dr. Merryl Hammond.

All of those involved were already actively seeking pesticide by-laws in their own communities, and recognized the Hudson case as having national significance with implications for their own work towards reducing pesticides. It was this direct involvement in pesticide reduction, as well as a long history of educational work on safe alternatives to the use of pesticides and other toxic substances, that the Supreme Court recognized in granting the intervention requests in the Hudson case.

SLDF represented additional community interests, the World Wildlife Fund and the Federation of Canadian Municipalities. Lawyers at CELA and SLDF coordinated their efforts, focusing the details of each intervention on specific points of law. This complementary approach created the classic synergy, the sum being greater than the constituent parts.

In the Toronto by-law challenge, CELA again intervened on its own behalf and also represented the Canadian Association of Physicians for the Environment, the Ontario College of Family Physicians, the Toronto Environmental Alliance, Sierra Club of Canada and Environmental Defence Canada. SLDF again represented the World Wildlife Fund and the Federation of Canadian Municipalities.

Taking environmental issues to court is not always a matter of representing community-based or even regional or national organizations. Individuals can and do use the courts to fight environmental battles. But it is more common for cases of such broad public interest, like pesticide by-laws, to be carried by groups who already work on issues of pesticide awareness.

While angry opposition to by-laws has been expressed by many lawn care businesses, forward-thinking companies are moving into organic lawn care methods and seeing profits rise. Garden Centres in the Loblaw grocery chain went pesticide-free in the spring of 2003, stocking alternative products and providing educational workshops.

As the groundswell of public support grows, it is echoed by mainstream health-focused organizations. Support for pesticide by-laws comes from the Canadian Cancer Society, Ontario College of Family Physicians, Registered Nurses Association of Ontario, Association of Early Childhood Educators Ontario and many more.

The Hudson decision (and now the challenge to Toronto's by-law) has implications for all municipalities in Canada. Legal counsel to municipalities, including Toronto, recognizes the need to follow the model used in Hudson. After all, the Hudson model has the strength of the Supreme Court decision behind it. Hudson's actions were deemed to be lawful; that is, the town acted within its municipal powers to respond to local circumstances. Moreover, the Supreme Court noted that the Hudson by-law fits within the international commitments Canada has made towards taking precautionary action to address environmental problems.

Hence, other municipalities can stay within the Hudson by-law approach while keeping their power to respond to local circumstances as appropriate. In Toronto this has meant ensuring that an exception to the

by-law could be made for termite control, a serious problem that is unique to certain areas of that city.

With the Hudson win at the Supreme Court, the intervening groups accomplished key public interest objectives. Their efforts ensured that the Hudson by-law would stand, alongside other by-laws in place at the time, and made it possible for like-minded community groups to seek by-laws in communities across the country.

On-line resources about pesticide by-laws in Canada, including Hudson's: www.cela.ca/celacourts/detail.shtml?x=1615

Materials produced by the Partnership for Pesticide By-laws in support of municipal pesticide by-laws:
www.healthyenvironmentforkids.ca/english/special_collections/fulltext.shtml?x=787

Toronto Public Health has information relating to pesticides and pesticide by-laws: www.toronto.ca/health/pesticides/index.htm

Kathleen Cooper is senior researcher and Theresa McClenaghan is legal counsel with the Canadian Environmental Law Association. This article revises and expands upon an article originally published in the spring 2003 issue of Interaction, a publication of the Canadian Child Care Federation.

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The Laws of Ecology: "All things are interconnected. Everything goes somewhere. There's no such thing as a free lunch. Nature bats last."

by Ernest Callenbach

