

When Do Municipal Environmental Laws Go Too Far?



Municipalities have authority to regulate environmental matters within their boundaries. But that authority goes only so far. Each province has enacted so-called ‘enabling laws’ setting out the powers municipalities may exercise. If a municipality enacts a by-law that goes beyond the power enumerated in the enabling law, the by-law is invalid. The legal term for a by-law that goes too far is *ultra vires* (Latin for ‘beyond authority’). As a general rule, a by-law is *ultra vires* the enabling law when its effects go beyond the boundaries of the municipality’s own territory and intrude on matters in other municipalities. Here are 2 cases showing how these principles play out in real life.

BY-LAW IS VALID

Here’s a case that went in the favour of the municipality.

Situation

The Town of Hudson in Qu bec passes By-Law 270 restricting the use of pesticides to specific parts of the town and only for specifically enumerated purposes. A landscaper licensed to use pesticides gets a summons for violating the by-law. The landscaper claims that By-Law 270 is *ultra vires*. The Town claims that the law is a valid exercise of the power granted

to it under the enabling law to protect the municipality's health and general welfare.

Ruling

The Canadian Supreme Court upholds By-Law 270 and throws out the lawsuit.

Reasoning

The enabling law in this case (Sec. 410(1) of the *Quebec Cities and Towns Act*) allows municipalities to make by-laws 'to secure. . . health and general welfare in the territory of the municipality, provided such by-laws are not contrary to the laws of Canada, or of Quebec. . . .' By-Law 270 is a lawful application of this power, according to the Court. The Town passed the By-Law in response to the health concerns expressed by its residents, including letters to the Town Council and a petition with more than 300 signatures. Moreover, By-Law 270 has no impact on any neighbouring municipalities. It applies only to the application of pesticides within Town limits.

[114957 Canada Ltée \(Spraytech, Société d'arrosage\) v. Hudson \(Town\)](#), [2001] 2 S.C.R. 241, 2001 SCC 40 (CanLII)

BY-LAW IS INVALID

Here's another case in which a court ruled that a municipal by-law was *ultra vires*.

Situation

Toronto adopts By-law No 12347-2011 banning the possession, consumption and sale of shark fin or shark fin food products within the city. Individuals representing a pro-business group called the Fair and Responsible Governance Alliance (FARGA) claim the by-law exceeds the City's powers under the enabling

act, the *City of Toronto Act* (the Act). Shark fin sale and consumption is a global environmental issue, and the Act authorizes the City to adopt only laws regulating municipal matters, they claim.

Ruling

The Ontario Superior Court agrees that By-Law 12347 is *ultra vires* and strikes it down.

Reasoning

Preventing an environmental threat and cruelty to animals is a legitimate basis for municipal regulation under the Act. However, the court continued, the by-law must be tailored to achieving those objectives. A ban on possession, sale and consumption within the City of Toronto could 'not possibly have any benefit in protecting sharks,' the court reasoned, noting that Toronto isn't even a major market for shark fin soup and that China accounts for 95% of the world's shark fin consumption. And because its purpose is to affect matters beyond the City's boundaries without any identifiable benefits to its inhabitants, By-Law 12347 is *ultra vires* the Act, the court concludes.

[*Eng v. Toronto \(City\)*](#), 2012 ONSC 6818 (CanLII)