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January 24, 2004

Court upholds city ban on pesticides

Industry group challenges Toronto bylaw

Healthy lawn best defense against weeds

Last month, the Ontario Superior Court upheld the validity of a Toronto bylaw which makes most pesticide use illegal starting April 1.

The bylaw was passed by city council last May, and bans pesticides on all private and public property.

Croplife Canada, an industry group representing pesticide manufacturers and distributors, challenged the city's legal authority to pass the bylaw. Group members included Dow Agro Sciences Inc. and Dupont Canada Inc.

Under the bylaw, a pesticide includes any product or substance registered under federal pest control legislation that is used to control, destroy, attract or repel a pest, or for reducing or preventing its "injurious, noxious or troublesome" effects.

In passing the bylaw last May, council cited citizen concerns over health risks associated with the use of pesticides in Toronto.

The preamble to the bylaw acknowledges that pesticides used in lawn and garden care are known to enter streams and rivers that discharge into Lake Ontario, the source of the city's drinking water.

In its case before Justice William P. Somers, Croplife argued Toronto did not have the authority under the Municipal Act to enact bylaws regulating the environment, since that is a matter only the province can control under the Environmental Protection Act.

At one time, the city had tried to get provincial approval to pass a bylaw dealing with pesticides, but the Ministry of the Environment indicated the province did not wish to proceed on a "patchwork basis" with individual municipalities.

When the province failed to come through with authorizing legislation, Toronto proceeded on its own.

Instead of framing the bylaw as environmental legislation, the city worded it to make it clear that its aim was the health, safety and well-being of the city's inhabitants.

In his decision released last month, Somers found that there was no conflict between federal or provincial environment legislation and the Toronto bylaw. He ruled the bylaw was within the city's powers ("intra vires") and Croplife's application to quash it was dismissed. Costs were awarded to the city.

After it lost the case, Croplife issued a statement complaining that "gardening remains a crime," and "gardeners will risk being considered criminals."

Toronto is not alone in its campaign to ban pesticides. Several other Ontario municipalities have similar bylaws, including Caledon, Perth and Thorold. Halifax and about 40 Quebec municipalities also have similar bylaws in place.

Toronto is not the first municipality to have its pesticide bylaw taken to court.

Back in 1991, the Quebec town of Hudson, west of Montreal, adopted a bylaw to restrict the use of pesticides.

After two lawn care companies were convicted of violating the bylaw, the case wound up in the Supreme Court of Canada in 2001.

The Supreme Court agreed with the two lower courts and said the town of Hudson had the authority to pass the bylaw under the "general welfare" provisions of the enabling provincial legislation.

Justice Clare L'Heureux-Dub wrote, "Twenty years ago, there was very little concern over the effect of chemicals such as pesticides on the population. Today, we are more conscious of what type of an environment we wish to live in and what quality of life we wish to expose our children (to)."

Last week, my annual lawn care contract renewal arrived from Neil McCallum, co-owner of Earth Green Lawn Care in Mississauga. A cover letter explained that his firm would no longer offer any pesticide controls to customers in the city of Toronto. The term pesticides includes herbicides or weed controls, insecticides and fungicides.

As a Toronto resident, I've been on the organic program for years. Earth Green encourages its customers outside Toronto to change to a more environmentally friendly program, but will "reluctantly" offer the traditional pesticides.

Under the Toronto bylaw, pesticides are still permitted within the city for indoor use and for situations directly related to protecting human health, such as purifying drinking water or swimming pools, and controlling or destroying a health hazard such as West Nile virus. They are also permitted for infestations involving immediate or potential risk of loss or damage.

For homeowners, the best solution to avoid the use of pesticides is to have a healthy lawn. More information is available from your lawn care company, gardening supply store, or the City of Toronto Web site. For valuable lawn care information, visit <http://www.toronto.ca/pesticides>

And, if you're tempted to use up those old pesticides in the garage or shed, remember the fines can be up to \$250 effective September, 2005. That kind of money will remove a lot of dandelions.

Croplife Canada has filed an appeal of the court decision upholding the bylaw.