
JULY 10, 2015

CLIENT BULLETIN

CANADA POST v. CITY OF HAMILTON COMMUNITY MAILBOX PLACEMENT FIGHT TO CONTINUE

Canada Post is ending all urban door-to-door mail service to five million Canadians in five years. Like any change in government services, the shift away from at home delivery is rife with contention and public outcry. At the centre of the anguish is Canada Post's placement of the community mailboxes (CMB) that will be replacing at home delivery service. Municipalities are faced with the difficult task of reconciling Canada Post's policy with existing regulatory policies and infrastructure. The City of Hamilton attempted to do so by passing a bylaw requiring Canada Post to apply for a permit, subject to approval at the discretion of the Director of Engineering for the City, prior to placing any further CMBs. The bylaw also included a \$100,000 permit application fee, covering all proposed locations, and a moratorium on new placements intended to run for 120 days from the payment of the fee. In addition, the City filed a restraining order to prevent Canada Post from installing any further mailboxes without permits. Council member Terry Whitehead was quoted as saying "What's at stake here is that Canada Post feels it has the God-given right, and approach (sic) it with some arrogance, to put in super mailboxes".

In return, Canada Post filed a motion to quash the bylaw. In *Canada Post v City of Hamilton*, 2015 ONSC 3615, the Ontario Superior Court examined the core issue of whether or not a municipality is acting within its authority or power in enacting a regulation which profoundly impacts the operation of a federal Crown corporation.

The Court first analyzed how Canada Post derived its federal authority, including the 1980s origins of the community mailbox and pointing out the recent seismic shift to communicating via email. Against the historical backdrop, the Court noted that as transactional mail volume continues to decline, Canada Post must improve its infrastructure to comply with its mandate – laying the foundation for validating the CMB strategy.

An analysis of the interaction between the City and Canada Post followed. The enmity between the parties was reflected in a series of communications, including the City's decision not to review Canada Post's proposed mailbox locations. Based on these exchanges, the judge concluded that the City's impetus in passing the bylaw was politically motivated systemic resistance to Canada Post ending at home delivery. The language of the bylaw was considered, and the judge outlined the inefficiencies inherent in what was deemed to be a largely

standardless bylaw. The negative consequences of delaying the implementation of the conversion to CMBs were also addressed.

Coming to the legal questions, the City argued their traditional authority to regulate anyone, including federal utilities, that wants to operate in the municipally owned right of way extended to the regulation of CMB placement. The judge disagreed, using the language of the *Mail Receptacles Regulation* as the basis for finding that the matter which the bylaw attempts to control is *ultra vires* the authority of the City. Further, a bylaw in conflict with or frustrating the purpose of a federal act or regulation is of no effect. The judge determined the federal purpose in this instance to be Canada Post's time sensitive need to carry out its mandate with respect to delivery of mail on a self-sustaining financial basis. The bylaw would give the City final say on the location of CMBs after an application process that has no regard for the temporal exigencies faced by Canada Post, and as such frustrated the legislative purpose of Parliament. The judge used extrinsic evidence in determining the pith and substance of the bylaw, and in doing so determined the intent of the bylaw was to prevent the transition from door-to-door delivery to community mailboxes. The judge refuted the City's argument that the bylaw was primarily intended for road regulation and that any impact on CMB's location was incidental, and instead decided the bylaw directly encroached on an activity within Canada Post's mandate by affecting how mail is deposited, stored, and delivered. The Court considered the bylaw to be a serious trammeling of Canada Post's federal power to locate its receptacles where it deemed appropriate.

The City lost on every point. The Court found the bylaw conflicted with federal law under s. 14(1) of the Municipal Act, was *ultra vires* the jurisdiction of the City, violated the doctrine of interjurisdictional immunity, was subject to the doctrine of paramountcy of federal law, and was preempted by Crown immunity. The determinative factor was the judge's opinion that the bylaw is an attempt to stop Canada Post from ending door-to-door service. If the decision stands, it will serve as clear precedent that municipalities have no voice in determining where future CMBs should be placed. Given the importance of the decision, the City has recently decided to appeal the Court's decision.

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