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CLIENT BULLETIN

Eng v. Toronto (City), 2012 ONSC 6818:
Ontario Superior Court of Justice Rules Toronto Shark Fin Ban Invalid

On November 30, 2012, the Ontario Superior Court of Justice struck down the City of Toronto's bylaw banning the possession, sale, and consumption of shark fin products. The challenge was founded on two main arguments: that the bylaw's primary purpose was the protection of sharks, which was argued not to be a valid municipal purpose, and that the municipality could not have jurisdiction over the harvesting of fish caught outside the boundaries of the Province of Ontario, as Ontario itself does not have that power and could not delegate it. Spence J. found for the applicants, holding that the bylaw was highly intrusive and lacked a proper municipal purpose.

Although the Toronto bylaw was far more sweeping in scope than most shark fin bans, this decision will be of interest to local governments in British Columbia that have banned or intend to ban the sale of shark fin products, as both the purpose of protecting sharks and the purpose of protecting public health and well-being were found to be invalid.

The preamble to the Toronto bylaw stated that "the consumption of shark fin and shark fin products may have an adverse impact on the health, safety and well-being of persons and on the economic, social and environmental well-being of the City of Toronto". Spence J. held that for this purpose to be valid there had to be some identifiable benefit to the City. Toronto argued that its ban would benefit the City economically and environmentally by contributing to the reduction of global shark finning, which would benefit communities around the world, including Toronto. The judge rejected this argument, stating that "the ban will not by itself have any identifiable benefit for Toronto with respect to the environmental well-being of the City."

The evidence showed that the ban was also partly motivated by concern over the inhumane nature of shark finning. The judge held that the power to regulate in respect of animals does not extend to shark fin products. Toronto submitted that the bylaw reflected the social and environmental values of the City with respect to the treatment of animals, and that this was a municipal purpose related to the social well-being of the City. Spence J. found that "social well-being of the City" referred to the ability of the City's inhabitants to live together as an urban society, rather than to the expression of some inhabitants' values, and that the practice of shark finning has no effect on the ability of Torontonians to live as a community.

The argument that shark fins are unhealthy for human consumption was rejected as having no air of reality, given that there was no evidence that moderate shark fin consumption would have any ill effect on people's health, and that many food products can be injurious to health if consumed to excess.

Accordingly, Spence J. held that the bylaw did not have a proper municipal purpose, and was therefore *ultra vires* and without any force and effect.

For further information about this case, please contact Young, Anderson.

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