

Waste Not Want Not

Preserving the Value of Garbage

*The opinions expressed are those of the author and not necessarily those of the
City of Toronto or its Legal Department*

MWIN Conference, 2008
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DISCOVERY



Sometimes, the greatest treasures
are found beneath piles of trash.

Overview

- Pollocking
- Flow Control
- Current Municipal Powers

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Pollocking

The art of taking something that does not belong to you, but no one else appears to be using

The Slang Dictionary

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The Cost of Pollocking

- Berkeley \$200K per year
- Manhattan \$300K per year
- Nappa \$500K per year

Materials Taken

- Scrap metal and white goods
- Aluminium cans
- PET
- Paper fibre

Strategies

- By-laws prohibiting removal (eg. Toronto c.841, 844)
- Civil remedies

Toronto v. Global Recycling Industries Inc.,
[1995] O.J. No. 1955 (Gen. Div.)

- Scooping curbside cardboard
- Contrary to Toronto By-law 1994-0759
- Loss of revenue and waste of time for crews
- Court granted injunction

Donohue Recycling Inc. v. Toronto, [2002] O.J. No. 468 (S.C.)

- Bins installed in churches and schools
- “Slice and dice” by-law (eg. 235-2001)
- Requires participation in all waste streams
- Court rejected *Donohue* argument that City was regulating a private waste system
- Court upheld broad City powers to regulate its system and users

Flow Control

- Directing flow of private waste
- Charging fees to private facilities

United Haulers Association Inc. et al v. Oneida-Herkimer Solid Waste Management Authority et al,
127 S.Ct. 1786 (2007)

- Problems in industry led to Authority and flow control by-laws
- Challenged under “dormant commerce clause”
- USSC reversed 1994 decision and upheld flow control by-law
- Recognition of important policy objectives (diversion, recycling)

Halifax Regional Municipality v. Ed de Wolfe Trucking Ltd.,
[2007] N.S.J. No. 333 (C.A.); rev'g. [2006] N.S.J. No. 385 (S.C.)

- HRM required haulers to take ICI/CD waste to designated sites in HRM
- Trial judge concluded this was an illegal monopoly
- Court of Appeal looked at broader policy objectives
- By-law upheld

*Greater Vancouver Sewerage and Drainage District
v. Ecowaste Industries Ltd.,*
[2008] B.C.J. No. 495 (C.A.); aff'g [2006] B.C.J. No. 1232 (S.C.)

- \$3/tonne fee charged on private demolition, land clearing and construction (DLC) waste
- Irrelevant that haulers were not licensed (as contemplated)
- Fee part of a regulatory scheme, not a tax

Conclusions

- Broad and purposive interpretation of existing powers
- Flow control powers have received favourable review

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