



City to Ask Supreme Court of Canada to Rule on Municipal Power to Regulate Business Use of Plastic Bags

Date: Wednesday, September 25, 2019

For Immediate Release

VICTORIA, BC — The City of Victoria will ask the Supreme Court of Canada to review the decision that set aside its business bylaw to regulate the use of plastic checkout bags.

In July, the BC Court of Appeal overturned a lower court ruling and set aside the City's Checkout Bag Regulation Bylaw, which regulated businesses providing checkout bags to customers and included restrictions on the use of plastic checkout bags. The Court of Appeal ruled that the purpose of the bylaw was the protection of the natural environment and that it required approval from the Province of BC prior to being enacted.

After careful review, the City has decided to ask the Supreme Court of Canada to review the Court of Appeal decision to clarify a municipal government's power to regulate unsustainable business practices that negatively impact the community.

"The BC Court of Appeal decision goes far beyond the issue of plastic bags. It strikes at the heart of the power of local governments to regulate business practices in line with 21st-century community values," said Victoria Mayor Lisa Helps. "If the decision is allowed to stand it can potentially be interpreted to severely limit the power of local governments. This is why the City of Victoria is seeking leave to appeal to the Supreme Court of Canada."

The Court of Appeal decision that the bylaw required provincial approval runs contrary to a principle previously mentioned by the Supreme Court of Canada that law-making and implementation are often best achieved at a level of government that is closest to the citizens affected and therefore most responsive to their needs and to local distinctiveness.

"Large and small local governments across British Columbia are enacting bylaws that regulate the use of single-use plastics, in response to the strong wishes of their citizens and businesses. These local governments are not wavering in their commitment, but a review of the BC Court of Appeal decision is critical," said District of Tofino Mayor Josie Osborne. "Most municipalities simply don't have the resources to respond to legal challenges or take issues like these all the way through the court system, so I welcome the City of Victoria's decision and deeply appreciate their leadership."

The City believes that the Court of Appeal applied a very restrictive interpretation of municipal power to regulate business, which could potentially affect other municipal bylaws not only in Victoria but across B.C. and

in other provinces that have similar municipal legislation. Therefore, this case raises issues of general importance and warrants consideration by the Supreme Court of Canada.

“As Squamish works to develop a bylaw towards eliminating single use items, I wish to recognize the City of Victoria for taking continued leadership with the development of its original bylaw, and now as the City seeks leave to appeal to the Supreme Court of Canada. Local governments of all sizes across Canada are grappling with complex issues such as climate change, environmental degradation, housing affordability, economic disruption, policing, and the list goes on,” said Squamish Mayor Karen Elliott. “We engage with our citizens, businesses and others to find local solutions that work in our particular circumstances, and that can potentially inspire other communities to act. As the government closest to the citizens, it is critical that our power to implement bylaws and regulations, in line with a community’s values and long-term goals, is protected to the fullest extent possible.”

The City of Victoria’s Checkout Bag Regulation Bylaw came into effect on July 1, 2018 and regulated the types of checkout bags that could be offered by businesses to customers. The bylaw was developed with extensive input from local businesses, industry and the community during a two-year engagement period. The implementation of the City’s checkout bag bylaw in 2018 was enthusiastically embraced by both businesses and customers and was used as a model by a number of other B.C. municipalities.

The bylaw was challenged by the Canadian Plastic Bag Association, an industry lobbying group, that alleged the bylaw was not a valid business regulation but rather an environmental regulation that required provincial approval prior to adoption by the City.

The Association’s challenge was dismissed by the BC Supreme Court in June 2018 when the judge found that the bylaw was, in fact, a business regulation and that any environmental effect of the bylaw was merely incidental and secondary to its main purpose to regulate business checkout transactions. In July 2019, the BC Court of Appeal overturned the lower court’s finding when it concluded that the bylaw was an environmental regulation.

Victoria has made sustainable business practices the new norm. Since the bylaw’s introduction, the community eliminated 17 million plastic bags from the waste stream which will result in both short-term and long-term cost savings for waste management. Although the Checkout Bag Regulation Bylaw has been set aside and has not been in effect since the Court of Appeal decision on July 11, most businesses in Victoria continue to operate as if the bylaw was still in effect – a testament to the wide community support of the bylaw.

Under the Supreme Court of Canada rules, the court decides whether or not it will hear the appeal. The City’s deadline to apply is September 30. It normally takes between four and six months for the decision on whether or not the Supreme Court of Canada will hear the case.

For More Information:

Bill Eisenhauer
Head of Engagement
City of Victoria
250.858.1061
beisenhauer@victoria.ca