2001 CarswellQue 1268, 2001 SCC 40, 200 D.L.R. (4th) 419, 19 M.P.L.R. (3d) 1, 271 N.R. 201, 40 C.E.L.R. (N.S.) 1, [2001] 2 S.C.R. 241, 2001 CarswellQue 1269, 2 S.C.R. 241, [2001] S.C.J. No. 42, REJB 2001-24833, J.E. 2001-1306

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114957 Canada Ltée (Spray-Tech, Société d'arrosage) v. Hudson (Ville)

114957 Canada Ltée (Spraytech, Société d'arrosage) and Services des espaces verts Ltée/Chemlawn, Appellants v. Town of Hudson, Respondent and Federation of Canadian Municipalities, Nature-Action Québec Inc. and World Wildlife Fund Canada, Toronto Environmental Alliance, Sierra Club of Canada, Canadian Environmental Law Association, Parents' Environmental Network, Healthy Lawns - Healthy People, Pesticide Action Group Kitchener, Working Group on the Health Dangers of the Urban Use of Pesticides, Environmental Action Barrie, Breast Cancer Prevention Coalition, Vaughan Environmental Action Committee and Dr. Merryl Hammond, and Fédération interdisciplinaire de l'horticulture ornementale du Québec, Interveners

Supreme Court of Canada

L'Heureux-Dubé, Gonthier, Iacobucci, Major, Bastarache, Arbour, LeBel JJ.

Heard: December 7, 2000
Judgment: June 28, 2001
Docket: Doc. 26937

Counsel: *Gérard Dugré* and *Denis Manzo*, for appellants

Stéphane Brière and *Pierre Lepage*, for respondent

Stewart A.G. Elgie and *Jerry V. DeMarco*, for interveners Federation of Canadian Municipalities, Nature-Action Québec Inc. and World Wildlife Fund Canada

Theresa A. McClenaghan and *Paul Muldoon*, for interveners Toronto Environmental Alliance, Sierra Club of Canada, Canadian Environmental Law Association, Parents' Environmental Network, Healthy Lawns - Healthy People, Pesticide Action Group Kitchener, Working Group on the Health Dangers of the Urban Use of Pesticides, Environmental Action Barrie, Breast Cancer Prevention Coalition, Vaughan Environmental Action Committee and Dr. Merryl Hammond

Jean Piette, for intervener Fédération interdisciplinaire de l'horticulture ornementale du Québec

Subject: Property; Public; Environmental

Municipal law --- Attacks on by-laws and resolutions — Grounds — Ultra vires — Beyond power of municipality — Prohibiting activity

2001 CarswellQue 1268, 2001 SCC 40, 200 D.L.R. (4th) 419, 19 M.P.L.R. (3d) 1, 271 N.R. 201, 40 C.E.L.R. (N.S.) 1, [2001] 2 S.C.R. 241, 2001 CarswellQue 1269, 2 S.C.R. 241, [2001] S.C.J. No. 42, REJB 2001-24833, J.E. 2001-1306

By-law was passed according to powers conferred on municipality by s. 410 of Cities and Towns Act — Section 410 is general welfare provision that allows municipality to pass by-laws — By-law must be interpreted in way that respects parameters set by its enabling legislation and according to municipality's objectives — By-law was passed to answer citizens' concerns regarding use of pesticides — Municipality wanted to protect health of its citizens — Municipality's objective fell within "health" component in s. 410 of Act — By-law was not beyond municipality's powers — Cities and Towns Act, R.S.Q., c. C-19, s. 410.

Municipal law --- Attacks on by-laws and resolutions — Grounds — Discrimination — Miscellaneous

By-law may discriminate when authorized to do so by its enabling legislation or when discrimination is necessary accessory to exercise by municipality of powers delegated to it by provincial legislature — Distinctions drawn by by-law were necessary consequences to exercise of power delegated by s. 410 of Cities and Towns Act — By-law 270 was validly enacted under s. 410(1) of Act — Cities and Towns Act, R.S.Q., c. C-19, s. 410, 410(1).

Administrative law --- Review of subordinate legislation — Ultra vires — Conflict with parent or general statute

Explicit conflict exists between legislation and regulation when to comply with one is to defy other — Municipality is not prohibited from regulating in particular field because legislation already exists in that field — By-law, federal legislation, and provincial legislation constitute three-tiered regulatory scheme — Because Pest Control Products Act was not exhaustive, but permissive, by-law and Act did not conflict — No conflict existed between by-law and Pesticides Act because by-law may impose stricter standards, but not less strict standards — Legislation and by-law could co-exist — Pest Control Products Act, R.S.C. 1985, c. P-9 — Pesticides Act, R.S.Q., c. P-9.3.

Droit municipal --- Contestation des règlements municipaux — Motifs — Ultra vires — En dehors des pouvoirs de la municipalité — Interdiction d'une activité

Règlement a été adopté en vertu des pouvoirs conférés à la municipalité par l'art. 410 de la Loi sur les cités et villes — Article 410 est une disposition de « bien-être général » qui permet à la municipalité d'adopter des règlements — Règlement doit être interprété de façon à respecter les paramètres de la loi habilitante et en fonction des objectifs de la municipalité — Règlement avait été adopté pour répondre aux craintes des citoyens relatives à l'usage des pesticides — Municipalité visait à protéger la santé de ses citoyens — Objectif de la municipalité relevait de l'aspect « santé » prévu à l'art. 410 de la Loi — Règlement n'était pas en dehors des pouvoirs de la municipalité — Loi sur les cités et villes, L.R.Q., c. C-19, art. 410.

Droit municipal --- Contestations des règlements municipaux — Motifs — Discrimination — En général

Règlement peut faire de la discrimination lorsque sa loi habilitante l'autorise ou lorsque la discrimination est un accessoire nécessaire de l'exercice des pouvoirs délégués à la municipalité par le législateur provincial — Distinctions faites par le règlement constituaient des conséquences nécessaires du pouvoir délégué par l'art. 410 de la Loi sur les cités et villes — Règlement 270 a été valablement adopté en vertu de l'art. 410(1) de la loi — Loi sur les cités et villes, L.R.Q., c. C-19, art. 410.

Droit administratif --- Révision de la législation accessoire — Ultra vires — Conflit avec la loi habilitante

Conflit explicite entre une loi et un règlement existe lorsque le fait d'observer l'un d'eux entraîne l'inobservation de l'autre — Existence d'une loi dans un domaine particulier n'empêche pas la municipalité de légiférer dans ce domaine — Lois fédérale et provinciale ainsi que règlement constituent un régime de réglementation à trois niveaux — Il n'y avait aucun conflit entre le règlement et la Loi sur les produits antiparasitaires, car celle-ci est permissive et non exhaustive — Il n'y avait pas de conflit entre le règlement et la Loi sur les pesticides, car le règlement peut imposer des

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normes plus sévères que la Loi, mais pas moins sévères — Lois et règlement pouvaient coexister — Loi sur les produits antiparasitaires, L.R.C. 1985, c. P-9 — Loi sur les pesticides, L.R.Q., c. P-9.3.

The appellant companies handled landscaping and lawn care. Their activities took place within the respondent municipality's territory. The companies had commercial and residential clients. In their business, they made regular use of pesticides that have been approved by the federal *Pest Control Products Act*. The companies held the permits required by Quebec's *Pesticides Act*.

Since 1985 residents of the respondent municipality have expressed concerns about the use of pesticides. As a result, the municipality passed By-law 270 in 1991, limiting the use of pesticides within the territory of the municipality to particular places. It listed activities for which pesticides could be used and adopted the definition of "pesticides" set out in the *Pesticides Act*.

In 1992 the appellant companies were charged with having used pesticides contrary to By-law 270. They pleaded not guilty and moved for declaratory judgment requesting that By-law 270 be declared inoperative on the basis that it was beyond the municipality's powers.

The motion was dismissed by the Quebec Superior Court on the ground that the municipality had the power to pass the by-law under both the *Cities and Towns Act* (CTA) and the *Pesticides Act*. The companies appealed. The Quebec Court of Appeal dismissed the appeal on the grounds that By-law 270 had been passed under s. 410(1) of the CTA and that no conflict existed between the *Pesticides Act* and the by-law. The companies appealed the judgment.

Held: The appeal was dismissed.

Per L'Heureux-Dubé J. (Gonthier, Bastarache and Arbour JJ. concurring): Because municipalities are created by legislation, they may exercise only those powers expressly granted to them by the legislation, powers implied by the expressed powers, and powers indispensable to the municipality for it to accomplish its purpose, including the general welfare powers conferred by the enabling provincial legislation. Section 410 of the CTA is a general welfare provision. Provisions such as s. 410 are less limiting, or omnibus, provisions, which allow municipalities to accept the challenges they face without requiring the enabling legislation to be modified. Nevertheless, these types of provisions do not confer an unlimited regulatory power on municipalities.

As By-law 270 used the definition of "pesticides" contained in the *Pesticides Act*, the by-law was not governed by s. 412(32) of the CTA. Instead, it fell under s. 410 of the CTA, because the provincial enabling legislation did not refer to pesticides. Since the CTA contained no provision regarding pesticides, the general welfare provision of the CTA, s. 410, was not limited.

Interpreted as a whole, By-law 270 did not impose an umpermissible total prohibition. Its sections limited only the uses of the pesticides and where the pesticides could be used. The by-law did not demand a total prohibition; it allowed the use of pesticides as long as the use was not for purely aesthetic pursuits. Even if the later adoption of s. 463.1 of the CTA by the province could confirm that the legislature never intended municipalities to regulate pesticide use, s. 463.1 is permissive and contains nothing meant to exhaust the freedom of action by municipalities regarding pesticides. If a problem occurs, an attempt must be made to interpret the by-law passed by a municipality in a way that harmonizes the powers of the municipalities with their purposes. Provisions like s. 410 of the CTA must have a reasonable connection to permitted municipal objectives. By-laws must be interpreted in a way that respects the limits set by their enabling legislation, but courts must ensure that municipalities do not pass ultra vires by-laws.

In this case By-law 270 was passed in response to the concerns of citizens regarding health risks that could be incurred from the non-essential use of pesticides within the municipality's territory. The by-law had to be given an implicit purpose: it could be reasonably concluded that the municipality's purpose was to limit the use of pesticides to protect

its residents' health. That object was directly related to the "health" aspect of s. 410(1) of the CTA. The trial judge was right to conclude that the municipality had answered one of its community's needs by noting a situation in which the environment and the health of its residents were in danger; thus, it exercised its role of environment trustee.

Discrimination may occur only when the enabling legislation explicitly provides for it or when the discrimination is necessarily subordinate to the exercise of the power delegated by the provincial legislator to the municipality. The distinctions drawn in By-law 270 were necessary consequences of the application of the power delegated by the province under s. 410 of the CTA, as they were indispensable to the exercise of the conferred power. Authorization for these distinctions had to be found in the enabling provisions by inference or by implicit delegation. This interpretation of s. 410(1) of the CTA, allowing the municipality to regulate the use of pesticides, corresponds to international principles of law and policies, as it respects the "precautionary principle" defined by international law.

By-law 270 was not rendered inoperative because of an alleged conflict with federal or provincial legislation. An explicit conflict exists only when "compliance with one is defiance of the other." Such conflict did not exist here. The *Pest Control Products Act* concerns the regulation, importation, exportation, sale, and manufacture of pesticides. That legislation is permissive, not exhaustive. Therefore, no operational conflict exists between that Act and By-law 270, because no one is in the impossible situation of having to respect both regimes created by these legislative instruments. There was no reason to fear that applying the by-law would put aside Parliament's intention. If the by-law did conflict with provincial legislation, the by-law would become inoperative only if it was directly contrary to the provincial legislation. There is neither conflict nor incompatibility when the by-law only enhances the actual legislative regulatory scheme by imposing stricter rules. The municipality may require more than the province, but not less. If the provisions can be applied harmoniously, then they must be allowed to co-exist and each will regulate a part of the same activity. Thus, the sole existence of legislation, provincial or federal, in a particular field does not prohibit municipalities from regulating in that same field. Federal and provincial legislation, as well as By-law 270, provide for a three-tiered regulatory scheme. The *Pesticides Act* contemplates the existence of complementary by-laws and the co-existence of the legislation and the by-law. The lower courts were right to reach this conclusion, as the province has yet to pass a Pesticide Management Code provided for in the provincial legislation. Moreover, to invalidate a by-law, a real conflict must exist between it and the legislation. A possible incompatibility is not enough.

The by-law was validly passed under s. 410 of the CTA.

Per LeBel J. (Iacobucci and Major JJ. concurring): As found by L'Heureux-Dubé J., By-law 270, which was passed by the respondent municipality, was valid. It did not conflict with the federal or the provincial legislation.

Although the purpose of the by-law was commendable, and it expressed the will of the members of the community to protect their local environment, the enabling legislation must provide for how that protection is to be effected. Even if municipalities are the level of public administration better adapted to answer citizens' immediate needs and concerns, municipalities remain creatures of the provincial legislature. They can exercise only those rights conferred on them by the provincial legislation. That power should be interpreted reasonably and liberally, but the interpretation cannot make up for a lack of power. To accept the appellant companies' interpretation of s. 410 of the CTA - that the section does not grant any regulatory power regarding pesticides to municipalities - would, however, render the section an empty shell. It would then become necessary for municipal powers to be particularly and explicitly expressed. Section 410 must be given a meaning: the legislature cannot provide for every possibility. It is therefore logical that that type of provision exist to give municipalities a residual power, power that will enable them to act in cases of unforeseen circumstances. Nevertheless, the concern that allows a municipality to act must be related to problems involving the community as a local entity, rather than as a member of the community at large. It must be closely linked to the immediate interests of the citizens within the territory of the municipality and must be related to a matter for which an intervention of the local public administration can be useful.

In this case the purpose of By-law 270 fell within the normal activities of the municipality: it was directed at the use and protection of the local environment. Therefore, the by-law was authorized by s. 410 of the CTA.

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Although the by-law discriminates, as L'Heureux-Dubé J. states, this type of regulation must necessarily contain a discriminatory component. Regulation on a topic like pesticides could not be accomplished without decisions on the uses of the products regulated by the by-law; otherwise, regulating would become impossible. Thus, the regulatory power implicitly included the power to discriminate.

Les entreprises appelantes faisaient de l'aménagement paysager ainsi que l'entretien de pelouses. Elles exerçaient leurs activités sur le territoire de la municipalité intimée; elles avaient des clients commerciaux et résidentiels. Dans le cadre de leurs activités commerciales, ces entreprises utilisaient régulièrement des pesticides conformes à la *Loi sur les produits antiparasitaires* (« LPAP ») du gouvernement fédéral et détenaient les permis requis par la *Loi sur les pesticides* du gouvernement provincial québécois.

Les résidants de la municipalité intimée ayant exprimé à maintes reprises depuis 1985 leurs craintes relativement à l'usage des pesticides, la municipalité a adopté, en 1991, le règlement 270. Celui-ci limitait l'utilisation des pesticides sur son territoire à des endroits précis et aux activités énumérées et reprenait la définition de pesticides énoncée dans la *Loi sur les pesticides*.

En 1992, les entreprises appelantes ont été accusées d'avoir utilisé des pesticides, contrairement au règlement 270. Elles ont plaidé non coupable et ont déposé une requête en jugement déclaratoire qui demandait que le règlement 270 soit déclaré inopérant sous prétexte qu'il était en dehors des pouvoirs de la municipalité.

La Cour supérieure a rejeté la requête au motif que la municipalité avait le pouvoir d'adopter ce règlement en vertu de la *Loi sur les cités et villes* (« LCV ») et de la *Loi sur les pesticides*. Les entreprises ont interjeté appel. La Cour d'appel a rejeté le pourvoi au motif que le règlement 270 avait été adopté en vertu de l'art. 410(1) de la LCV et que le règlement n'entrait pas en conflit avec la *Loi sur les pesticides*. Les entreprises ont porté ce jugement en appel.

Held: Le pourvoi a été rejeté.

L'Heureux-Dubé, J. (Gonthier, Bastarache, Arbour, JJ., souscrivant) : Parce que les municipalités sont créées par la loi, elles ne peuvent exercer que les pouvoirs qui leur sont explicitement dévolus par la loi, ceux qui découlent de ces derniers et les pouvoirs indispensables pour arriver à leurs fins, y compris les pouvoirs conférés par la loi provinciale habilitante en matière de « bien-être général ». L'article 410 de la LCV constitue une disposition de « bien-être général ». Les dispositions moins limitatives, ou « omnibus », tel l'art. 410 de la LCV, permettent aux municipalités de relever les nouveaux défis auxquels elles font face sans avoir besoin de faire modifier la loi habilitante. Par ailleurs, ce genre de disposition ne confère pas aux municipalités un pouvoir de réglementation illimité.

Parce que le règlement 270 reprend la définition de « pesticide » de la *Loi sur les pesticides*, il ne tombe pas sous l'égide de l'art. 412(32) LCV, mais plutôt sous l'égide de l'art. 410 LCV, car aucune disposition particulière de la loi provinciale habilitante ne fait référence aux pesticides. Vu que la LCV ne contient aucune disposition sur les pesticides, l'art. 410, une disposition de bien-être général, n'est aucunement limité.

Interprété dans son ensemble, le règlement 270 n'impose pas une interdiction absolue non permise. Ses articles délimitent les lieux et les cas d'utilisation des pesticides. Le règlement n'énonce pas un interdiction totale; il permet que les pesticides soient utilisés « dans certains cas où cet usage n'a pas un but purement esthétique ». Même si l'adoption ultérieure par le gouvernement provincial de l'art. 463.1 de la LCV pouvait confirmer que le législateur n'avait jamais eu l'intention que les municipalités puissent réglementer l'usage des pesticides, l'art. 463.1 est une disposition permissive et ne contient rien visant à retirer aux municipalités leur liberté d'action relativement aux pesticides. En cas de problème, il faut s'efforcer d'interpréter un règlement adopté par une municipalité de façon à harmoniser les pouvoirs des municipalités avec les objectifs qu'elles cherchent à atteindre. Les dispositions, tel l'art. 410 LCV, doivent donc être raisonnablement liées aux objectifs municipaux permis. Il faut interpréter les règlements municipaux de façon à

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respecter les paramètres de la loi habilitante, mais il faut aussi que les tribunaux s'assurent que les municipalités n'adoptent pas de règlements ultra vires.

En l'espèce, le règlement 270 a été adopté pour répondre aux craintes exprimées par les citoyens relativement aux risques que pouvait présenter pour la santé l'usage non essentiel des pesticides sur le territoire de la municipalité. Il fallait prêter au règlement un objectif implicite : on pouvait raisonnablement conclure que l'objet visé par la municipalité était de minimiser l'utilisation des pesticides nocifs afin de protéger la santé de ses habitants. Il s'agissait d'un objet relevant directement de l'aspect « santé » énoncé à l'art. 410(1) LCV. Le juge de première instance a donc conclu à bon droit que la municipalité, après avoir remarqué une situation où la santé de ses citoyens et l'environnement étaient en jeu, a répondu à un besoin de sa collectivité, et exercé ainsi son rôle de « fiduciaire de l'environnement ».

Il ne peut y avoir discrimination que lorsque la loi habilitante le prévoit de façon explicite ou lorsque la discrimination est nécessairement accessoire à l'exercice du pouvoir délégué à la municipalité par le législateur provincial. Les distinctions faites par le règlement 270 sont des conséquences nécessaires à l'application du pouvoir délégué par la province en vertu de l'art. 410(1) de la LCV, car elles sont indispensables à l'exercice du pouvoir conféré. La loi doit les autoriser soit par inférence ou délégation implicite. Cette façon d'interpréter l'art. 410(1) LCV, soit comme permettant à la municipalité de règlementer l'utilisation des pesticides, correspond aux principes de droit et de politique internationaux, car elle respecte le « principe de précaution » défini par le droit international.

Le règlement 270 n'a pas été rendu inopérant du fait de son incompatibilité alléguée avec la législation fédérale ou provinciale. Il existe un conflit explicite lorsque « l'observance d'une loi entraîne l'inobservance d'une autre ». Un tel conflit n'existait pas en l'espèce. La LPAP porte sur la réglementation, l'importation, l'exportation, la vente et la fabrication des pesticides. Cette loi est permissive et non exhaustive. Il n'y a donc aucun conflit opérationnel entre celle-ci et le règlement, car nul ne se voit dans l'impossibilité d'avoir à se conformer aux régimes créés par ces deux instruments législatifs. Il n'était pas à craindre que l'application du règlement écarte « l'intention du Parlement ». Quant à un conflit entre une loi provinciale et un règlement municipal, le règlement n'est inopérant que s'il se heurte directement à la loi provinciale. Il ne s'agit pas d'un conflit ou d'une incompatibilité si le règlement rehausse le régime législatif de réglementation en place en imposant des normes plus sévères. La municipalité peut être plus exigeante que la province, mais ne peut l'être moins. Si les dispositions en cause peuvent être appliquées de façon harmonieuse, il faut permettre qu'elles coexistent et qu'elles réglementent chacune une facette de la même activité. Donc, la seule existence d'une loi, provinciale ou fédérale, dans un domaine particulier n'empêche pas les municipalités de légiférer dans ce domaine. Les lois fédérale et provinciale ainsi que le règlement 270 constituent un régime de réglementation à trois niveaux. La *Loi sur les pesticides* envisage l'existence de règlements municipaux complémentaires, et que la loi et le règlement peuvent coexister. Les tribunaux inférieurs ont eu raison d'en arriver à une telle conclusion, vu que la province n'avait pas adopté le Code de gestion des pesticides prévu par la loi provinciale. Par ailleurs, il faut une réelle opposition entre la loi et le règlement pour que ce dernier soit invalidé, la possibilité d'une incompatibilité n'étant pas assez.

Le règlement a été validement adopté en vertu de l'art. 410 de la LCV.

LeBel, J. (Iacobucci, Major, JJ., souscrivant) : Comme le conclut L'Heureux-Dubé, J., le règlement 270 adopté par la municipalité intimée était valide. Il n'entre en conflit ni avec la loi fédérale ni avec la loi provinciale.

Même si l'objet du règlement était louable et que celui-ci exprimait la volonté des membres de la collectivité de protéger son environnement local, les moyens de protection choisis devaient provenir de la loi habilitante. Même si les municipalités semblent être l'ordre d'administration publique le mieux adapté aux besoins et préoccupations immédiats des citoyens, il n'en ressort pas moins que les municipalités demeurent des créatures du législateur provincial. Elles ne peuvent exercer qu'un pouvoir conféré par la loi provinciale. Ce pouvoir doit être interprété de façon raisonnable et libérale, mais l'interprétation ne peut suppléer à une absence de pouvoir. Accepter cependant l'interprétation soumise par les entreprises appelantes, soit que l'art. 410 n'accorde à la municipalité aucun pouvoir de réglementation des pesticides, ferait de l'article une coquille vide. Il serait alors nécessaire que tout pouvoir de réglemen-

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tation des municipalités soit énoncé de façon particulière et explicite. On doit donner un sens à l'art. 410 : le législateur ne peut prévoir toutes les éventualités. Il est donc logique d'avoir ce genre de dispositions qui attribuent un pouvoir résiduaire aux municipalités, leur permettant ainsi d'agir en cas d'imprévu. Par ailleurs, la préoccupation qui permet à la municipalité d'agir doit avoir trait à des problèmes qui touchent la collectivité comme entité locale, et non comme membre de la société au sens large. Elle doit être liée de près aux intérêts immédiats des citoyens se trouvant sur le territoire de la municipalité et se rapporter à toute question pour laquelle l'intervention des administrations publiques locales peut se révéler utile.

En l'espèce, l'objet visé par le règlement 270 relevait des activités normales de la municipalité. On visait l'utilisation et la protection de l'environnement local. Le règlement était donc autorisé en bonne et due forme par l'art. 410 LCV.

Tout comme l'énonce L'Heureux-Dubé, J., même si le règlement fait de la discrimination, ce genre de règlement doit nécessairement comporter une composante de discrimination. On ne peut faire de règlement sur un sujet, tel les pesticides, sans délimiter l'usage du produit visé par le règlement, sinon il ne serait pas possible de réglementer. Donc, le pouvoir de réglementer comportait implicitement celui de faire de la discrimination.

Cases considered by/Jurisprudence citée par *L'Heureux-Dubé J.* (*Gonthier, Bastarche and Arbour JJ.* concurring):

Allard Contractors Ltd. v. Coquitlam (District), 85 B.C.L.R. (2d) 257, 35 B.C.A.C. 241, 57 W.A.C. 241, 109 D.L.R. (4th) 46, 18 M.P.L.R. (2d) 1, [1993] 4 S.C.R. 371, 160 N.R. 249, 19 Admin. L.R. (2d) 1 (S.C.C.) — referred to

Baker v. Canada (Minister of Citizenship & Immigration), 174 D.L.R. (4th) 193, 243 N.R. 22, 1 Imm. L.R. (3d) 1, 14 Admin. L.R. (3d) 173, [1999] 2 S.C.R. 817 (S.C.C.) — considered

Bank of Montreal v. Hall, 9 P.P.S.A.C. 177, 46 B.L.R. 161, [1990] 1 S.C.R. 121, 65 D.L.R. (4th) 361, 104 N.R. 110, [1990] 2 W.W.R. 193, 82 Sask. R. 120 (S.C.C.) — referred to

British Columbia Lottery Corp. v. Vancouver (City) (1999), 169 D.L.R. (4th) 141, 118 B.C.A.C. 129, 192 W.A.C. 129, 1 M.P.L.R. (3d) 1, 61 B.C.L.R. (3d) 207 (B.C. C.A.) — considered

Canada (Procureure générale) c. Hydro-Québec, *(*sub nom. *R v. Hydro-Québec)* 118 C.C.C. (3d) 97, *(*sub nom. *R. v. Hydro-Québec)* 151 D.L.R. (4th) 32, 9 C.R. (5th) 157, *(*sub nom. *R. v. Hydro-Québec)* 217 N.R. 241, *(*sub nom. *R. v. Hydro-Québec)* [1997] 3 S.C.R. 213, 24 C.E.L.R. (N.S.) 167 (S.C.C.) — considered

Fountainhead Fun Centre Ltd. v. Montréal (Ville), *(*sub nom. *Montreal (Ville) v. Arcade Amusements Inc.)* [1985] 1 S.C.R. 368, 18 D.L.R. (4th) 161, 29 M.P.L.R. 220, *(*sub nom. *Arcade Amusements Inc. v. Montreal (Ville))* 58 N.R. 339 (S.C.C.) — considered

Friends of the Oldman River Society v. Canada (Minister of Transport), [1992] 2 W.W.R. 193, [1992] 1 S.C.R. 3, 3 Admin. L.R. (2d) 1, 7 C.E.L.R. (N.S.) 1, 84 Alta. L.R. (2d) 129, 88 D.L.R. (4th) 1, 132 N.R. 321, 48 F.T.R. 160 (S.C.C.) — considered

Huot c. St. Jérôme (Ville) (April 23, 1993), Doc. C.S. Terrebonne (Saint-Jérôme) 700-05-000250-930 (Que. S.C.) — considered

Kuchma v. Tache (Rural Municipality), [1945] S.C.R. 234, [1945] 2 D.L.R. 13 (S.C.C.) — considered

Law Society of Upper Canada v. Barrie (City) (2000), 46 O.R. (3d) 620, 183 D.L.R. (4th) 757, 11 M.P.L.R. (3d) 89 (Ont. S.C.J.) — considered

M & D Farm Ltd. v. Manitoba Agricultural Credit Corp., [1999] 9 W.W.R. 356, 176 D.L.R. (4th) 585, 245 N.R. 165, [1999] 2 S.C.R. 961, 35 C.P.C. (4th) 1, 138 Man. R. (2d) 161, 202 W.A.C. 161 (S.C.C.) — referred to

Multiple Access Ltd. v. McCutcheon, [1982] 2 S.C.R. 161, 138 D.L.R. (3d) 1, 44 N.R. 181, 18 B.L.R. 138 (S.C.C.) — followed

Nanaimo (City) v. Rascal Trucking Ltd., 183 D.L.R. (4th) 1, 2000 SCC 13, 251 N.R. 42, 132 B.C.A.C. 298, 215 W.A.C. 298, 9 M.P.L.R. (3d) 1, [2000] 1 S.C.R. 342, [2000] 6 W.W.R. 403, 76 B.C.L.R. (3d) 201, 20 Admin. L.R. (3d) 1 (S.C.C.) — considered

Ontario (Attorney General) v. Mississauga (City) (1981), 33 O.R. (2d) 395, 15 M.P.L.R. 212, 10 C.E.L.R. 91, 124 D.L.R. (3d) 385 (Ont. C.A.) — considered

R. v. Canadian Pacific Ltd., 41 C.R. (4th) 147, 17 C.E.L.R. (N.S.) 129, 99 C.C.C. (3d) 97, 125 D.L.R. (4th) 385, *(*sub nom. *Ontario v. Canadian Pacific Ltd.)* 183 N.R. 325, *(*sub nom. *Ontario v. Canadian Pacific Ltd.)* 24 O.R. (3d) 454 (note), *(*sub nom. *Ontario v. Canadian Pacific Ltd.)* 82 O.A.C. 243, *(*sub nom. *Ontario v. Canadian Pacific Ltd.)* 30 C.R.R. (2d) 252, *(*sub nom. *Ontario v. Canadian Pacific Ltd.)* [1995] 2 S.C.R. 1031 (S.C.C.) — considered

R. v. Greenbaum, 14 M.P.L.R. (2d) 1, 79 C.C.C. (3d) 158, 100 D.L.R. (4th) 183, 149 N.R. 114, [1993] 1 S.C.R. 674, 19 C.R. (4th) 347, 61 O.A.C. 241, 10 Admin. L.R. (2d) 161 (S.C.C.) — distinguished

R. v. Sharma, 14 M.P.L.R. (2d) 35, 19 C.R. (4th) 329, 10 Admin. L.R. (2d) 196, 79 C.C.C. (3d) 142, 100 D.L.R. (4th) 167, [1993] 1 S.C.R. 650, 149 N.R. 161, 61 O.A.C. 161 (S.C.C.) — considered

Scarborough (Borough) v. R.E.F. Homes Ltd. (1979), 9 M.P.L.R. 255, 10 C.E.L.R. 40 (Ont. C.A.) — considered

Shell Canada Products Ltd. v. Vancouver (City), [1994] 3 W.W.R. 609, 20 M.P.L.R. (2d) 1, 20 Admin. L.R. (2d) 202, 110 D.L.R. (4th) 1, 88 B.C.L.R. (2d) 145, [1994] 1 S.C.R. 231, 163 N.R. 81, 41 B.C.A.C. 81, 66 W.A.C. 81 (S.C.C.) — distinguished

St-Michel Archange (Municipalité) c. 2419-6388 Québec Inc., *(*sub nom. *2419-6388 Québec Inc. c. Saint-Michel Archange (Municipalité))* 45 Q.A.C. 161, *(*sub nom. *2419-6388 Québec Inc. c. Saint-Michel Archange (Municipalité))* [1992] R.J.Q. 875 (Que. C.A.) — considered

Uxbridge (Township) v. Timber Brothers Sand & Gravel Ltd. (1975), 7 O.R. (2d) 484, 55 D.L.R. (3d) 516, 4 C.E.L.N. 4 (Ont. C.A.) — considered

Weir v. R. (1979), 26 O.R. (2d) 326, 102 D.L.R. (3d) 273, 51 C.C.C. (2d) 49 (Ont. Div. Ct.) — referred to

Cases considered by/Jurisprudence citée par *LeBel J.* (*Iacobucci and Major JJ.* concurring):

Fountainhead Fun Centre Ltd. v. Montréal (Ville), *(*sub nom. *Montreal (Ville) v. Arcade Amusements Inc.)* [1985] 1 S.C.R. 368, 18 D.L.R. (4th) 161, 29 M.P.L.R. 220, *(*sub nom. *Arcade Amusements Inc. v. Montreal (Ville))* 58 N.R. 339 (S.C.C.) — referred to

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M & D Farm Ltd. v. Manitoba Agricultural Credit Corp., [1999] 9 W.W.R. 356, 176 D.L.R. (4th) 585, 245 N.R. 165, [1999] 2 S.C.R. 961, 35 C.P.C. (4th) 1, 138 Man. R. (2d) 161, 202 W.A.C. 161 (S.C.C.) — considered

Multiple Access Ltd. v. McCutcheon, [1982] 2 S.C.R. 161, 138 D.L.R. (3d) 1, 44 N.R. 181, 18 B.L.R. 138 (S.C.C.) — followed

Nanaimo (City) v. Rascal Trucking Ltd., 183 D.L.R. (4th) 1, 2000 SCC 13, 251 N.R. 42, 132 B.C.A.C. 298, 215 W.A.C. 298, 9 M.P.L.R. (3d) 1, [2000] 1 S.C.R. 342, [2000] 6 W.W.R. 403, 76 B.C.L.R. (3d) 201, 20 Admin. L.R. (3d) 1 (S.C.C.) — considered

O.E.C.T.A. v. Ontario (Attorney General), 2001 SCC 15, 2001 CarswellOnt 580, 2001 CarswellOnt 581, *(*sub nom. *Ontario English Catholic Teachers' Assn. v. Ontario (Attorney General))* 196 D.L.R. (4th) 577, [2001] 1 S.C.R. 470 (S.C.C.) — referred to

Public School Boards' Assn. (Alberta) v. Alberta (Attorney General), 2000 SCC 45, [2000] 2 S.C.R. 409, 191 D.L.R. (4th) 513, 260 N.R. 127, [2001] 1 W.W.R. 203, 266 A.R. 201, 228 W.A.C. 201, 85 Alta. L.R. (3d) 1 (S.C.C.) — referred to

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R. v. Sharma, 14 M.P.L.R. (2d) 35, 19 C.R. (4th) 329, 10 Admin. L.R. (2d) 196, 79 C.C.C. (3d) 142, 100 D.L.R. (4th) 167, [1993] 1 S.C.R. 650, 149 N.R. 161, 61 O.A.C. 161 (S.C.C.) — referred to

Shell Canada Products Ltd. v. Vancouver (City), [1994] 3 W.W.R. 609, 20 M.P.L.R. (2d) 1, 20 Admin. L.R. (2d) 202, 110 D.L.R. (4th) 1, 88 B.C.L.R. (2d) 145, [1994] 1 S.C.R. 231, 163 N.R. 81, 41 B.C.A.C. 81, 66 W.A.C. 81 (S.C.C.) — considered

Statutes considered/Législation citée par *L'Heureux-Dubé J.* (*Gonthier, Bastarche and Arbour JJ.* concurring):

Canadian Environmental Protection Act, 1999/protection de l'environnment (1999), Loi canadienne sur la, S.C./L.C. 1999, c. 33

s. 2(1)(a) — referred to

Cités et villes, Loi sur les, L.R.Q., c. C-19

en général — considered

art. 410 [mod. 1982, c. 64, s. 5; mod. 1996, c. 2, s. 150] — considered

art. 410(1) — considered

art. 412(32) — considered

art. 463.1 [ad. 1998, c. 31, s. 15] — considered

Cities, Towns and Villages Act/cités, villes et villages, Loi sur les, R.S.N.W.T./L.R.N.W.T. 1988, c. C-8

s. 54 — referred to

s. 102 — referred to

Code de procédure civile, L.R.Q., c. C-25

art. 453 — referred to

Endangered Species Act, S.N.S. 1998, c. 11

s. 2(1)(h) — referred to

s. 11(1) — referred to

Local Government Act, R.S.B.C. 1996, c. 323

s. 249 — referred to

Municipal Act/municipalités, Loi sur les, R.S.O./L.R.O. 1990, c. M.45

s. 102 — referred to

Municipal Act/municipalités, Loi sur les, S.M./L.M. 1996, c. 58

s. 232 — referred to

s. 233 — referred to

Municipal Act/municipalités, Loi sur les, R.S.Y./L.R.Y. 1986, c. 119

s. 271 — referred to

Municipal Government Act, S.A. 1994, c. M-26.1

s. 3(c) — referred to

s. 7 — referred to

Municipal Government Act, S.N.S. 1998, c. 18

s. 172 — referred to

Municipalities Act/municipalités, Loi sur les, R.S.N.B./L.R.N.-B. 1973, c. M-22

s. 190(2) — referred to

2001 CarswellQue 1268, 2001 SCC 40, 200 D.L.R. (4th) 419, 19 M.P.L.R. (3d) 1, 271 N.R. 201, 40 C.E.L.R. (N.S.) 1, [2001] 2 S.C.R. 241, 2001 CarswellQue 1269, 2 S.C.R. 241, [2001] S.C.J. No. 42, REJB 2001-24833, J.E. 2001-1306

First Sched. — referred to

Oceans Act/océans, Loi sur les, S.C./L.C. 1996, c. 31

Preamble/Préambule — referred to

Pest Control Products Act/produits antiparasitaires, Loi sur le, R.S.C./L.R.C. 1985, c. P-9

Generally/en général — considered

s. 4(1) — referred to

s. 4(3) — referred to

s. 6(1)(j) [am./mod. 1993, c. 44, s. 2000] — referred to

Pesticides, Loi sur les, L.R.Q., c. P-9.3

en général — considered

art. 102 [abr. et rempl. 1993, c. 77, s. 9] — considered

art. 105 [mod. 1987, c. 29, s. 105] — considered

art. 105.1 [ad. 1993, c. 77, s. 11] — considered

art. 106 [mod. 1987, c. 29, s. 106] — considered

art. 107 [mod. 1987, c. 29, s. 107] — considered

Statutes considered/Législation citée par *LeBel J.* (*Iacobucci and Major JJ.* concurring):

Cités et villes, Loi sur les, L.R.Q., c. C-19

en général — considered

art. 410 [mod. 1982, c. 64, s. 5; mod. 1996, c. 2, s. 150] — considered

art. 410(1) — considered

art. 412(32) — considered

Pest Control Products Act/produits antiparasitaires, Loi sur le, R.S.C./L.R.C. 1985, c. P-9

Generally/en général — considered

Pesticides, Loi sur les, L.R.Q., c. P-9.3

en général — considered

Regulations considered by *L'Heureux-Dubé J.* (*Gonthier, Bastarche and Arbour JJ.* concurring):

Pest Control Products Act, R.S.C. 1985, c. P-9

Pest Control Products Regulation, C.R.C. 1978, c. 1253

Generally

s. 45

Regulations considered by *LeBel J.* (*Iacobucci and Major JJ.* concurring):

Pest Control Products Act, R.S.C. 1985, c. P-9

Pest Control Products Regulation, C.R.C. 1978, c. 1253

Generally

APPEAL from judgment reported at [1998] A.Q. No. 2546, 1998 CarswellQue 747 (Que. C.A.), dismissing companies' appeal from judgment reported at 19 M.P.L.R. (2d) 224, 1993 CarswellQue 73, [1993] Q.J. No. 1450 (Que. S.C.), dismissing companies' motion for judgment declaring that municipal by-law was inoperative and beyond municipality's powers.

POURVOI des entreprises à l'encontre de l'arrêt publié à [1998] A.Q. No 2546, 1998 CarswellQue 747 (C.A. Qué.), qui a rejeté le pourvoi des entreprises à l'encontre du jugement publié à 19 M.P.L.R. (2d) 224, 1993 CarswellQue 73, [1993] Q.J. No 1450 (C.S. Qué.), qui avait rejeté la requête des entreprises demandant que le règlement de la municipalité soit déclaré inopérant et en dehors de ses pouvoirs.

***L'Heureux-Dubé J.* (*Gonthier, Bastarche and Arbour JJ.* concurring):**

1 The context of this appeal includes the realization that our common future, that of every Canadian community, depends on a healthy environment. In the words of the Superior Court judge: "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]." This Court has recognized that "[e]veryone is aware that individually and collectively, we are responsible for preserving the natural environment . . . environmental protection [has] emerged as a fundamental value in Canadian society": *R. v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031 (S.C.C.), at para. 55. See also *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3 (S.C.C.), at pp. 16-17.

2 Regardless of whether pesticides are in fact an environmental threat, the Court is asked to decide the legal question of whether the Town of Hudson, Quebec, acted within its authority in enacting a by-law regulating and restricting pesticide use.

3 The case arises in an era in which matters of governance are often examined through the lens of the principle of subsidiarity. This is the proposition that law-making and implementation are often best achieved at a level of government that is not only effective, but also closest to the citizens affected and thus most responsive to their needs, to

2001 CarswellQue 1268, 2001 SCC 40, 200 D.L.R. (4th) 419, 19 M.P.L.R. (3d) 1, 271 N.R. 201, 40 C.E.L.R. (N.S.) 1, [2001] 2 S.C.R. 241, 2001 CarswellQue 1269, 2 S.C.R. 241, [2001] S.C.J. No. 42, REJB 2001-24833, J.E. 2001-1306

local distinctiveness, and to population diversity. La Forest J. wrote for the majority in *Canada (Procureure générale) c. Hydro-Québec*, [1997] 3 S.C.R. 213 (S.C.C.), at p. 296, that "the protection of the environment is a major challenge of our time. It is an international problem, one that requires action by *governments at all levels*" (emphasis added). His reasons in that case also quoted with approval a passage from *Our Common Future*, the report produced in 1987 by the United Nations' World Commission on the Environment and Development. The so-called "Brundtland Commission" recommended that "local governments [should be] empowered to exceed, but not to lower, national norms" (p. 220).

4 There are now at least 37 Quebec municipalities with by-laws restricting pesticides: John Swaigen, "The *Hudson* Case: Municipal Powers to Regulate Pesticides Confirmed by Quebec Courts" (2000), 34 C.E.L.R. (N.S.) 162, at p. 174. Nevertheless, each level of government must be respectful of the division of powers that is the hallmark of our federal system; there is a fine line between laws that legitimately complement each other and those that invade another government's protected legislative sphere. Ours is a legal inquiry informed by the environmental policy context, not the reverse.

I. Facts

5 The appellants are landscaping and lawn care companies operating mostly in the region of greater Montreal, with both commercial and residential clients. They make regular use of pesticides approved by the federal *Pest Control Products Act*, R.S.C. 1985, c. P-9, in the course of their business activities and hold the requisite licences under Quebec's *Pesticides Act*, R.S.Q., c. P-9.3.

6 The respondent, the Town of Hudson ("the Town"), is a municipal corporation governed by the *Cities and Towns Act*, R.S.Q., c. C-19 ("*C.T.A.*"). It is located about 40 kilometres west of Montreal and has a population of approximately 5,400 people, some of whom are clients of the appellants. In 1991, the Town adopted By-law 270, restricting the use of pesticides within its perimeter to specified locations and for enumerated activities. The by-law responded to residents' concerns, repeatedly expressed since 1985. The residents submitted numerous letters and comments to the Town's Council. The definition of pesticides in By-law 270 replicates that of the *Pesticides Act*.

7 In November 1992, the appellants were served with a summons by the Town to appear before the Municipal Court and respond to charges of having used pesticides in violation of By-law 270. The appellants pled not guilty and obtained a suspension of proceedings in order to bring a motion for declaratory judgment before the Superior Court (under art. 453 of Quebec's *Code of Civil Procedure*). They asked that the court declare By-law 270 (as well as By-law 248, which is not part of this appeal) to be inoperative and *ultra vires* the Town's authority.

8 The Superior Court denied the motion for declaratory judgment, finding that the by-laws fell within the scope of the Town's powers under the *C.T.A.* This ruling was affirmed by a unanimous Quebec Court of Appeal.

II. Relevant Statutory Provisions

9 Town of Hudson By-Law 270

> 1. The following words and expressions, whenever the same occur in this By-Law, shall have the following meaning:
>
> > a) "PESTICIDES": means any substance, matter or micro-organism intended to control, destroy, reduce, attract or repel, directly or indirectly, an organism which is noxious, harmful or annoying for a human being, fauna, vegetation, crops or other goods or intended to regulate the growth of vegetation, excluding medicine or vaccine;
> >
> > b) "FARMER": means a farm producer within the meaning of the Farm Producers Act (R.S.Q., chap., P-28);

. . . . .

2. The spreading and use of a pesticide is prohibited throughout the territory of the Town.

3. Notwithstanding article 2, it is permitted to use a pesticide in the following cases:

a) in a public or private swimming pool;

b) to purify water intended for the use of human beings or animals;

c) inside of a building;

d) to control or destroy animals which constitute a danger for human beings;

e) to control or destroy plants which constitute a danger for human beings who are allergic thereto.

4. Notwithstanding article 2, a farmer using a pesticide on an immoveable which is exploited for purposes of agriculture or horticulture, in a hot house or in the open, is requested to

a) register, by written declaration, with the Town, in the month of March of each year, the products which he stores and which he will be using during that year.

b) also provide, in the written declaration at article 4a), the schedule of application of said products and the area(s) of his property where the products will be applied.

5. Notwithstanding article 2, it is permitted to use a pesticide on a golf course, for a period not exceeding five (5) years from the date this by-law comes into force:

. . . . .

6. Notwithstanding article 2, it is permitted to use a biological pesticide to control or destroy insects which constitute a danger or an inconvenience for human beings.

. . . . .

10. For the purpose of article 8 of the Agricultural Abuses Act (R.S.Q. chap. A-2), an inspector designated by the Town may use a pesticide, notwithstanding article 2 of the By-Law, if there is no other efficient way of destroying noxious plants determined as such by the Provincial Government and the presence of which is harmful to a real and continuous agricultural exploitation.

Cities and Towns Act, R.S.Q., c. C-19

410. The council may make by-laws:

(1) To secure peace, order, good government, health and general welfare in the territory of the municipality, provided such by-laws are not contrary to the laws of Canada, or of Québec, nor inconsistent with any special provision of this Act or of the charter;

2001 CarswellQue 1268, 2001 SCC 40, 200 D.L.R. (4th) 419, 19 M.P.L.R. (3d) 1, 271 N.R. 201, 40 C.E.L.R. (N.S.) 1, [2001] 2 S.C.R. 241, 2001 CarswellQue 1269, 2 S.C.R. 241, [2001] S.C.J. No. 42, REJB 2001-24833, J.E. 2001-1306

. . . . .

In no case may the council make by-laws on the matters contemplated in the Agricultural Products, Marine Products and Food Act (chapter P-29) or in the Dairy Products and Dairy Products Substitutes Act (chapter P-30). This paragraph applies notwithstanding any provision of a special Act granting powers on those matters to any municipality other than Ville de Trois-Rivières and Ville de Sherbrooke.

. . . . .

412. The council may make by-laws:

. . . . .

(32) To regulate or prohibit the storage and use of gun-powder, dry pitch, resin, coal oil, benzine, naphtha, gasoline, turpentine, gun-cotton, nitro-glycerine, and other combustible, explosive, corrosive, toxic or radioactive or other materials that are harmful to public health or safety, in the territory of the municipality or within 1 km therefrom;

By-laws passed under the first paragraph in respect of corrosive, toxic or radioactive materials require the approval of the Minister of the Environment;

. . . . .

463.1 Subject to the Pesticides Act (chapter P-9.3) and the Environment Quality Act (chapter Q-2), the municipality may, with the consent of the owner of an immovable, carry out pesticide application works on the immovable.

Pesticides Act, R.S.Q., c. P-9.3

102. The provisions of the Pesticide Management Code and of the other regulations of this Act prevail over any inconsistent provision of any by-law passed by a municipality or an urban community.

102. [as revised in 1993; not yet in force] The Pesticide Management Code and any other regulation enacted pursuant to this Act shall render inoperative any regulatory provision concerning the same matter enacted by a municipality or an urban community, except where the provision

- concerns landscaping or extermination activities, such as fumigation, as defined by government regulation, and

- prevents or further mitigates harmful effects on the health of humans or of other living species or damage to the environment or to property.

. . . . .

105. [Not yet in force] The Government shall enact by regulation a Pesticide Management Code which may prescribe rules, restrictions or prohibitions respecting activities related to the distribution, storage, transportation, sale or use of any pesticide, pesticide container or any equipment used for any of those activities.

105.1. [Not yet in force] The Pesticide Management Code may require a person who stores pesticides of a determined category or in a determined quantity to subscribe civil liability insurance, the kind, extent, duration, amount and other applicable conditions of which are determined in the said Code, and to furnish thereof to the Minister.

106. [Not yet in force] The Pesticide Management Code may cause any rule elaborated by another government or by a body to be mandatory.

In addition, the code may cause any instructions of the manufacturer of a pesticide or of equipment used for any activity referred to in the code to be mandatory.

107. [Not yet in force] The Government may prescribe that the contravention of the provisions of this code which it determines constitutes an offence.

Pest Control Products Act, R.S.C. 1985, c. P-9

4.(1) No person shall manufacture, store, display, distribute or use any control product under unsafe conditions.

. . . . .

(3) A control product that is not manufactured, stored, displayed, distributed or used as prescribed or that is manufactured, stored, displayed, distributed or used contrary to the regulations shall be deemed to be manufactured, stored, displayed, distributed or used contrary to subsection (1).

6.(1) The Governor in Council may make regulations

. . . . .

(j) respecting the manufacture, storage, distribution, display and use of any control product; . . .

Pest Control Products Regulations, C.R.C. 1978, c. 1253

45.(1) No person shall use a control product in a manner that is inconsistent with the directions or limitations respecting its use shown on the label.

(2) No person shall use a control product imported for the importer's own use in a manner that is inconsistent with the conditions set forth on the importer's declaration respecting the control product.

(3) No person shall use a control product that is exempt from registration under paragraph 5(a) for any purpose other than the manufacture of a registered control product.

III. Judgments

A. Superior Court

10 Kennedy J. held that by-laws are presumed valid and legal. He found that By-laws 248 and 270 were adopted under s. 410 *C.T.A.* and, thus, did not require ministerial approval to enter into effect. Both by-laws deal with pesti-

cides and not toxic substances and since "pesticides" are not included in s. 412(32), ministerial approval is not required. According to Kennedy J., the Town, faced with a situation involving health and the environment, acted in the public interest by enacting the by-laws in question. Consequently, the Town could rely on s. 410(1) *C.T.A.* as the legislative provision that enabled it to adopt these by-laws.

11 Kennedy J. then considered the provisions of the *Pesticides Act* to determine whether the by-laws conflicted with provincial legislation. He found it clear that the *Pesticides Act* was enacted with the intention to allow municipalities to adopt by-laws of this nature. In this regard, Kennedy J. cited ss. 102 and 105 to 107 of the *Pesticides Act*, which envision the creation of a Pesticide Management Code allowing the provincial government to restrict or prohibit pesticides. Section 102 of that Act states that the provisions of the Code are to take precedence over inconsistent by-laws. Yet, given that the Code had yet to come into force, nothing prohibited municipalities from regulating pesticide use in the interim. Kennedy J. thus concluded that there was no conflict between the by-laws and provincial or federal legislation.

B. Court of Appeal, [1998] Q.J. No. 2546 (Que. C.A.)

12 Before the Court of Appeal, the Town conceded that By-law 248 was inoperative. Thus, only By-law 270 was at issue. The appellants challenged Kennedy J.'s ruling on two grounds. First, they argued that By-law 270 was inoperative given that it was incompatible with the *Pesticides Act*. Second, the appellants contended that since the regulation of toxic substances was covered by s. 412(32) *C.T.A.*, Kennedy J. erred in finding that the by-law was enacted under s. 410(1) *C.T.A.* While the latter provision allows a municipality to enact by-laws considered necessary for public health and welfare, s. 412(32) *C.T.A.* is concerned with "toxic" materials, and states that by-laws addressing this subject matter require approval from the Minister of the Environment. Given that the Town did not obtain such approval when it enacted By-law 270, the appellants argued that the by-law was invalid.

13 The Court of Appeal, *per* Delisle J.A., accepted the Town's position that By-law 270 was enacted under s. 410(1) *C.T.A.*. In reaching this conclusion, the court noted that By-law 270 repeated the definition of "pesticide" that is found in the *Pesticides Act*. This definition makes no reference to terms used in s. 412(32) or to toxicity. Moreover, the *C.T.A.* itself does not discuss whether pesticides are "toxic . . . materials," nor does it require ministerial approval for regulations relating to pesticides. No evidence was submitted concerning the toxic character of pesticides. The Court of Appeal also held that By-law 270 furthered the objectives set out in s. 410(1) *C.T.A.* It reiterated the statements of Kennedy J. that by-laws are presumed to be valid and legal and that there is a presumption that legislators act in good faith and in the public interest. It found that s. 410(1) is a very general enabling clause and must receive a liberal interpretation.

14 The court agreed with Kennedy J.'s finding that the by-law was enacted by the Town in the public interest and in response to health concerns expressed by residents. The court noted that these concerns were recorded in the Town Council's meeting minutes and manifested themselves in letters to Council, as well as a petition with more than 300 signatures. Moreover, the Court of Appeal recognized that s. 410 *C.T.A.* describes when a municipality may not act under its general governance powers. By-laws on subjects contemplated in the *Pesticides Act* were not included in this list of unauthorized areas of regulation. The appellants argued that s. 410(1) does not permit the town to ban pesticides. The Court of Appeal held that an absolute ban would be forbidden, but that the by-law does not impose an absolute ban.

15 The Court of Appeal then examined whether By-law 270 was in conflict with the *Pesticides Act* and thus inoperative. It found that s. 102 of the *Pesticides Act* - which states that the Pesticide Management Code and all regulations of the *Pesticides Act* take precedence over any incompatible municipal by-law - contemplated municipal regulation of pesticide use. The court also commented that the revised version of s. 102, as well as ss. 105 to 107 regarding the Pesticide Management Code, had yet to be enacted. As a result, it held that, as opposed to a real conflict, a potential future incompatibility between the by-law and the Code did not suffice to render the by-law inoperative.

2001 CarswellQue 1268, 2001 SCC 40, 200 D.L.R. (4th) 419, 19 M.P.L.R. (3d) 1, 271 N.R. 201, 40 C.E.L.R. (N.S.) 1, [2001] 2 S.C.R. 241, 2001 CarswellQue 1269, 2 S.C.R. 241, [2001] S.C.J. No. 42, REJB 2001-24833, J.E. 2001-1306

16 Finally, the Court of Appeal noted that, although not yet in force, the revised version of s. 102 of the *Pesticides Act* allows municipalities to adopt by-laws concerning pesticides, so long as these are not incompatible with the Pesticide Management Code. At the same time, even if such incompatibility arises, the by-laws can continue to be operative if they relate to landscaping activities, or if they aim to prevent or reduce injury or damage to people, animals, the environment, or property. As such, this new regime would enable municipalities to enact by-laws that are more restrictive than the provisions set out in the provincial Pesticide Management Code. Based on these reasons, the Court of Appeal dismissed the appeal, holding that By-law 270 was validly enacted and operative.

IV. Issues

17 There are two issues raised by this appeal:

(1) Did the Town have the statutory authority to enact By-law 270?

(2) Even if the Town had authority to enact it, was By-law 270 rendered inoperative because of a conflict with federal or provincial legislation?

V. Analysis

A. Did the Town have the statutory authority to enact By-law 270?

18 In *R. v. Sharma*, [1993] 1 S.C.R. 650 (S.C.C.), at p. 668, this Court recognized "the principle that, as statutory bodies, municipalities 'may exercise only those powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation' (Makuch, *Canadian Municipal and Planning Law* (1983), at p. 115)." Included in this authority are "general welfare" powers, conferred by provisions in provincial enabling legislation, on which municipalities can draw. As I.M. Rogers points out, "the legislature cannot possibly foresee all the powers that are necessary to the statutory equipment of its creatures. . . . Undoubtedly the inclusion of 'general welfare' provisions was intended to circumvent, to some extent, the effect of the doctrine of *ultra vires* which puts the municipalities in the position of having to point to an express grant of authority to justify each corporate act" (Ian MacFee Rogers, *The Law of Canadian Municipal Corporations*, 2nd ed. (looseleaf, updated 2001, release 1), cum. supp. to vol. 1 (Toronto: Carswell: 1971), at p. 367).

19 Section 410 *C.T.A.* is an example of such a general welfare provision and supplements the specific grants of power in s. 412. More open-ended or "omnibus" provisions such as s. 410 allow municipalities to respond expeditiously to new challenges facing local communities, without requiring amendment of the provincial enabling legislation. There are analogous provisions in other provinces' and territories' municipal enabling legislation: see *Municipal Government Act*, S.A. 1994, c. M-26.1, ss. 3(c) and 7; *Local Government Act*, R.S.B.C. 1996, c. 323, s. 249; *Municipal Act*, S.M. 1996, c. 58, C.C.S.M., c. M225, ss. 232 and 233; *Municipalities Act*, R.S.N.B. 1973, c. M-22, s. 190(2), First Sched.; *Municipal Government Act*, S.N.S. 1998, c. 18, s. 172; *Cities, Towns and Villages Act*, R.S.N.W.T. 1988, c. C-8, ss. 54 and 102; *Municipal Act*, R.S.O. 1990, c. M.45, s. 102; *Municipal Act*, R.S.Y. 1986, c. 119, s. 271.

20 While enabling provisions that allow municipalities to regulate for the "general welfare" within their territory authorize the enactment of by-laws genuinely aimed at furthering goals, such as public health and safety, it is important to keep in mind that such open-ended provisions do not confer an unlimited power. Rather, courts faced with an impugned by-law enacted under an "omnibus" provision such as s. 410 *C.T.A.* must be vigilant in scrutinizing the true purpose of the by-law. In this way, a municipality will not be permitted to invoke the implicit power granted under a "general welfare" provision as a basis for enacting by-laws that are in fact related to ulterior objectives, whether mischievous or not. As a Justice of the Ontario Divisional Court, Cory J. commented instructively on this subject in

2001 CarswellQue 1268, 2001 SCC 40, 200 D.L.R. (4th) 419, 19 M.P.L.R. (3d) 1, 271 N.R. 201, 40 C.E.L.R. (N.S.) 1, [2001] 2 S.C.R. 241, 2001 CarswellQue 1269, 2 S.C.R. 241, [2001] S.C.J. No. 42, REJB 2001-24833, J.E. 2001-1306

Weir v. R. (1979), 26 O.R. (2d) 326 (Ont. Div. Ct.), at p. 334. Although he found that the City of Toronto's power to regulate matters pertaining to health, safety and general welfare (conferred by the *Municipal Act*, R.S.O. 1970, c. 284, s. 242) empowered it to pass a by-law regulating smoking in public retail shops, Cory J. also made the following remark about the enabling provision: "There is no doubt that a by-law passed pursuant to the provisions of s. 242 must be approached with caution. If such were not the case, the municipality could be deemed to be empowered to legislate in a most sweeping manner."

21 Within this framework, I turn now to the specifics of the appeal. As a preliminary matter, I agree with the courts below that By-law 270 was not enacted under s. 412(32) *C.T.A.* This provision authorizes councils to "make by-laws: To regulate or prohibit the storage and use of gun-powder, dry pitch, resin, coal oil, benzine, naphtha, gasoline, turpentine, gun-cotton, nitro-glycerine, and *other combustible, explosive, corrosive, toxic or radioactive or other materials that are harmful to public health or safety*, in the territory of the municipality or within 1 km therefrom" (emphasis added). In replicating the definition of "pesticides" found in the provincial *Pesticides Act*, By-law 270 avoids falling under the ambit of s. 412(32). There is no equation of pesticides and "toxic . . . materials" either in the terms of the by-law or in any evidence presented during this litigation. The provincial government did not consider By-law 270 to fall under s. 412(32): see letter of July 5, 1991, from the deputy minister of the Environment. As Yvon Duplessis and Jean Hétu state in *Les pouvoirs des municipalités en matière de protection de l'environnement*, 2nd ed. (Cowansville: Yvon Blais, 1994), at p. 110:

> [TRANSLATION] these subsections concerning "corrosive, toxic or radioactive materials" in no way limit the other more general powers granted to municipalities that could justify municipal intervention in relation to pesticides.

As a result, since there is no specific provision in the provincial enabling legislation referring to pesticides, the by-law must fall within the purview of s. 410(1) *C.T.A.* The party challenging a by-law's validity bears the burden of proving that it is *ultra vires*: see *Kuchma v. Tache (Rural Municipality)*, [1945] S.C.R. 234 (S.C.C.), at p. 239, and *Fountainhead Fun Centre Ltd. v. Montréal (Ville)*, [1985] 1 S.C.R. 368 (S.C.C.), at p. 395.

22 The conclusion that By-law 270 does not fall within the purview of s. 412(32) *C.T.A.* distinguishes this appeal from *R. v. Greenbaum*, [1993] 1 S.C.R. 674 (S.C.C.). In that case, various express provisions of the provincial enabling legislation at issue covered the regulation of Toronto sidewalks. The appellant was therefore trying to expand the ambit of these specific authorizations by recourse to the "omnibus" provision in Ontario's *Municipal Act*. Moreover, that provision, s. 102, stated that "[e]very council may pass such by-laws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in *matters not specifically provided for by this Act* as may be deemed expedient and are not contrary to law . . . " (emphasis added). The Court thus held in *Greenbaum*, at p. 693, that "[t]hese express powers are . . . taken out of any power included in the general grant of power." Since the *C.T.A.* contains no such specific provisions concerning pesticides (nor a clause limiting its purview to matters not specifically provided for in the Act) the "general welfare" provision of the *C.T.A.*, s. 410(1), is not limited in this fashion.

23 Section 410(1) *C.T.A.* provides that councils may "make by-laws:

> (1) To secure peace, order, good government, health and general welfare in the territory of the municipality, provided such by-laws are not contrary to the laws of Canada, or of Québec, nor inconsistent with any special provision of this Act or of the charter."

In *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342, 2000 SCC 13 (S.C.C.), at para. 36, this Court quoted with approval the following statement by McLachlin J. (now Chief Justice) in *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231 (S.C.C.), at p. 244:

2001 CarswellQue 1268, 2001 SCC 40, 200 D.L.R. (4th) 419, 19 M.P.L.R. (3d) 1, 271 N.R. 201, 40 C.E.L.R. (N.S.) 1, [2001] 2 S.C.R. 241, 2001 CarswellQue 1269, 2 S.C.R. 241, [2001] S.C.J. No. 42, REJB 2001-24833, J.E. 2001-1306

> Recent commentary suggests an emerging consensus that courts must respect the responsibility of elected municipal bodies to serve the people who elected them and exercise caution to avoid substituting their views of what is best for the citizens for those of municipal councils. *Barring clear demonstration that a municipal decision was beyond its powers, courts should not so hold*. In cases where powers are not expressly conferred but may be implied, courts must be prepared to adopt the "benevolent construction" which this Court referred to in *Greenbaum*, and confer the powers by reasonable implication. Whatever rules of construction are applied, they must not be used to usurp the legitimate role of municipal bodies as community representatives. [Emphasis added.]

24 The appellants argue that By-law 270 imposes an impermissible absolute ban on pesticide use. They focus on s. 2 of the by-law, which states that: "The spreading and use of a pesticide is prohibited throughout the territory of the Town." In my view, the by-law read as a whole does not impose such a prohibition. By-law 270's ss. 3 to 6 state locations and situations for pesticide use. As one commentary notes, "by-laws like Hudson's typically target non-essential uses of pesticides. That is, it is not a total prohibition, but rather permits the use of pesticides in certain situations where the use of pesticides is not purely an aesthetic pursuit (e.g. for the production of crops)": Swaigen, *supra*, at p. 178.

25 The appellants further submit that the province's adoption in 1997 of s. 463.1 *C.T.A.*, which states that a municipality may get permission to introduce pesticides onto private property, indicates, by virtue of the principle of *expressio unius est exclusio alterius* (express mention of one is the exclusion of the other), that the province did not intend to allow municipal regulation of pesticides. I find this argument to be without merit, since, even if this subsequent enactment were considered to instantiate prior legislative intent, there is absolutely no implication in s. 463.1 *C.T.A.*, a permissive provision, that it is meant to exhaust municipalities' freedom of action concerning pesticides.

26 In *Shell*, *supra*, at pp. 276-277, Sopinka J. for the majority quoted the following with approval from Rogers, *supra*, § 64.1, at p. 387:

> In approaching a problem of construing a municipal enactment a court should endeavour firstly to interpret it so that the powers sought to be exercised are in consonance with the purposes of the corporation. The provision at hand should be construed with reference to the object of the municipality: to render services to a group of persons in a locality with a view to advancing their health, welfare, safety and good government.

In that case, Sopinka J. enunciated the test of whether the municipal enactment was "passed for a municipal purpose." Provisions such as s. 410(1) *C.T.A.*, while benefiting from the generosity of interpretation discussed in *Nanaimo*, *supra*, must have a reasonable connection to the municipality's permissible objectives. As stated in *Greenbaum*, *supra*, at p. 689: "municipal by-laws are to be read to fit within the parameters of the empowering provincial statute where the by-laws are susceptible to more than one interpretation. However, courts must be vigilant in ensuring that municipalities do not impinge upon the civil or common law rights of citizens in passing *ultra vires* by-laws."

27 Whereas in *Shell*, the enactments' purpose was found to be "to affect matters beyond the boundaries of the City without any identifiable benefit to its inhabitants" (p. 280), that is not the case here. The Town's By-law 270 responded to concerns of its residents about alleged health risks caused by non-essential uses of pesticides within Town limits. Unlike *Shell*, in which the Court felt bound by the municipal enactments' "detailed recital of . . . purposes," the by-law at issue requires what Sopinka J. called the reading in of an implicit purpose. Based on the distinction between essential and non-essential uses of pesticides, it is reasonable to conclude that the Town by-law's purpose is to minimize the use of allegedly harmful pesticides in order to promote the health of its inhabitants. This purpose falls squarely within the "health" component of s. 410(1). As Ruth Sullivan appositely explains in a hypothetical example illustrating the purposive approach to statutory interpretation:

> Suppose, for example, that a municipality passed a by-law prohibiting the use of chemical pesticides on residential lawns. With no additional information, one might well conclude that the purpose of the by-law was to

> protect persons from health hazards contained in the chemical spray. This inference would be based on empirical beliefs about the harms chemical pesticides can cause and the risks of exposure created by their use on residential lawns. It would also be based on assumptions about the relative value of grass, insects and persons in society and the desirability of possible consequences of the by-law, such as putting people out of work, restricting the free use of property, interfering with the conduct of businesses and the like. These assumptions make it implausible to suppose that the municipal council was trying to promote the spread of plant-destroying insects or to put chemical workers out of work, but plausible to suppose that it was trying to suppress a health hazard.

(*Driedger on the Construction of Statutes*, 3rd ed. (Toronto: Butterworths, 1994), at p. 53)

Kennedy J. correctly found that the Town Council, "faced with a situation involving health and the environment," "was addressing a need of their community." In this manner, the municipality is attempting to fulfil its role as what the Ontario Court of Appeal has called the "trustee of the environment" *Scarborough (Borough) v. R.E.F. Homes Ltd.* (1979), 9 M.P.L.R. 255 (Ont. C.A.), at p. 257.

28 The appellants claim that By-law 270 is discriminatory and therefore *ultra vires* because of what they identify as impermissible distinctions that affect their commercial activities. There is no specific authority in the *C.T.A.* for these distinctions. Writing for the Court in *Sharma*, *supra*, at p. 668, Iacobucci J. stated the principle that:

> . . . in *Fountainhead Fun Centre Ltd. v. Montréal (Ville)*, *supra*, this Court recognized that discrimination in the municipal law sense was no more permissible between than within classes (at pp. 405-6). Further, the general reasonableness or rationality of the distinction is not at issue: discrimination can only occur where the enabling legislation specifically so provides *or where the discrimination is a necessary incident to exercising the power delegated by the province* (*Fountainhead Fun Centre Ltd. v. Montréal (Ville)*, *supra*, at pp. 404-6). [Emphasis added.]

See also *Shell*, *supra*, at p. 282; *Allard Contractors Ltd. v. Coquitlam (District)*, [1993] 4 S.C.R. 371 (S.C.C.), at p. 413.

29 Without drawing distinctions, By-law 270 could not achieve its permissible goal of aiming to improve the health of the Town's inhabitants by banning non-essential pesticide use. If all pesticide uses and users were treated alike, the protection of health and welfare would be sub-optimal. For example, withdrawing the special status given to farmers under the by-law's s. 4 would work at cross-purposes with its salubrious intent. Section 4 thus justifiably furthers the objective of By-law 270. Having held that the Town can regulate the use of pesticides, I conclude that the distinctions impugned by the appellants for restricting their businesses are necessary incidents to the power delegated by the province under s. 410(1) *C.T.A.* They are "so absolutely necessary to the exercise of those powers that [authorization has] to be found in the enabling provisions, by necessary inference or implicit delegation." *Arcade Amusements*, *supra*, at p. 414, quoted in *Greenbaum*, *supra*, at p. 695.

30 To conclude this section on statutory authority, I note that reading s. 410(1) to permit the Town to regulate pesticide use is consistent with principles of international law and policy. My reasons for the Court in *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817 (S.C.C.), at p. 861, observed that "the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review. As stated in *Driedger on the Construction of Statutes*, *supra*, at p. 330:

> [T]he legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. *In so far as possible, therefore, interpretations that reflect these values and principles are preferred.* [Emphasis added.]

31 The interpretation of By-law 270 contained in these reasons respects international law's "precautionary prin-

2001 CarswellQue 1268, 2001 SCC 40, 200 D.L.R. (4th) 419, 19 M.P.L.R. (3d) 1, 271 N.R. 201, 40 C.E.L.R. (N.S.) 1, [2001] 2 S.C.R. 241, 2001 CarswellQue 1269, 2 S.C.R. 241, [2001] S.C.J. No. 42, REJB 2001-24833, J.E. 2001-1306

ciple," which is defined as follows at para. 7 of the *Bergen Ministerial Declaration on Sustainable Development* (1990):

> In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

Canada "advocated inclusion of the precautionary principle" during the Bergen Conference negotiations (David VanderZwaag, CEPA Issue Elaboration Paper No. 18, *CEPA and the Precautionary Principle/Approach* (Ottawa: Environment Canada, 1995), at p. 8). The principle is codified in several items of domestic legislation: see, for example, the *Oceans Act*, S.C. 1996, c. 31, Preamble (para. 6); *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33 ("*CEPA*"), s. 2(1)(a); *Endangered Species Act*, S.N.S. 1998, c. 11, ss. 2(1)(h) and 11(1).

32 Scholars have documented the precautionary principle's inclusion "in virtually every recently adopted treaty and policy document related to the protection and preservation of the environment" (D. Freestone and E. Hey, "Origins and Development of the Precautionary Principle," in David Freestone and Ellen Hey, eds., *The Precautionary Principle and International Law* (The Hague: Kluwer Law International, 1996), at p. 41. As a result, there may be "currently sufficient state practice to allow a good argument that the precautionary principle is a principle of customary international law" (James Cameron and Juli Abouchar, "The Status of the Precautionary Principle in International Law," in *ibid.*, at p. 52). See also Owen McIntyre and Thomas Mosedale, "The Precautionary Principle as a Norm of Customary International Law" (1997), 9 *J. Env. L.* 221, at p. 241 ("the precautionary principle has indeed crystallized into a norm of customary international law"). The Supreme Court of India considers the precautionary principle to be "part of the Customary International Law" (*A.P. Pollution Control Board v. Nayudu*, 1999 S.O.L. Case No. 53, at p. 8). See also *Vellore Citizens Welfare Forum v. Union of India*, [1996] Supp. 5 S.C.R. 241. In the context of the precautionary principle's tenets, the Town's concerns about pesticides fit well under their rubric of preventive action.

B. Even if the Town had authority to enact it, was By-law 270 rendered inoperative because of a conflict with federal or provincial legislation?

33 This Court stated in *Hydro-Québec*, *supra*, at p. 286, that *Oldman River*, *supra*,"made it clear that the environment is not, as such, a subject matter of legislation under the *Constitution Act, 1867*. As it was put there, 'the *Constitution Act, 1867* has not assigned the matter of "environment" *sui generis* to either the provinces or Parliament' (p. 63). Rather, it is a diffuse subject that cuts across many different areas of constitutional responsibility, some federal, some provincial (pp. 63-64)." As there is bijurisdictional responsibility for pesticide regulation, the appellants allege conflicts between By-law 270 and both federal and provincial legislation. These contentions will be examined in turn.

1. Federal Legislation

34 The appellants argue that ss. 4(1), 4(3) and 6(1)(j) of the *Pest Control Products Act* ("*PCPA*"), and s. 45 of the *Pest Control Products Regulations* allowed them to make use of the particular pesticide products they employed in their business practices. They allege a conflict between these legislative provisions and By-law 270. In *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161 (S.C.C.), at p. 187, Dickson J. (later Chief Justice) for the majority of the Court reviewed the "express contradiction test" of conflict between federal and provincial legislation. At p. 191, he explained that "there would seem to be no good reasons to speak of paramountcy and preclusion except where there is actual conflict in operation as where one enactment says 'yes' and the other says 'no'; 'the same citizens are being told to do inconsistent things'; compliance with one is defiance of the other." See also *M & D Farm Ltd. v. Manitoba Agricultural Credit Corp.*, [1999] 2 S.C.R. 961 (S.C.C.), at paras. 17 and 40; *Bank of Montreal v. Hall*, [1990] 1 S.C.R. 121 (S.C.C.), at p. 151. By-law 270, as a product of provincial enabling legislation, is subject to this test.

35 Federal legislation relating to pesticides extends to the regulation and authorization of their import, export, sale, manufacture, registration, packaging, and labelling. The *PCPA* regulates which pesticides can be registered for manufacture and/or use in Canada. This legislation is permissive, rather than exhaustive, and there is no operational conflict with By-law 270. No one is placed in an impossible situation by the legal imperative of complying with both regulatory regimes. Analogies to motor vehicles or cigarettes that have been approved federally, but the use of which can nevertheless be restricted municipally, well illustrate this conclusion. There is, moreover, no concern in this case that application of By-law 270 displaces or frustrates "the legislative purpose of Parliament." See *Multiple Access*, *supra*, at p. 190; *Bank of Montreal*, *supra*, at pp. 151 and 154.

2. Provincial Legislation

36 *Multiple Access* also applies to the inquiry into whether there is a conflict between the by-law and provincial legislation, except for cases (unlike this one) in which the relevant provincial legislation specifies a different test. The *Multiple Access* test, namely "impossibility of dual compliance," see Peter W. Hogg, *Constitutional Law of Canada*, looseleaf ed. (updated 2000, release 1) (Toronto: Carswell, 1997), vol 1, at p. 16-13, was foreshadowed for provincial-municipal conflicts in *dicta* contained in this Court's decision in *Arcade Amusements*, *supra*, at p. 404. There, Beetz J. wrote that "otherwise valid provincial statutes which are *directly contrary* to federal statutes are rendered inoperative by that conflict. Only the same type of conflict with provincial statutes can make by-laws inoperative: Ian M. Rogers, *The Law of Canadian Municipal Corporations*, vol. 1, 2nd ed., 1971, No. 63.16" (emphasis added).

37 One of the competing tests to *Multiple Access* suggested in this litigation is based on *Ontario (Attorney General) v. Mississauga (City)* (1981), 15 M.P.L.R. 212 (Ont. C.A.). In that case, decided before *Multiple Access*, Morden J.A. saw "no objection to borrowing, in this field, relevant principles of accommodation which have been developed in cases involving alleged federal-provincial areas of conflict. In both fields great care is, and should be, taken before it is held that an otherwise properly enacted law is inoperative" (p. 232). He added, at p. 233, the important point that "a by-law is not void or ineffective merely because it 'enhances' the statutory scheme of regulation by imposing higher standards of control than those in the related statute. This is not conflict or incompatibility per se" (quoting *Uxbridge (Township) v. Timber Brothers Sand & Gravel Ltd.* (1975), 7 O.R. (2d) 484 (Ont. C.A.). See also Pierre-André Côté, *The Interpretation of Legislation in Canada*, 3rd ed. (Toronto: Carswell, 2000), at pp. 446-447 ("In some cases, the courts have held that the provincial statute does not imply full repeal of the municipal power. The municipality retains its authority as long as there is no conflict with provincial legislation. It may be more demanding than the province, but not less so.").

38 Some courts have already made use of the *Multiple Access* test to examine alleged provincial-municipal conflicts. For example, in *British Columbia Lottery Corp. v. Vancouver (City)* (1999), 169 D.L.R. (4th) 141 (B.C. C.A.), at pp. 147-148, the British Columbia Court of Appeal stated that cases pre-dating *Multiple Access*, including the Ontario Court of Appeal decision in *Mississauga*, *supra*, "must be read in the light of [that] decision."

> It is no longer the key to this kind of problem to look at one comprehensive scheme, and then to look at the other comprehensive scheme, and to decide which scheme entirely occupies the field to the exclusion of the other. Instead, the correct course is to look at the precise provisions and the way they operate in the precise case, and ask: Can they coexist in this particular case in their operation? If so, they should be allowed to co-exist, and each should do its own *parallel regulation* of one aspect of the same activity, or two different aspects of the same activity. [Emphasis added.]

The court summarized the applicable standard as follows: "A true and outright conflict can only be said to arise when one enactment compels what the other forbids." See also *Law Society of Upper Canada v. Barrie (City)* (2000), 46 O.R. (3d) 620 (Ont. S.C.J.), at pp. 628-630: "Compliance with the provincial Act does not necessitate defiance of the municipal By-law; dual compliance is certainly possible."; *Huot c. St. Jérôme (Ville)* (April 23, 1993), Doc. C.S.

2001 CarswellQue 1268, 2001 SCC 40, 200 D.L.R. (4th) 419, 19 M.P.L.R. (3d) 1, 271 N.R. 201, 40 C.E.L.R. (N.S.) 1, [2001] 2 S.C.R. 241, 2001 CarswellQue 1269, 2 S.C.R. 241, [2001] S.C.J. No. 42, REJB 2001-24833, J.E. 2001-1306

Terrebonne (Saint-Jérôme) 700-05-000250-930 (Que. S.C.), at pp. 19-20: [TRANSLATION] "A finding that a municipal by-law is inconsistent with a provincial statute (or a provincial statute with a federal statute) requires, first, that they both deal with similar subject matters, and second, that obeying one necessarily means disobeying the other."

39 As a general principle, the mere existence of provincial (or federal) legislation in a given field does not oust municipal prerogatives to regulate the subject matter. As stated by the Quebec Court of Appeal in an informative environmental decision, *St-Michel Archange (Municipalité) c. 2419-6388 Québec Inc.*, [1992] R.J.Q. 875 (Que. C.A.), at pp. 888-891:

> [TRANSLATION] According to proponents of the unitary theory, although the provincial legislature has not said so clearly, it has nonetheless established a provincial scheme for managing waste disposal sites. It has therefore reserved exclusive jurisdiction in this matter for itself, and taken the right to pass by-laws concerning local waste management away from municipalities. The *Environment Quality Act* therefore operated to remove those powers from municipal authorities.
>
> According to proponents of the pluralist theory, the provincial legislature very definitely did not intend to abolish the municipality's power to regulate; rather, it intended merely to better circumscribe that power, to ensure complementarity with the municipal management scheme.
>
> . . . . .
>
> The pluralist theory accordingly concedes that the intention is to give priority to provincial statutory and regulatory provisions. However, it does not believe that it can be deduced from this that any complementary municipal provision in relation to planning and development that affects the quality of the environment is automatically invalid.
>
> . . . . .
>
> A thorough analysis of the provisions cited *supra* and a review of the environmental policy as a whole as it was apparently intended by the legislature leads to the conclusion that it is indeed the pluralist theory, or at least a pluralist theory, that the legislature seems to have taken as the basis for the statutory scheme.

In this case, there is no barrier to dual compliance with By-law 270 and the *Pesticides Act*, nor any plausible evidence that the legislature intended to preclude municipal regulation of pesticide use. The *Pesticides Act* establishes a permit and licensing system for vendors and commercial applicators of pesticides and thus complements the federal legislation's focus on the products themselves. Along with By-law 270, these laws establish a tri-level regulatory regime.

40 According to s. 102 of the *Pesticides Act*, as it was at the time By-law 270 was passed: "The provisions of the Pesticide Management Code and of the other regulations of this Act prevail over any inconsistent provision of any by-law passed by a municipality or an urban community." Evidently, the *Pesticides Act* envisions the existence of complementary municipal by-laws. As Duplessis and Hétu, *supra*, at p. 109, put it, [TRANSLATION] "the Quebec legislature gave the municipalities the right to regulate pesticides, provided that the by-law was not incompatible with the regulations and the Management Code enacted under the *Pesticides Act*." Since no Pesticide Management Code has been enacted by the province under s. 105, the lower courts in this case correctly found that the by-law and the *Pesticides Act* could co-exist. In the words of the Court of Appeal, at p. 16: [TRANSLATION] "The *Pesticides Act* thus itself contemplated the existence of municipal regulation of pesticides, since it took the trouble to impose restrictions."

41 I also agree with the Court of Appeal at p. 16, that: [TRANSLATION] "A potential inconsistency is not sufficient to invalidate a by-law; there must be a real conflict." In this regard, the Court of Appeal quoted, at p. 17, *Mu-*

2001 CarswellQue 1268, 2001 SCC 40, 200 D.L.R. (4th) 419, 19 M.P.L.R. (3d) 1, 271 N.R. 201, 40 C.E.L.R. (N.S.) 1, [2001] 2 S.C.R. 241, 2001 CarswellQue 1269, 2 S.C.R. 241, [2001] S.C.J. No. 42, REJB 2001-24833, J.E. 2001-1306

nicipalité de St-Michel-Archange, *supra*, at p. 891, to the effect that: [TRANSLATION] "However, to the extent that and for as long as the provincial regulation is not in force, the municipal by-law continues to regulate the activity, provided, of course, that it complies with all the rules established by the law and the courts concerning its validity."

42 I note in conclusion that the 1993 revision to the *Pesticide Act* added a new s. 102, stating:

> The Pesticide Management Code and any other regulation enacted pursuant to this Act shall render inoperative any regulatory provision concerning the same matter enacted by a municipality or an urban community, except where the provision
>
> - concerns landscaping or extermination activities, such as fumigation, as defined by government regulation, and
>
> - prevents or further mitigates harmful effects on the health of humans or of other living species or damage to the environment or to property.

This revised language indicates more explicitly that the *Pesticides Act* is meant to co-exist with stricter municipal by-laws of the type at issue in this case. Indeed, the new s. 102, by including the word "health," echoes the enabling legislation that underpins By-law-270, namely, s. 410(1) *C.T.A.* Once a Pesticide Management Code is enacted, municipalities will be able to draw on s. 102 in order to continue their independent regulation of pesticides. As Duplessis and Hétu, *supra*, explain at p. 111: [TRANSLATION] "the Quebec legislature has again recognized that municipalities have a role to play in pesticide control while at the same time indicating that it intends to make the municipal power subordinate to its own regulatory activity."

VI. Disposition

43 I have found that By-law 270 was validly enacted under s. 410(1) *C.T.A.* Moreover, the by-law does not render dual compliance with its dictates and either federal or provincial legislation impossible. For these reasons, I would dismiss the appeal with costs.

***LeBel J.* (*Iacobucci and Major JJ.* concurring):**

Introduction

44 I agree with Justice L'Heureux-Dubé that the impugned by-law on pesticide use adopted by the respondent, the Town of Hudson, is valid. It does not conflict with relevant federal and provincial legislation on the use and control of pesticides and is a valid exercise of municipal regulatory power under s. 410(1) of the *Cities and Towns Act*, R.S.Q., c. C-19.

45 I view this case as an administrative and local government law issue. Although I agree with L'Heureux-Dubé J. on the disposition of the appeal, I wish to add some comments on some of the problems raised by the appellants. First, I will discuss the alleged operational conflict with the regulatory and legislative systems put in place by other levels of government. I will then turn to the difficulties created by the use of broad provisions like s. 410 and the application of the general principles of administrative law governing delegated legislation.

The Operational Conflict

46 As its first line of attack against By-law 270 of the Town of Hudson, the appellants raise the issue of an operational conflict with the federal *Pest Control Products Act*, R.S.C. 1985, c. P-9, and the *Pest Control Products*

2001 CarswellQue 1268, 2001 SCC 40, 200 D.L.R. (4th) 419, 19 M.P.L.R. (3d) 1, 271 N.R. 201, 40 C.E.L.R. (N.S.) 1, [2001] 2 S.C.R. 241, 2001 CarswellQue 1269, 2 S.C.R. 241, [2001] S.C.J. No. 42, REJB 2001-24833, J.E. 2001-1306

Regulations, C.R.C. 1978, c. 1253. The appellants also assert that the by-law conflicts with the Quebec *Pesticides Act*, R.S.Q., c. P-9.3. As L'Heureux-Dubé J. points out, the applicable test to determine whether an operational conflict arises is set out in *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161 (S.C.C.), at pp. 187 and 189. There must be an actual conflict, in the sense that compliance with one set of rules would require a breach of the other. This principle was recently reexamined and restated by Binnie J. in *M & D Farm Ltd. v. Manitoba Agricultural Credit Corp.*, [1999] 2 S.C.R. 961 (S.C.C.), at pp. 982-985. The basic test remains the impossibility of dual compliance. From this perspective, the alleged conflict with federal legislation simply does not exist. The federal Act and its regulations merely authorize the importation, manufacturing, sale and distribution of the products in Canada. They do not purport to state where, when and how pesticides could or should be used. They do not grant a blanket authority to pesticides' manufacturers or distributors to spread them on every spot of greenery within Canada. This matter is left to other legislative and regulatory schemes. Nor does a conflict exist with the provincial *Pesticides Act*, and I agree with L'Heureux-Dubé J.'s analysis on this particular point. The operational conflict argument thus fails.

The Administrative Law Issues

47 The most serious problems raised by the appeal involve pure administrative law issues. The appellants' arguments raise some basic issues of administrative law as applied in the field of municipal governance.

48 The appellants assert that no provision of the *Cities and Towns Act* authorizes By-law 270. If such legislative authority exists, the by-law is nevertheless void, because of its discriminatory and prohibitory nature. A solution is to be found in the principles governing the interpretation and application of the laws governing cities and towns like the respondent in the Province of Quebec. Interesting as they may be, references to international sources have little relevance. They confirm the general importance placed in modern society and shared by most citizens of this country on the environment and the need to protect it. Nevertheless, no matter how laudable the purpose of the by-law may be, and although it may express the will of the members of the community to protect their local environment, the means to do it must be found somewhere in the law. The issues in this case remain strictly first whether the *Cities and Towns Act* authorizes municipalities to regulate the use of pesticides within their territorial limits, and second whether the particular regulation conforms with the general principles applicable to delegated legislation.

49 A tradition of strong local government has become an important part of the Canadian democratic experience. This level of government usually appears more attuned to the immediate needs and concerns of the citizens. Nevertheless, in the Canadian legal order, as stated on a number of occasions, municipalities remain creatures of provincial legislatures (see *Public School Boards' Assn. (Alberta) v. Alberta (Attorney General)*, [2000] 2 S.C.R. 409, 2000 SCC 45 (S.C.C.), at paras. 33-34; *O.E.C.T.A. v. Ontario (Attorney General)*, [2001] 1 S.C.R. 470, 2001 SCC 15 (S.C.C.), at paras. 29 and 58-59). Municipalities exercise such powers as are granted to them by legislatures. This principle is illustrated by numerous decisions of our Court (see, for example, *Fountainhead Fun Centre Ltd. v. Montréal (Ville)*, [1985] 1 S.C.R. 368 (S.C.C.); *R. v. Sharma*, [1993] 1 S.C.R. 650 (S.C.C.)). They are not endowed with residuary general powers, which would allow them to exercise dormant provincial powers (see Ian MacFee Rogers, *The Law of Canadian Municipal Corporations*, 2nd ed. (looseleaf, updated 2001, release 1) (Toronto: Carswell, 1971), cum. supp. to vol. 1, at pp. 358 and 364; Jean Hétu, Yvon Duplessis and Dennis Pakenham, *Droit Municipal : Principes généraux et contentieux* (Montreal: Hébert Denault, 1998), at p. 651). If a local government body exercises a power, a grant of authority must be found somewhere in the provincial laws. Although such a grant of power must be construed reasonably and generously (*Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342, 2000 SCC 13 (S.C.C.), it cannot receive such an interpretation unless it already exists. Interpretation may not supplement the absence of power.

50 The appellants argue that no power to regulate the use of pesticides was delegated to municipalities in Quebec, either under a specific grant of power or under the more general provisions of s. 410(1) of the Act. The respondent concedes that the only provision under which its by-law can be upheld is the general clause of s. 410(1). It no longer asserts that it could be supported under s. 412(32) concerning toxic materials.

51 As the appellants interpret a general clause like s. 410 in the *Cities and Towns Act*, it would amount to an empty

shell. Any exercise of municipal regulatory authority would require a specific and express grant of power. The history of the *Cities and Towns Act* confirms that the Quebec legislature has generally favoured a drafting technique of delegating regulatory or administrative powers to municipalities through a myriad of specific provisions, which are amended frequently. The reader is then faced with layers of complex and sometime inconsistent legislation.

52 In the case of a specific grant of power, its limits must be found in the provision itself. Non-included powers may not be supplemented through the use of the general residuary clauses often found in municipal laws (*R. v. Greenbaum*, [1993] 1 S.C.R. 674 (S.C.C.)).

53 The case at bar raises a different issue: absent a specific grant of power, does a general welfare provision like s. 410(1) authorize By-law 270? A provision like s. 410(1) must be given some meaning. It reflects the reality that the legislature and its drafters cannot foresee every particular situation. It appears to be sound legislative and administrative policy, under such provisions, to grant local governments a residual authority to deal with the unforeseen or changing circumstances, and to address emerging or changing issues concerning the welfare of the local community living within their territory. Nevertheless, such a provision cannot be construed as an open and unlimited grant of provincial powers. It is not enough that a particular issue has become a pressing concern in the opinion of a local community. This concern must relate to problems that engage the community as a local entity, not a member of the broader polity. It must be closely related to the immediate interests of the community within the territorial limits *defined* by the legislature in a matter where local governments may usefully intervene. In *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231 (S.C.C.), the Court emphasized the local ambit of such power. It does not allow local governments and communities to exercise powers in questions that lie outside the traditional area of municipal interests, even if municipal powers should be interpreted broadly and generously (see Felix Hoehn, *Municipalities and Canadian Law: Defining the Authority of Local Governments* (Saskatoon: Purich Publishing, 1996), at pp. 17-24).

54 In the present case, the subject matter of the by-law lies within the ambit of normal local government activities. It concerns the use and protection of the local environment within the community. The regulation targets problems of use of land and property, and addresses neighborhood concerns that have always been within the realm of local government activity. Thus, the by-law was properly authorized by s. 410(1). I must then turn briefly to the second part of the administrative law argument raised by the appellants, that the particular exercise of the existing municipal power breached principles of delegated legislation against prohibitory and discriminatory regulations.

55 Two basic and longstanding principles of delegated legislation state that a by-law may not be prohibitory and may not discriminate unless the enabling legislation so authorizes. (See Patrice Garant, *Droit administratif*, 4th ed. (Cowansville: Yvon Blais, 1996), vol. 1, at pp. 407 *et seq.*; René Dussault and Louis Borgeat, *Administrative Law: A Treatise*, 2nd ed. (Toronto: Carswell, 1985), vol. 1, at pp. 435 *et seq.*; Hétu, Duplessis and Pakenham, *supra*, at pp. 677-682 and 691-696.) The drafting technique used in the present case creates an apparent problem. On its face, the by-law involves a general prohibition and then authorizes some specific uses. This obstacle may be overcome through global interpretation of the by-law. When it is read as a whole, its overall effect is to prohibit purely esthetic use of pesticides while allowing other uses, mainly for business or agricultural purposes. It does not appear as a purely prohibitory legal instrument. As such, it conforms with this first basic principle of municipal law. There remains the problem of the discriminatory aspect of the by-law. Although the by-law discriminates, I agree with L'Heureux-Dubé J. that this kind of regulation implies a necessary component of discrimination. There can be no regulation on such a topic without some form of discrimination in the sense that the by-law must determine where, when and how a particular product may be used. The regulation needed to identify the various distinctions between different situations. Otherwise, no regulation would have been possible. An implied authority to discriminate was then unavoidably part of the delegated regulatory power.

56 For these reasons, the appeal is dismissed, with costs to the respondent the Town of Hudson.

Appeal dismissed.

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Pourvoi rejeté.

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