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Wed, March 28, 2007

Plastic bag ban a first But Leaf Rapids bylaw may not stand up in court

By CP



As the northern Manitoba town of Leaf Rapids prepares to become Canada's first plastic-shopping-bag-free zone, some lawyers and plastics industry advocates are questioning whether the ban could withstand a legal challenge.

When the municipal bylaw comes into effect Monday, retailers will no longer be allowed to give away or sell plastic bags intended for single use. Scofflaws will face penalties of up to \$1,000 a day.

Town administrator Bond Ryan says the law will help the environment by keeping the bags out of the landfill, save the town money in cleanup costs and protect the town's image as an international fishing destination.

"This is just one small thing that's going to go a long way," said Ryan, who spearheaded the bylaw.

Ryan said the town did not consult with a lawyer before drafting the two-page bylaw, but he's confident it falls within the town's jurisdiction under the Manitoba Municipal Act.

"Towns have the right to ban stuff that defaces their town, and to help make their town look good."

WIDE BERTH

While Leaf Rapids is set to become the first Canadian town to implement a plastic bag ban, the municipal council of the southeastern B.C. town of Rossland, B.C. has said it will look at a similar bylaw.

Robert Tyler, a Winnipeg lawyer who specializes in municipal law, says the Manitoba Municipal Act gives towns a wide berth when it comes to defining jurisdiction.

But he says it's unclear whether this bylaw could withstand a legal challenge because the legislation is open to interpretation.

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Municipalities have "spheres of jurisdiction" in areas such as health, safety, public protection and the protection of property.

"The primary grounds (for a challenge) would be to argue that it's outside the jurisdiction given to the town, that they don't have the right to determine what a private enterprise can or can not market from its premises," said Tyler, a partner in the firm Aikins MacAuley and Thorvaldson.

"It's an interesting question. You can certainly see both sides."

He said environmental bylaws can be especially tricky because questions of jurisdiction haven't been clearly defined, even at a constitutional level.

An Ontario company, Instore Products Ltd., has donated 5,000 clothlike, reusable shopping bags, which the town has been giving to its 500 residents to help them prepare for the ban.

Even when those wear out, Ryan said, it would be cheaper for the town to buy more bags than to keep picking the single-use bags out of the landfill or off the street, fences and grass where they often end up.

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