

Raw Milk Legislative Environment in Ontario, Canada

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Ontario Public Health Legislation - HPPA

- In Ontario, the *Health Protection and Promotion Act* (HPPA) provides the organizing framework for the delivery of public health programs and services
- HPPA primarily provides for local service delivery and is primarily enforced locally (by “local boards of health”)

Ontario Public Health Legislation - HPPA

- Section 18 of HPPA: no person shall sell, offer for sale, deliver or distribute milk or cream that has not been pasteurized or sterilized in a plant that is licensed under the Milk Act or in a plant outside Ontario that meets the standards for plants licensed under the Milk Act.
- Similar prohibition for products derived from raw milk.
- Section 13 of HPPA allows (local) public health inspectors and medical officers of health to issue orders to “decrease the effect of or to eliminate” health hazards.

3

Prosecution - Background

- In 1994, Grey Bruce Health Unit issued order under section 13 of *Health Protection and Promotion Act* (HPPA) prohibiting defendant from manufacturing, processing, preparation, storing, handling, displaying raw milk and raw milk products

4

Prosecution - Background

- April 2005 – E. Coli O157 outbreak leads to investigation – Ontario Ministry of Natural Resources acting on behalf of MOHLTC and Ontario Ministry of Agriculture and Rural Affairs (licensor of milk plants)
- November 2006 – investigators accompanied by PHIs executed search warrant at defendant's farm
- Defendant had structured his operation as a “cow-share” system, whereby consumers owned cows that defendant kept and milked on their behalf

5

Trial

- Heard by Justice of the Peace of Ontario Court of Justice in Newmarket, Ontario in January 2009
- 19 charges under section 18 of HPPA, section 100 of HPPA (re: violation of 1994 order), section 15 of Milk Act (re: licensing).

6

Trial

- MNR prosecutors acted on behalf of Province, while Grey Bruce prosecuted charges related to 1994 order
- Defendant also brought *Charter of Rights and Freedoms* (i.e. constitutional) challenge against HPPA and Milk Act provisions that he was charged under

7

Decision

- Decision issued January 21, 2010
- All charges dismissed, no decision on *Charter* challenge
- JP acknowledged that on plain reading of HPPA and Milk Act offence provisions, defendant would be guilty on all counts

8

Decision

- “Modern Approach” to statutory interpretation – a unified approach to statutory interpretation that focuses on the text, context and purpose of a statute .
- Looks beyond plain language of a specific provision.

9

Decision

- JP looked to purpose of HPPA, found that “people of Ontario” referred to “public at large”
- JP held that defendant's private arrangements with cow-share “members” were valid private arrangements that did not violate Milk Act, and that defendant was not violating section 18 of HPPA by providing raw milk to cow-share “members” who chose not to receive protection that HPPA generally provides to public at large
- Also held that 1994 Order was not applicable, as it related to “cow-lease” program

10

Current Status

- Both Province and Grey Bruce Health Unit filed notice of appeal
- Numerous grounds cited in notice of appeal
- Appeal being heard by judge of Ontario Court of Justice
- Substantive arguments on charges and constitutional issues made in mid-April – currently awaiting decision

11

Current Status

- Recent developments in British Columbia

12