

October 29, 2024

**Re: City of Hamilton
Planning and Economic Development Department
Licensing and By-Law Services Division**

Amending the Property Standards By-Law Respecting Air Conditioning Appliances (PED 24101)
(City Wide)

Municipalities across Ontario have jurisdiction to pass a maximum temperature by-law that would require landlords to ensure that a maximum of 26 degrees Celsius is maintained indoors. While the City of Hamilton would be the first jurisdiction in Canada to pass a by-law that would apply to all rental units, there is legislative and case law support for the by-law. There are examples of by-laws on similar subject matters that also demonstrate municipal authority, including by-laws setting minimum temperatures for all rental units and by-laws addressing maximum temperatures for some rental units.

There is no operational conflict between a maximum temperature by-law and the *Residential Tenancies Act, 2006*, SO 2006, c 17 (“*Residential Tenancies Act*”). Tenants and landlords may comply with the *Residential Tenancies Act*, including any future requirements permitting but not requiring tenants to purchase their own temporary air conditioning units, and a maximum temperature by-law. A maximum temperature by-law also does not frustrate the purpose of the *Residential Tenancies Act*.

We urge the City of Hamilton to use its authority pursuant to the *Municipal Act, 2001*, SO 2001, c 25 (“*Municipal Act*”) to protect all tenants from the dangers of extreme heat.

A. Background on the Urgent Need for a Maximum Temperature By-Law in Hamilton

The impacts of climate change pose a disproportionate risk to certain populations in Hamilton. Extreme heat is a particular risk for seniors, children and infants, individuals with chronic illnesses, and those with mobility challenges. Tenants who rent are also more vulnerable to extreme heat events as an inability to control the temperature within their own units can create dangerously hot environments.

After the 2021 extreme heat event in British Columbia, the provincial government found that 98% of the 619 deaths occurred indoors.¹ Of these 619 people, 90% were over the age of 60. Most of the people who died did not have adequate cooling systems. Deaths were higher among those

¹ Government of British Columbia, “Extreme Heat and Human Mortality: A Review of Heat-Related Deaths in B.C. in Summer 2021” (June 7, 2022) at 5. Online (pdf): <https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/death-review-panel/extreme_heat_death_review_panel_report.pdf> [BC Heat Deaths].

living in socially or materially deprived neighborhoods with poor-quality housing. Unhoused individuals and overall deprivation were also identified as risk factors for increased mortality rates.²

A report to the Chief Coroner of British Columbia explicitly identified high indoor temperatures as the primary cause of injury and death during this extreme heat event.³ This report goes on to state:

“During this time, hot air became trapped indoors and continued to rise over time. Although outdoor temperatures decreased overnight, residences did not cool off, exposing people to harmful high temperatures for extended periods of time. The BC Centre for Disease Control (BCCDC) identified that people were most in danger when indoor temperatures remained above 26 degrees throughout the heat event.”⁴

B. The City of Hamilton’s Legislative Authority Pursuant to the *Municipal Act*

Section 8(1) of the *Municipal Act* outlines a broad and deferential approach to interpreting legal authority for municipal action. The City of Hamilton recently relied on section 8 of the *Municipal Act* as authority for By-Law No. 24 – Renovation Licence and Relocation By-Law:⁵

8(1) The powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality’s ability to respond to municipal issues.

...

(3) Without limiting the generality of subsections (1) and (2), a by-law under sections 10 and 11 respecting a matter may,

- (a) regulate or prohibit respecting the matter;
- (b) require persons to do things respecting the matter;
- (c) provide for a system of licences respecting the matter.⁶ [*emphasis added*]

The City of Hamilton is a single-tier municipality and may provide any service or thing that the municipality considers “necessary or desirable for the public.”⁷

² BC Heat Deaths, *supra* note 1 at 17.

³ BC Heat Deaths, *ibid*, at 22.

⁴ BC Heat Deaths, *ibid*, at 22.

⁵ City of Hamilton, By-law No 24, *Renovation Licence and Relocation By-Law* (January 24, 2024) [*Renoviction By-Law*].

⁶ *Municipal Act*, 2001, SO 2001, c 25, at s 8 [MA].

⁷ MA, *ibid*, at ss 10(1).

The power of a single-tier municipality to pass a by-law mandating a maximum temperature in rental units is provided by s.10(2) of the *Municipal Act*, which allows for by-laws that address economic, social and environmental well-being of the municipality, including respecting climate change, the health, safety and well-being of persons, and the protection of persons and property:

10(2) A single-tier municipality may pass by-laws respecting the following matters:

...

5. Economic, social and environmental well-being of the municipality, including respecting climate change.

6. Health, safety and well-being of persons.

...

8. Protection of persons and property, including consumer protection.⁸

The City of Hamilton also recently relied on section 10 of the *Municipal Act* as authority for its Renovation Licence and Relocation By-Law.⁹

Section 425 of the *Municipal Act* authorizes a municipality to pass by-laws providing that a person who contravenes a by-law of the municipality passed under that Act is guilty of an offence.¹⁰

A municipality may pass a by-law providing that the municipality may enter on lands at any reasonable time to carry out an inspection to determine whether there is compliance with a by-law.¹¹

Sections 444 and 445 provide that a municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention.¹²

C. Provincial Authority is Not Exclusive

i. Residential Tenancies Act, 2006

Section 1 of the *Residential Tenancies Act* provides the purposes of the Act:

The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and

⁸ *MA*, *supra* note 6, at ss 10(2).

⁹ Renovation By-Law, *supra* note 5.

¹⁰ *MA*, *supra* note 6, at s 425

¹¹ *MA*, *ibid*, at s 436.

¹² *MA*, *ibid*, at s 444 and 445.

tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes.¹³

The *Residential Tenancies Act* outlines conflict provisions:

3(4) If a provision of this Act conflicts with a provision of another Act, other than the Human Rights Code, the provision of this Act applies.¹⁴

The *Residential Tenancies Act* contemplates municipal authority. There are several provisions that provide for municipal by-laws, including municipal property standards by-laws.¹⁵

Section 123 of the *Residential Tenancies Act* provides that a landlord may increase the rent charged to a tenant if the landlord and tenant agree that the landlord will provide a new air conditioner or electricity for an air conditioner unit.¹⁶

ii. Bill 97 and Amendments to the Residential Tenancies Act

Bill 97 amended the *Residential Tenancies Act* to include s.36.1, although the provision has not been proclaimed and is not currently in force.

In any event, section 36.1 addresses the issue of landlords preventing tenants from purchasing, installing and paying for their own window or portable air conditioner units.¹⁷ Section 36.1(1) states:

A tenant may install and use a window or portable air conditioner in a rental unit for which the landlord does not supply air conditioning, unless prohibited from doing so by the landlord under subsection (2), and subject to the conditions set out in subsection (3).
[emphasis added]

Subsection (2) refers to “prescribed circumstances” which have not yet been defined. Subsection (3) provides for requirements on a tenant to notify the landlord about installation of the air conditioning unit and to safely install the air conditioner in accordance with municipal property by-law standards or other applicable laws.

The proposed section 36.1 would allow a landlord who pays for electricity to increase the rent of the tenant to cover the “actual cost” to the landlord of the electricity supplied for the air conditioner.

iii. The Building Code Act, 1992

¹³ *Residential Tenancies Act, 2006*, SO 2006, c 17, at s 1 [RTA].

¹⁴ *RTA, ibid*, at ss 3(4).

¹⁵ *RTA, ibid*, at s 224-226.2.

¹⁶ *RTA, ibid*, at s 123; *General*, O Reg 516/06, s 16(1).

¹⁷ Bill 97, *Helping Homebuyers, Protecting Tenants Act*, 1st Sess, 43rd Leg, Ontario, 2023, Schedule 7 (assented to June 8, 2023); *RTA, supra* note 13, at s 36.1 (not proclaimed).

There is another source of authority for municipal by-laws addressing property standards in Ontario's *Building Code Act, 1992*, SO 1992, c 23 ("*Building Code Act*"). Section 15.1(3) of the *Building Code Act* contemplates municipal property standards¹⁸:

The council of a municipality may pass a by-law to do the following things if an official plan that includes provisions relating to property conditions is in effect in the municipality or if the council of the municipality has adopted a policy statement as mentioned in subsection (2):

1. Prescribing standards for the maintenance and occupancy of property within the municipality or within any defined area or areas and for prohibiting the occupancy or use of such property that does not conform with the standards.
2. Requiring property that does not conform with the standards to be repaired and maintained to conform with the standards or the site to be cleared of all buildings, structures, debris or refuse and left in graded and levelled condition.¹⁹

Section 15.2 provides for the power within a municipal by-law to give "reasonable particulars of the repairs to be made":

(2) An officer who finds that a property does not conform with any of the standards prescribed in a by-law passed under section 15.1 may make an order,

- (a) stating the municipal address or the legal description of the property;
- (b) giving reasonable particulars of the repairs to be made or stating that the site is to be cleared of all buildings, structures, debris or refuse and left in a graded and levelled condition;
- (c) indicating the time for complying with the terms and conditions of the order and giving notice that, if the repair or clearance is not carried out within that time, the municipality may carry out the repair or clearance at the owner's expense; and
- (d) indicating the final date for giving notice of appeal from the order.²⁰

These municipal powers are subject to a mandatory appeal provision. Section 15.3(1) allows for an appeal by an owner or occupant of a building to a municipal committee within 14 days of being served with the Order and ultimately with an appeal to the Superior Court of Justice.²¹

D. City of Hamilton Addresses Property Standards and Other Rental Conditions

¹⁸ See *Belleville (City of) v. McDonald*, 2022 ONSC 5510.

¹⁹ *Building Code Act*, 1992, SO 1992, c 23, at ss 15.1(3) [BCA].

²⁰ *BCA*, *ibid*, at ss 15.2(2).

²¹ *BCA*, *ibid*, at ss 15.3(1)-(4).

The City of Hamilton’s By-Law No.23-162 (“the By-Law”) is a detailed *Property Standards By-law*, which outlines municipal requirements for rental units.²² The By-Law sets the “minimum standards” for all property in Hamilton.²³ An owner not meeting those standards is required to repair and maintain the property to conform to the standards.²⁴ In section 4(2), the By-Law includes a requirement that “every building shall be kept free of any condition which constitutes a health or safety hazard.”²⁵

With respect to internal temperatures, the By-Law provides a minimum heat requirement:

19(1) A heating system shall be installed that is capable of supplying during normal hours of occupancy of the building sufficient heat to maintain a temperature of not less than 20° C measured at 1.5 m above floor level and 1 m from exterior walls in all habitable rooms not including a habitable room not used frequently or for extended periods for living, eating or sleeping.

19(2) A heating system shall be operated and maintained:

- (a) so as to properly perform its intended function;
- (b) free from unsafe conditions.²⁶

City of Hamilton staff noted in developing the recent Renovation Licence and Relocation By-Law that the authority set out in the *Municipal Act* authorizes municipalities to pass by-laws with respect to the well-being of the municipality and its inhabitants. Staff noted that the purpose of the *Residential Tenancies Act* is “to regulate the relationship between landlords and tenants” and staff were of the view that the proposed Renovation Licence and Relocation By-Law was within municipal authority as an innovative approach to address renovations, tenant displacement and property standards.²⁷

E. Municipal By-Laws on Temperature

In other municipal by-laws seeking to regulate indoor maximum temperatures, the authority for the by-laws is stated to be the *Municipal Act*. The approach taken to date has been targeted to rental units that already have air conditioning equipment in place, but applies to all rental units for minimum heat. These by-laws demonstrate legal authority for municipalities to act on internal temperature standards and related subject matters.

²² City of Hamilton, by-law No 23-162, *Being a By-Law to Prescribe Standards for the Maintenance and Occupancy of Property and to Repeal By-Law No. 10-221*, (June 30, 2024) online (pdf): <<https://www.hamilton.ca/sites/default/files/2024-07/23-162-consolidatedjun24.pdf>> [*Property Standards By-Law*].

²³ Property Standards By-Law, *ibid*, at ss 3(1).

²⁴ Property Standards By-Law, *ibid*, at ss 3(3).

²⁵ Property Standards By-Law, *ibid*, at ss 4(2).

²⁶ Property Standards By-Law, *ibid*, at ss 19(1)-(2).

²⁷ City of Hamilton, Planning and Economic Development Department, Licensing and By-Law Services Division, *REVISED: Addressing Renovictions, Tenant Displacement and Property Standards in Apartment Buildings in the City of Hamilton (PED23072)*, (report), online: <<https://pub-hamilton.escribemeetings.com/filestream.ashx?DocumentId=375373>>, at 11.

In the City of Mississauga, Adequate Temperature By-Law 0110-2018, sets a minimum temperature standard of 20 degrees Celsius in all dwelling units.²⁸ It also provides for adequate and suitable cooling, defined as a maximum of 26 degrees Celsius, in dwelling units that are equipped or furnished with an air conditioning system or unit.²⁹ This by-law relies on the authority in sections 8, 9 and 11 of the *Municipal Act*, along with provisions relating to the creation of offences, power to enter lands, and order-making authority.

In the City of Ajax, By-Law Number 47-2017 provides for adequate and suitable indoor temperatures for rented or leased dwellings.³⁰ A minimum temperature of at least 20 degrees Celsius is required for all rental units.³¹ A standard for maximum temperatures of 26 degrees Celsius is set for dwelling units equipped with central air conditioning systems.³²

F. Case Law on Conflicts Between Provincial and Municipal Laws

i. *Supreme Court of Canada's Ruling in Hudson is the Leading Case*

The leading case on municipal authority to pass by-laws to address local environmental and health matters is [114957 Canada Ltée \(Spraytech, Société d'arrosage\) v. Hudson \(Town\), 2001 SCC 40](#) ("*Hudson*").³³ There were several crucial findings in the *Hudson* decision:

- General welfare provisions in statutes conferring municipal power allow municipalities to respond expeditiously to new challenges facing local communities, without requiring amendment of the provincial enabling legislation.³⁴
- A party challenging a by-law's validity bears the burden of proving it is outside of their legal authority.³⁵
- A by-law regulating the use of pesticides was found to have a purpose to promote the health of the municipality's inhabitants.³⁶
- There is no need to speak of paramountcy or 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.³⁷

²⁸ City of Mississauga, by-law No 0110-2018, *Adequate Temperature*, s 1 and 2(1) [*Mississauga Temperature By-Law*].

²⁹ Mississauga Temperature By-Law, *ibid*, at ss 1, 4(1), 4(2).

³⁰ City of Ajax, By-law No 47-2017, *Rented Dwelling Temperature By-Law* [*Ajax Temperature By-Law*].

³¹ Ajax Temperature By-Law, *ibid*, at ss 2.1(a), 3.1.

³² Ajax Temperature By-Law, *ibid*, at ss 2.1(b), 2.1(e), 3.2.

³³ *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40 [*Hudson*].

³⁴ *Hudson*, *ibid*, at para 19.

³⁵ *Hudson*, *ibid*, at para 21.

³⁶ *Hudson*, *ibid*, at para 27.

³⁷ *Hudson*, *ibid*, at para 34.

- A finding that a municipal by-law is inconsistent with a provincial statute requires, first, that they both deal with similar subject matters and, second, that obeying one necessarily means disobeying the other.³⁸

The Federal legislation at issue in *Hudson* was the *Pest Control Products Act*, which regulated and authorized the import, export, sale, manufacture, registration, packaging and labelling of pesticides. The legislation was characterized as permissive, rather than exhaustive. The Court found a cosmetics pesticides ban at the municipal level was not an operational conflict.³⁹

The provincial legislation was the *Pesticides Act* and established a permit and licensing system for vendors and commercial applicators of pesticides. It was found to complement the federal legislation and along with the municipal by-law, established a tri-level regulatory regime.⁴⁰

ii. Legal Test

The legal test to be applied in analyzing whether the City of Hamilton has jurisdiction to pass a municipal by-law to set a maximum indoor temperature was outlined in [Croplife Canada v Toronto \(City\), 2005 CanLII 15709 \(ON CA\)](#) (“*Croplife*”). The Ontario Court of Appeal applied the following two-prong test to determine a municipal by-law’s validity:

- 1) Is it impossible to comply simultaneously with the by-law and with the federal or the provincial Acts?
- 2) Does the by-law frustrate the purpose of Parliament or the Ontario legislature in enacting those laws?⁴¹

This legal test applies unless it has been displaced by legislative language, such as in [Peacock v Norfolk \(County\), 2006 CanLII 21752 \(ON CA\)](#).

iii. Case Law

A. Interpret Municipal Authority Broadly

In *Croplife*, the Court of Appeal held that it would be a retrograde step to apply the former, restrictive approach to interpret the *Municipal Act*, which was amended to provide municipalities in Ontario “the tools they need to tackle the challenges of governing in the 21st century.”⁴² Absent clear legislative language to the contrary, municipal powers, including general welfare powers, are to be interpreted broadly and generously within their context and statutory limits, to achieve the legitimate interests of the municipality and its inhabitants.⁴³

³⁸ *Hudson*, *supra* note 33, at para 38.

³⁹ *Hudson*, *ibid*, at para 35.

⁴⁰ *Hudson*, *ibid*, at para 39.

⁴¹ *Croplife Canada v. Toronto (City)*, (2005), 75 O.R. (3d) 357 (C.A.), at para 63 [*Croplife*].

⁴² *Croplife*, *ibid*, at para 34.

⁴³ *Croplife*, *ibid*, at para 37.

B. No Operational Conflict

The Court of Appeal in *Croplife* highlighted that the conflict provisions of the *Municipal Act* codify the “impossibility of dual compliance” conflict test from *Hudson* and the validity of tri-level regulation has been unambiguously endorsed by the Supreme Court of Canada.⁴⁴ An Ontario pesticides by-law did not conflict with and did not frustrate the purpose of the permissive federal *Pest Control Products Act*, which makes certain pesticides available by regulating their manufacture and labelling, but does not require that everyone be able to use every regulated product in an unrestricted way.⁴⁵

Some other examples of Court findings which uphold broad municipal power include:

- In [R v Drain, 2006 ONCJ 186](#), the Ontario Court of Justice at paragraph 29 noted that the ordinary meaning of ‘well-being’ includes not only concern for the health of its citizens “but also the concern for the living conditions and prosperity of the people living in that municipality.” In *R v Drain*, the Court held that the unregulated accumulation of refuse and debris on neighbouring yards could impact the well-being of the local community.⁴⁶
- In [Newmarket \(Town\) v Halton Recycling Ltd., \[2006\] OJ No 3918](#), the Superior Court of Justice highlighted that public nuisance powers under s.433 of the *Municipal Act* does not frustrate the purpose of the *Environmental Protection Act* or preclude compliance with environmental legislation. The Ontario legislature did not intend to occupy the field of public nuisances caused by odours by enacting the *Environmental Protection Act*.⁴⁷
- In [Kenora \(City\) v Eikre Holdings Ltd., 2018 ONSC 7635](#), the Superior Court of Justice upheld the broad power of municipalities pursuant to the *Municipal Act* to pass by-laws addressing zoning, fire codes, policing, property standards, unsafe buildings and public nuisances.⁴⁸ The Court notes that municipalities have been given a number of statutory remedies to deal with premises where protection of the public interest is at stake, including the *Building Code Act*, the *Health Protection and Promotion Act*, the *Fire Protection and Prevention Act*, the *Expropriations Act*, and various provisions of the *Municipal Act*.⁴⁹
- The British Columbia Court of Appeal in [1193652 B.C. Ltd. v. New Westminster \(City\), 2021 BCCA 176](#), upheld a municipal by-law regulating residential tenancy evictions for the purpose of renovations (“renovictions”).⁵⁰ The Court found that the new provisions supplemented, and did not contravene, those of the B.C. *Residential Tenancy Act*.⁵¹ The legislative authority for municipal by-laws under the B.C. *Community Charter* is similar

⁴⁴ *Croplife*, *supra* note 41, at paras 51, 52, 58.

⁴⁵ *Croplife*, *ibid*, at para 66.

⁴⁶ *R v Drain*, 2006 ONCJ 186, at para 29.

⁴⁷ *Newmarket (Town) v Halton Recycling Ltd.*, [2006] OJ No 3918, at paras 86, 87.

⁴⁸ *Kenora (City) v Eikre Holdings Ltd.*, 2018 ONSC 7635, at para 55 [*Kenora*].

⁴⁹ *Kenora*, *ibid*, at paras 61, 63.

⁵⁰ *1193652 B.C. Ltd. v. New Westminster (City)*, 2021 BCCA 176, at para 1 [*New Westminster*].

⁵¹ *New Westminster*, *ibid*, at para 6.

to the *Municipal Act*, including powers to pass by-laws for the “health, safety or protection of persons or property [...]”⁵² The B.C. *Community Charter* also incorporates the legal test in *Hudson*.⁵³

At paragraph 79, the B.C. Court of Appeal highlighted that the principle of subsidiarity stresses that the level of government closest to a subject matter may choose to respond to local needs by introducing complementary legislation in an area of jurisdictional overlap:

To repeat, under the subsidiarity principle the level of government closest to a subject matter may choose to respond to local needs by introducing complementary legislation in an area of jurisdictional overlap. The City has a long-standing concern with the need to preserve local affordable rental housing and has recently become particularly concerned with a perceived increase in the risk of renovations in New Westminster. In my view, the City's conclusion that it was authorized by the Community Charter to address those local concerns by enacting the Impugned Bylaw aligns with Justice L'Heureux-Dubé's statement in *Spraytech* that "the mere existence of provincial ... legislation in a given field does not oust municipal prerogatives to regulate the subject matter": at para. 39. It also aligns with Chief Justice McLachlin's statement in *Reference re Assisted Human Reproduction Act* that, so long as complementary local laws do not frustrate other legislation, "in an area of jurisdictional overlap, the level of government that is closest to the matter will often introduce complementary legislation to accommodate local circumstances": at para. 70.⁵⁴

Like in the Ontario legislation, the B.C. *Residential Tenancy Act* contemplates overlapping and complementary jurisdiction.⁵⁵

- In the recent ruling of the Superior Court of Justice in [Volcano Café v Durham Region, 2023 ONSC 993](#), later upheld by the Ontario Court of Appeal, the Region of Durham passed a Smoking By-law to prohibit the smoking of any substance in enumerated public spaces. In upholding the constitutional validity of the by-law, the Court held:

I will deal briefly with this issue. I agree with the respondent. Section 7.1 is not *ultra vires* for the following reasons:

- a) As it relates to cannabis and tobacco, s. 7.1 merely mirrors section 115(10) of the *Municipal Act*, 2001;
- b) Nothing prevents a municipality from duplicating provincial legislation where it otherwise has jurisdiction to legislate on an issue;

⁵² *New Westminster, ibid*, at para 6; *Community Charter*, SBC 2003, ch 26, ss 8(3) [*Community Charter*].

⁵³ *New Westminster, supra* note 50, at para 10; *Community Charter, supra* note 52 at s 9.

⁵⁴ *New Westminster, supra* note 50, at para 79.

⁵⁵ *New Westminster, ibid*, at para 81.

[Stelmach Project Management Ltd. v. Kingston \(City\), 2021 ONSC 4343](#) at paras 83-84;

c) A municipal by-law is not void or ineffective merely because it imposes stricter standards of control than those imposed by a provincial statute. As stated by the majority in [114957 Canada Ltée \(Spraytech, Société d'arrosage\) v. Hudson \(Town\), 2001 SCC 40 \(CanLII\), \[2001\] 2 SCR 241](#) at para. 37:

...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 [Township of Uxbridge v. Timber Bros. Sand & Gravel Ltd. \(1975\), 1975 CanLII 507 \(ON CA\), 7 O.R. \(2d\) 484 \(C.A.\)](#)). See also P.-A. Côté, *The Interpretation of Legislation in Canada* (3rd ed. 2000), at p. 353 (“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”);

d) Section 7.1 of the By-law is only activated if a substantive conflict arises between the By-law and a provincial or federal legislative instrument. No such conflict has been alleged. Should a conflict within the meaning of section 14 of the *Municipal Act*, 2001 arise, section 14 would render the offending provision inoperative to the extent of the conflict.⁵⁶

C. No Frustration of Purpose

The second branch of the legal test outlined in *Croplife* is that a municipal by-law may not frustrate the purpose of federal or provincial legislation. A maximum temperature by-law would not frustrate the purpose of the *Residential Tenancies Act*.

The provisions in s.36.1 of the *Residential Tenancies Act* (not in force) do not purport to apply to all rental units or oust jurisdiction for other action to address indoor temperatures in rental units to protect the health of tenants. Legislation will only be considered a complete code if it “provides a comprehensive treatment or contains a comprehensive list of laws and procedures in that particular field.”⁵⁷ The *Residential Tenancies Act* provisions only apply if a tenant chooses to purchase a temporary or portable air conditioning unit. It also does not set an indoor temperature standard.

In [London Property Management Association v. City of London, 2011 ONSC 4710](#), the Ontario Superior Court of Justice held that the *Residential Tenancies Act* has not precluded other acts from

⁵⁶ *Volcano Café v Durham Region*, 2023 ONSC 993, at para 32.

⁵⁷ *London Property Management Association v. City of London*, 2011 ONSC 4710, at paras 44, 45 [*London*].

dealing with units in residential complexes.⁵⁸ The Court noted as a matter of statutory interpretation that courts should attempt to interpret two potentially conflicting pieces of legislation in a way that avoids a conflict.⁵⁹

In [*Kenora \(City\) v. Eikre Holdings Ltd.*, 2018 ONSC 7635](#), the Ontario Superior Court of Justice dismissed an argument that a municipal by-law which authorized the municipality to close a premises if it is a public nuisance was a conflict with the *Residential Tenancies Act*.⁶⁰ The Court found that the purpose of the *Residential Tenancies Act* and the *Municipal Act* do not conflict and the City was acting in furtherance of the City's duty to promote and protect the public interest.⁶¹

In [*Fodor v North Bay \(City\)*, 2018 ONSC 3722](#), the Ontario Superior Court of Justice also highlighted that the *Residential Tenancies Act* is concerned with the relationship between landlords and tenants. By way of contrast, a by-law addressing licensing of rental units and minimum property standards is concerned with the rights and responsibilities of landlords and their relationship with the City.⁶²

G. Conclusion

Municipal authority to set property standards, protect the public interest, and act on environmental matters is well established. There is broad authority in the *Municipal Act* to address the clear health threat posed to tenants by high indoor temperatures, made worse by climate change. Municipalities have long acted through by-laws to establish minimum indoor temperatures and other property standards, demonstrating long-standing authority to regulate indoor temperatures within rental units to ensure the health and safety of tenants.

There is no operational conflict between the proposed s.36.1 and a new maximum temperature by-law. A landlord is not required to take any action to comply with s.36.1 of the *Residential Tenancies Act*. It is permissive language and allows tenants who can afford to purchase window or portable air conditioning units to do so. It does not purport to oust jurisdiction to address other aspects of indoor temperature, public health and safety.

There is also no frustration of provincial purpose. The case law establishes that municipal by-laws can enhance and address public health and safety issues in residential dwellings and it does not conflict with the purpose of the *Residential Tenancies Act*.

We urge the City of Hamilton to pass a maximum temperature by-law which sets an indoor temperature standard of 26 degrees Celsius and applies to all residential units. Climate change is causing indoor heat to worsen. There is a clear and growing health threat to tenants that must be addressed.

⁵⁸ *London*, *supra* note 57, at paras 46-53, 62.

⁵⁹ *London*, *ibid*, at para 53.

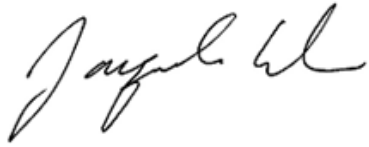
⁶⁰ *Kenora*, *supra* note 48, at para 50.

⁶¹ *Kenora*, *ibid*, at para 57.

⁶² *Fodor v. North Bay (City)*, 2018 ONSC 3722, at paras 55-63.

Regards,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read "Jacqueline Wilson". The signature is fluid and cursive, with the first name being more prominent than the last.

Jacqueline Wilson
Counsel