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Can we use plastic straws again? What could happen after court quashes Liberal ban

Chris Knight · Postmedia News ; Posted: a day ago ; Updated: a day ago ; 4 Min Read

A Federal Court judge has ruled that Ottawa went too far in characterizing all plastic items as toxic in the Canadian Environmental Protection Act (CEPA). But don't expect the sudden return of plastic straws.

When Bill S-5 became law in June after receiving royal assent, it amended the Canadian Environmental Protection Act and gave the federal government the right to regulate the import, manufacture and sale of plastic items, which it promptly did.

In fact, it had already started. As of last December, regulations banned the manufacture or import of five types of single-use plastics -- straws, grocery bags, cutlery, takeout containers and stir sticks. In another month, on Dec. 20, sale of these items is also prohibited. (A sixth type, six-pack ring carriers, are on a similar but slightly delayed timeline of prohibition.)

Thursday's ruling by Justice Angela Furlanetto notes that it was "unreasonable and unconstitutional" to list all plastic manufactured products as harmful, and that the government acted out-

side of its authority. "There is no reasonable apprehension" that all listed plastic manufactured items are harmful, she wrote.

But Stewart Elgie, a law professor and director of the Environment Institute at the University of Ottawa, said the decision is unlikely to bring back straws, stir sticks and the like.

"The federal government still has ample authority to regulate plastics that are harmful to the environment," he said. "They just have to do it in a targeted way, and have the proper scientific support behind it."

The government, he said, may need to deliver additional, more specific scientific proof that particular plastics and products are harmful to the environment, which could happen in as little as a few months.

In the meantime, he said, "they can go to the court and ask for this judgment to be suspended temporarily until there's an appeal decision. That's quite common in court decisions."

Alternately, "they can bring in an interim order under CEPA that essentially

deals with the plastics they're regulating. And it will regulate them on an interim basis until a permanent regulation is re-done."

Calgary Co-op launches petition to save compostable bags Canada bans 'harmful' single-use plastics as of December

The case against the government was brought forward by the Responsible Plastics Use Coalition (RPUC), a not-for-profit corporation comprising companies from the plastics industry who do business in Canada, as well Dow Chemical Canada, Nova Chemicals Corporation and Imperial Oil.

A press release issued yesterday by the RPUC said it supported the federal court decision, adding: "We are currently analyzing court documents and will be considering our next steps upon completing that review."

But Usman Valiante, a fellow at the Ottawa-based Smart Prosperity Institute, says the industry is unlikely to move quickly on the decision.

"I think, practically, industry is going to wait and see what the government does before anybody starts to try to rein-

roduce any of this stuff into the market," he said. "Everybody was anticipating that they wouldn't be selling this stuff by Dec. 20 and it's not like they're going to rush out to start supplying it again, given the uncertainty of where public policy might go."

"In reality, the decision isn't that big of a deal," Elgie adds. "It shouldn't affect (the government's) regulation of plastics. I think the industry did it kind of as a shot across the bow. To make sure that the government is careful and thorough about which plastics they regulate (in the future). I don't think the industry likes having all their products labelled as toxic, and I don't blame them."

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