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The Law Leaves Room for Local Food

Local food has economic, environmental, health and community benefits. But many municipalities wishing to support local food are afraid to show local preference for fear of contravening procurement and trade laws.

In a webinar hosted by Sustain Ontario on February 25th, a panel of public procurement experts agreed that trade agreement compliance for local food procurement is about how you structure the ask. A current Request For Proposals by Concordia University demonstrates the potential to leverage public tax dollars by requesting that [75% of produce purchased in the summer is local](#).

However, municipalities continue to cite domestic and trade laws as a barrier. An article published in the Daily Observer this week announced that Pembroke's city council decided they could not implement a "Pembroke first" clause into their procurement policy. Council decided it would be illegal to write local preference into their city's procurement policy due to trade law limitations. (See "[City can't prefer local for procurement](#)," The Daily Observer, February 25, 2015.)

The panel of experts say finding ways to support "local" is all about the ask. "When you review the rules in detail, you will see they contain avenues which, when used responsibly, permit regional economic development," says Dan Munshaw, Manager of Supply Management for the City of Thunder Bay, who participated on Sustain Ontario's February 25th panel on [Local Food Procurement in the Ontario Broader Public Sector](#). "This is how you support local foods."

"Municipalities can lead the way in building a better food system for Ontario by purchasing fresh, local and sustainable foods," states Carolyn Young, Sustain Ontario's Director. "Too often, policies and trade law are cited as barriers when there are clear examples of how this can be done within the law. That is why Sustain Ontario is working to clarify these concerns and share examples of how this can be done"

Diane Schofield, Pembroke's deputy treasurer, cited trade agreements and federal and provincial statutes - such as the Discriminatory Business Practice Act (DBPA) - as the legislation prohibiting local preference in policies that govern tax dollar spending. "It is an offence under the DBPA to refuse to engage in business, which includes buying goods and

services, with another person where the refusal is on account of their geographical location," Schofield told The Daily Observer.

According to an article in [Municipal World](#), the DBPA was put in place to combat the Arab boycott of Israel in the mid-1970s and the effects it could have on the Ontario marketplace. The actual statute that is relevant refers to the "geographical location of persons employed" and/or their "place of origin." However, the interpretation of these terms has yet to be understood as there are no reported court decisions on how this might impact on local procurement preferences.

Munshaw explains that while the DBPA essentially prohibits discrimination based on geographic location, the DBPA also states an exemption: "this subsection does not prohibit a person in Ontario from seeking or providing a statement, whether written or oral, to the effect that any goods or services supplied or rendered by any person or government originate in whole or in part in a specific location".

Social procurement leaders think this is an important opportunity for local procurement: the distinction between specifying the geographic origin of the goods versus restricting the geographic location of a bidder.

"You are not prohibiting a local, provincial, national or international company from bidding, you are only requiring them to provide you with foods which come from local sources," says Munshaw.

There are also clear social, environmental, and economic impacts of local and sustainable foods that allow them to be exempted from many trade laws. "Can a City prefer local companies in procurement process? Yes, if you think more about impact and less about geography," says panelist [Sandra Hamilton](#), a Social Procurement Consultant and former Business Manager to John Furlong, CEO of the Vancouver 2010 Olympic and Paralympic Winter Games.

"There is no limitation to a municipal procurement policy from the common law, NAFTA (*North American Free Trade Agreement*) or the WTO Agreement on Government Trade. AIT (*Agreement on Internal Trade*) does have non-discrimination clauses that may limit a buy-local municipal procurement policy, but if an institution or municipality is using its economic development powers (and provides justification for an exclusion) or is purchasing goods (or unbundling contracts) valued under \$100,000, this is the exception," says Hayley Lapalme of My Sustainable Canada, a non-profit organization that works directly with institutions to increase their local food purchases.

Developing local food procurement policies and practices for municipally-run facilities in Durham Region, Chatham-Kent, and Bruce County was the focus of Sustain Ontario's ["From The Ground Up" project](#), supported by the Greenbelt Fund. The project investigated the legal, financial and logistical issues in shifting public procurement dollars to more local foods. Public procurement of Ontario food is central to the province's [Local Food Act](#), which includes goal-setting to encourage "increased use of local food by public sector organizations."



“Resistance to change in the public sector is a much bigger barrier than trade agreement contract language,” says Hamilton. “Canada must empower and educate procurement officers to strategically consider how a tax dollar can be fully leveraged to achieve a targeted environmental, social or economic impact.”

Sustain Ontario hosts a Municipal Regional Food Policy Network that connects stakeholders from across the province to share knowledge, experience and resources in order to establish best practices regarding public policy development.

Municipalities can find more information on trade laws and local food in Sustain Ontario’s [Policies from the Field Report](#) or the [Greenbelt Fund’s Green Paper on Trade Policies](#).

Sustain Ontario is a province-wide cross-sectoral alliance that is working to create a food system that is healthy, ecological, equitable and financially viable. Comprised of over 80 member organizations, the Sustain Ontario alliance represents stakeholders from diverse sectors - farming, health, environment, business, public and non- profit. Sustain Ontario engages with its membership to take a collaborative approach to research, policy development, and action by addressing intersecting issues related to healthy food and local sustainable agriculture. Sustain Ontario is a project of Tides Canada Initiatives Society.

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