



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

June 12, 2008

Shafiq Qaadri, MPP
Chair, Standing Committee on Social Policy
c/o Katch Koch, Clerk
Committees Branch
99 Wellesley Street West
Room 1405, Whitney Block
Toronto, ON M7A 1A2

Sent via email: katch_koch@ontla.ola.org
Original to follow by regular mail

Dear Mr. Qaadri and members of the Standing Committee on Social Policy,

RE: *Bill 64, Cosmetic Pesticides Ban Act, 2008*

CELA is pleased to provide this submission in response to the proposed legislative amendments to the *Pesticides Act* contained in Bill 64, the *Cosmetic Pesticides Ban Act, 2008*.

We wish to express our qualified support for the bill in light of two significant concerns:

- We ask that the Bill be amended to delete subsection 7.1(5) in light of other provincial law, specifically Section 14 of the *Municipal Act, 2001*, and the existing and recent caselaw at the highest levels of Ontario and Canadian courts concerning pesticide bylaws; and
- We ask that the Bill be amended to delete subsection 7.1(2)5 (“other prescribed uses”) as the language is too open-ended and adequate exceptions are provided in previous sections - 7.1(2)1-4.

Background about CELA’s involvement in pesticide issues

The Canadian Environmental Law Association (CELA) is a non-profit, public interest organization founded in 1970. CELA is an environmental law clinic – within Legal Aid Ontario - dedicated to providing legal services to low income people and disadvantaged communities, and advancing the cause of strong environmental protection through advocacy, education and law reform.

In addition to providing direct legal representation and summary advice, CELA's law reform and public educational mandates include advocacy on ensuring access to environmental justice and protecting public environmental rights. This work occurs at the local, regional, provincial, national and international level.

Members of our staff have worked on pesticides issues for over 25 years. We have been at the forefront of Canadian activity summarizing the research about human health impacts, particularly to children, and were extensively involved in efforts to reform the *Pest Control Products Act*, several progressive revisions to which were proclaimed in June of 2006. We have acted in the courts on behalf of clients adversely affected by pesticides as well as on behalf of multiple groups and individuals who successfully opposed repeated legal challenges to pesticide bylaws in Hudson, Quebec and Toronto, Ontario. Public inquiries to our office are numerous. For over twenty years, a very large proportion of these inquiries have consistently included questions about pesticides. We have assisted hundreds of groups and individuals across Canada in their efforts to see pesticide bylaws enacted by their local municipalities.

We therefore support the overall intent of banning the use and sales of cosmetic pesticides in Ontario but make the following comments in support of the recommendations noted above.

Existing Municipal Bylaws

Subsection 7.1(5) of the Bill as currently drafted has the potential to render municipal by-laws completely inoperative where they address “the use, sale, offer for sale or transfer of a pesticide that may be used for a cosmetic purpose.”

We recommend that this section be deleted entirely and that the Bill remain silent on this issue. Section 14 of the *Municipal Act, 2001* and the existing and recent caselaw at the highest levels of Ontario and Canadian courts are more than adequate to deal with any conflicts arising between municipal by-laws and Provincial regulation of pesticides. Further, Provincial regulation of pesticides ought to be the floor from which municipalities can regulate further in accordance with local needs.

The existing and recent caselaw and the *Municipal Act, 2001* are sufficient in two respects. First, the Supreme Court of Canada decision¹ on the Hudson, Quebec bylaw, and related caselaw in Ontario concerning the challenge to the Toronto bylaw, confirm municipal powers to pass pesticide bylaws and confirm that such bylaws can be more restrictive of pesticides than the provincial or federal laws but cannot weaken or undermine those laws.

Second, the Hudson decision confirms a broader reality of law-making in Canada whereby there exist nested powers and responsibilities such that actions at a lower, i.e., in this case a municipal government, cannot undermine laws of higher (provincial or federal) jurisdiction. However, such bylaws can strengthen or further develop their intent. The Supreme Court also noted that municipalities could legitimately act in the interest of their own citizens and in response to local circumstances.

Bill 64 is a very progressive statute since it will ban both use and sales of cosmetic pesticides. Removing Section 7.1(5) will ensure that local bylaws can be stronger than the Provincial law, should municipalities choose to do so in response to local circumstances. This nesting of legal roles would continue to be in accordance with the “tri-level regulatory regime” described by the

¹ Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town), [2001] 2 S.C.R. 241, 2001 SCC 40

Supreme Court in the Hudson decision. Simply removing Section 7.1(5) would also be consistent with the intent of the legislature when the *Municipal Act* was most recently amended, bolstering local regulatory powers to protect human health and the environment.

Delegation of Rulemaking

A second concern arises with the delegation of rulemaking under subsection 7.1(2)5 (“other prescribed uses”). This language is very open-ended, allowing for exceptions to the intended ban for any purpose. However, in our view, the exceptions provided in section 7.1(2)1-4 are broad enough. Subsection 7.1(2)5, has the potential to authorize exceptions that would run counter to the overall purposes of a bill designed to prohibit pesticide uses. For example, this subsection could, in future, be used to allow for the setting of thresholds for applying controlled products to control weeds. Although this government is committed to reducing pesticide use in Ontario, subsequent governments could, through prescribing excepted uses, render the purpose of these amendments to the *Pesticides Act* meaningless.

Nor are we convinced that the rest of the Bill, specifically the powers provided for in sections 5.(1) and 5.(2)(2), are sufficient to circumscribe the language of subsection 7.1(2)5. At a minimum, the language “other prescribed uses” should be qualified, for example: “other prescribed uses not in conflict with the overall intent of this bill.” On balance, the bill would provide simpler and clearer direction on pesticide rule-making if subsection 7.1(2)5 was deleted from the Bill in order to ensure that pesticide use in Ontario is reduced over the long-term.

All of which is respectfully submitted.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read 'Kathleen Cooper', with a stylized flourish extending to the right.

Kathleen Cooper
Senior Researcher

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