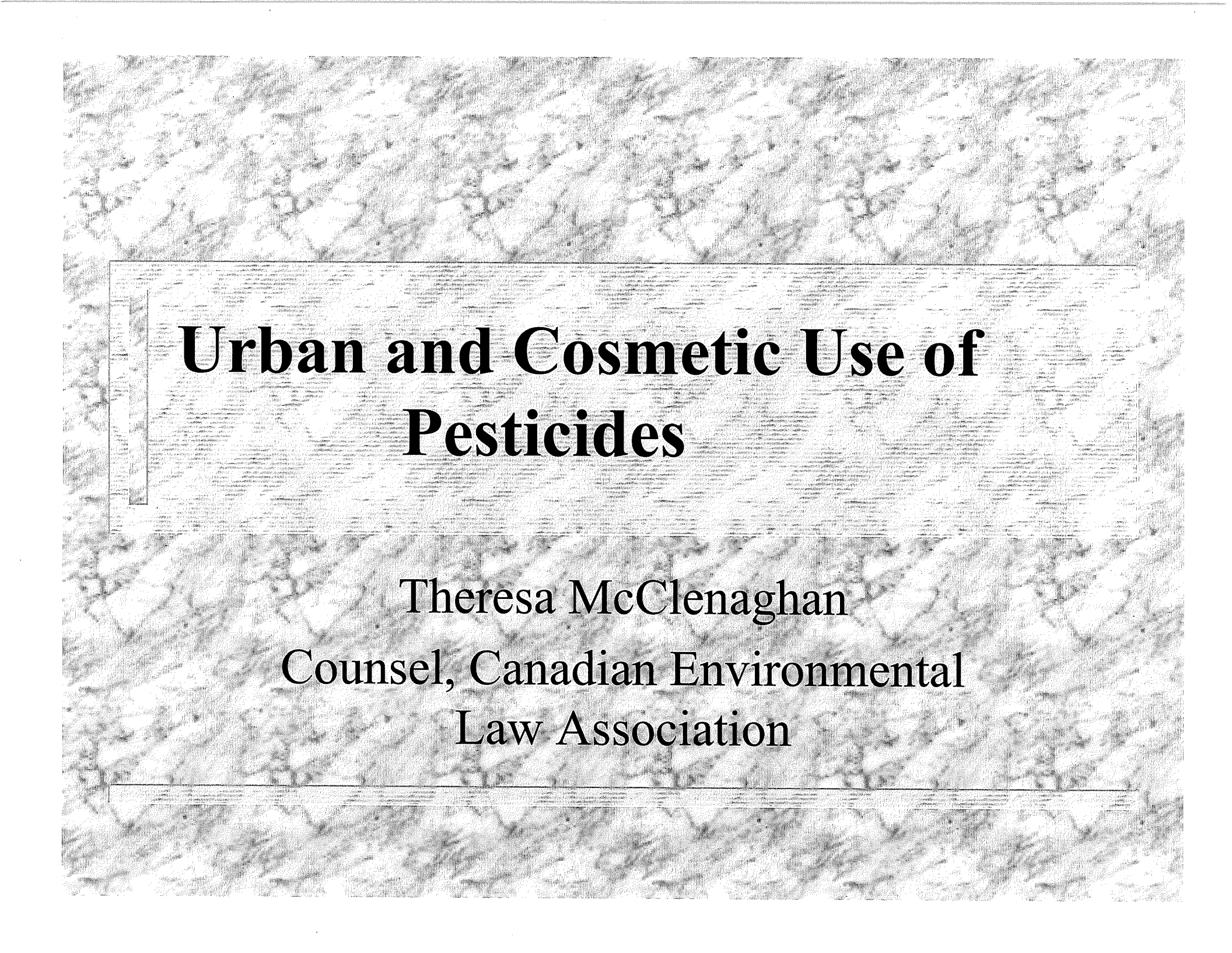




Urban and Cosmetic Use of Pesticides

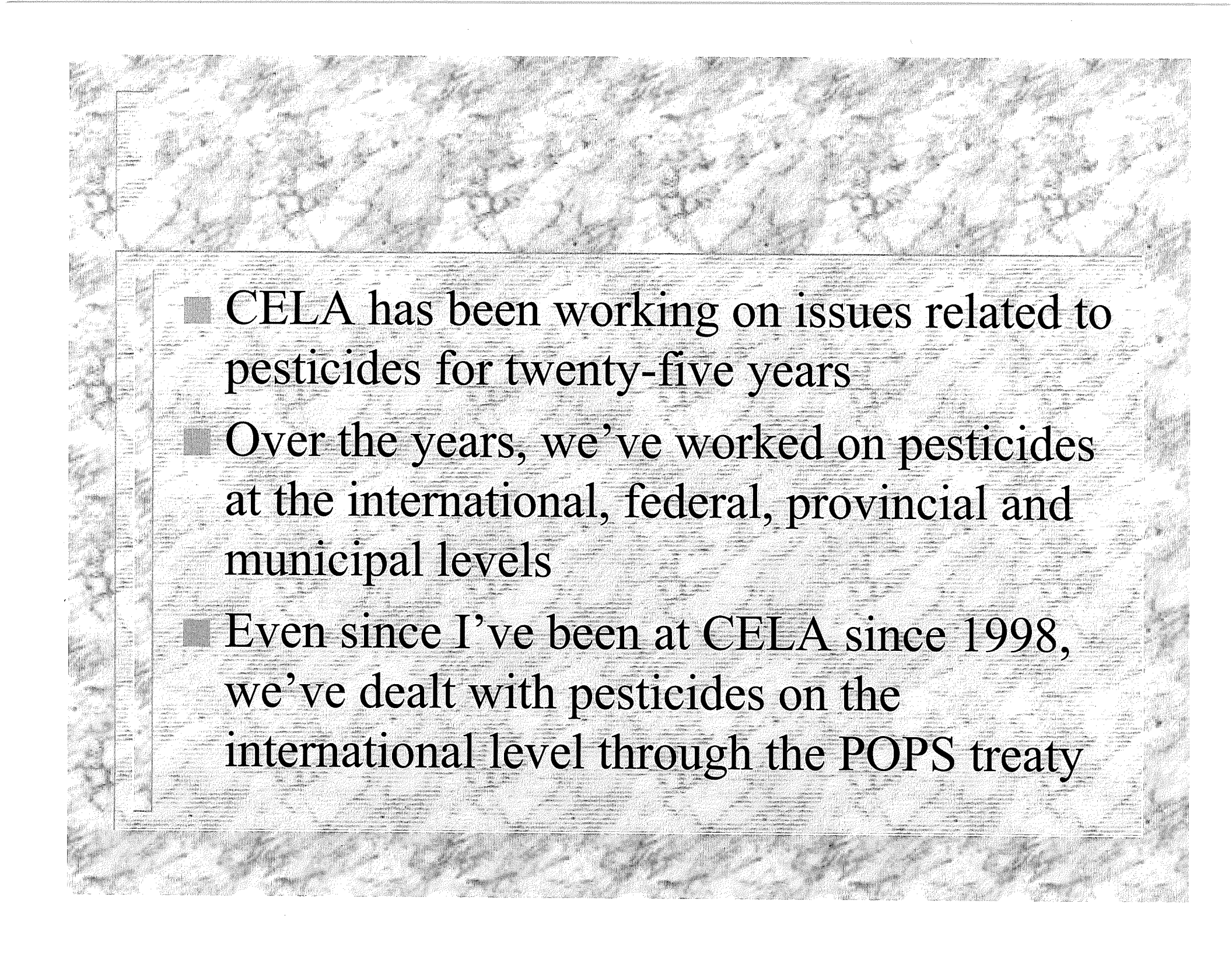
Theresa McClenaghan
Counsel, Canadian Environmental
Law Association

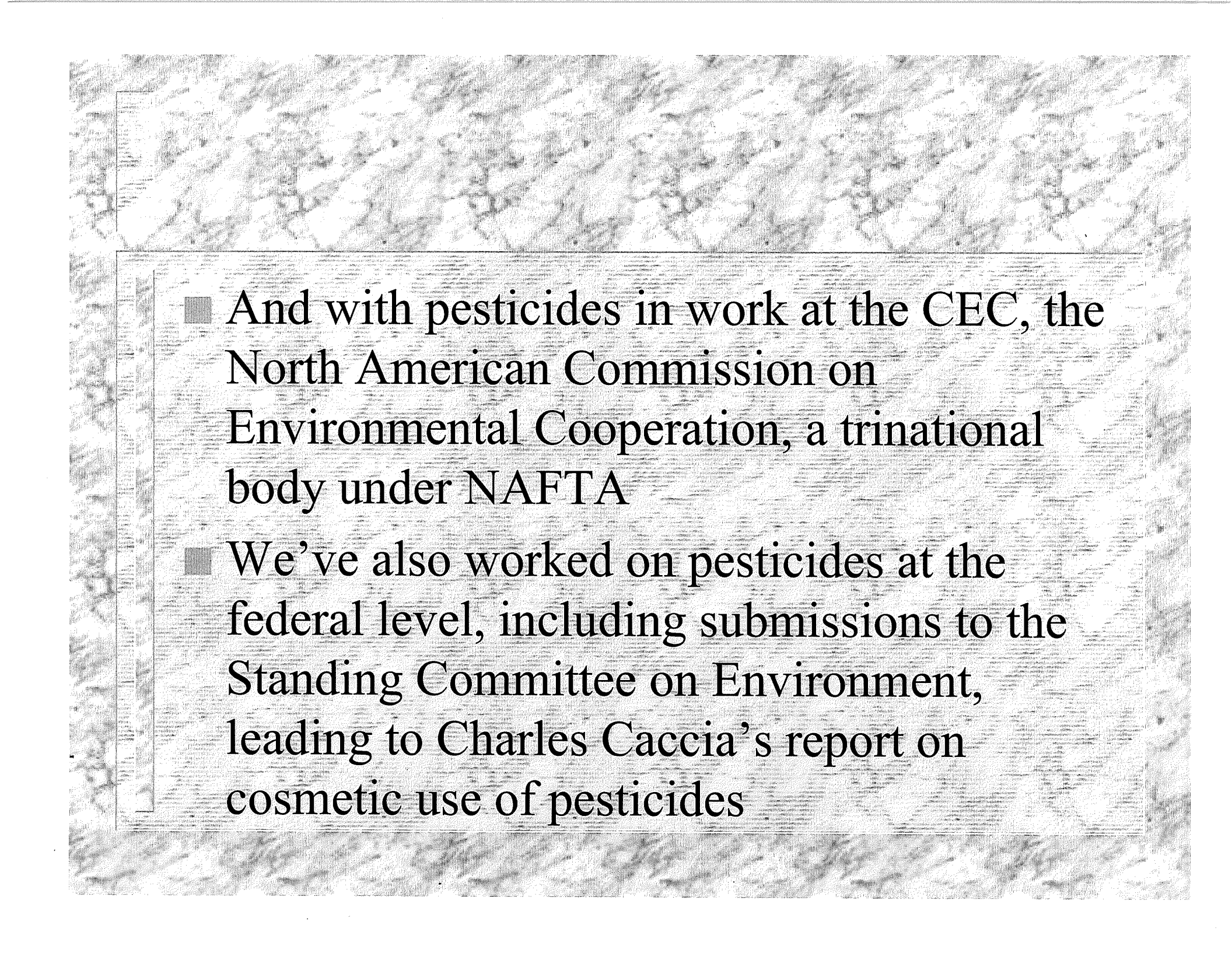
Prepared for Probus International

■ Theresa McClenaghan

■ Canadian Environmental Law Association

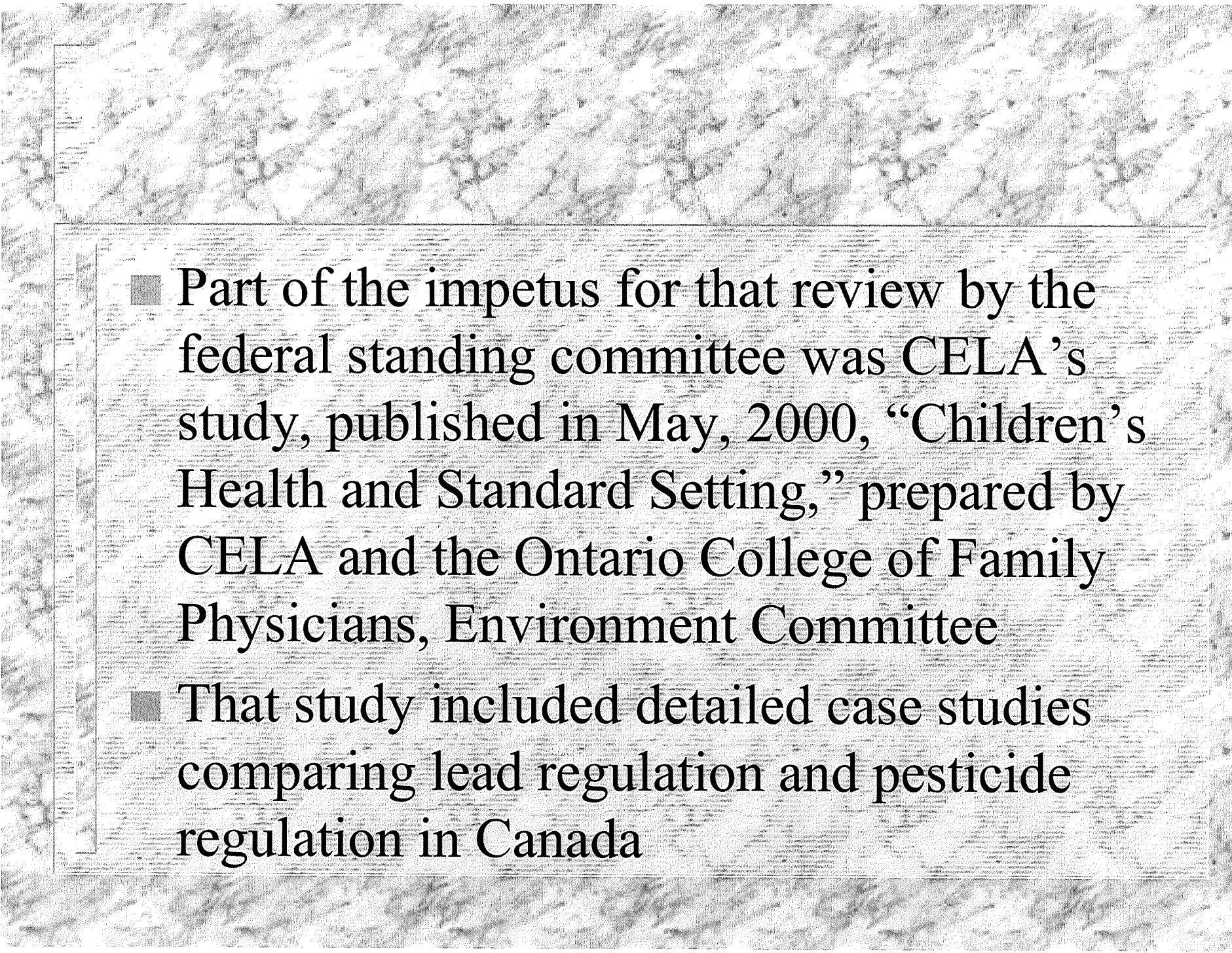
■ April 17, 2003

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- CELA has been working on issues related to pesticides for twenty-five years
 - Over the years, we've worked on pesticides at the international, federal, provincial and municipal levels
 - Even since I've been at CELA since 1998, we've dealt with pesticides on the international level through the POPS treaty



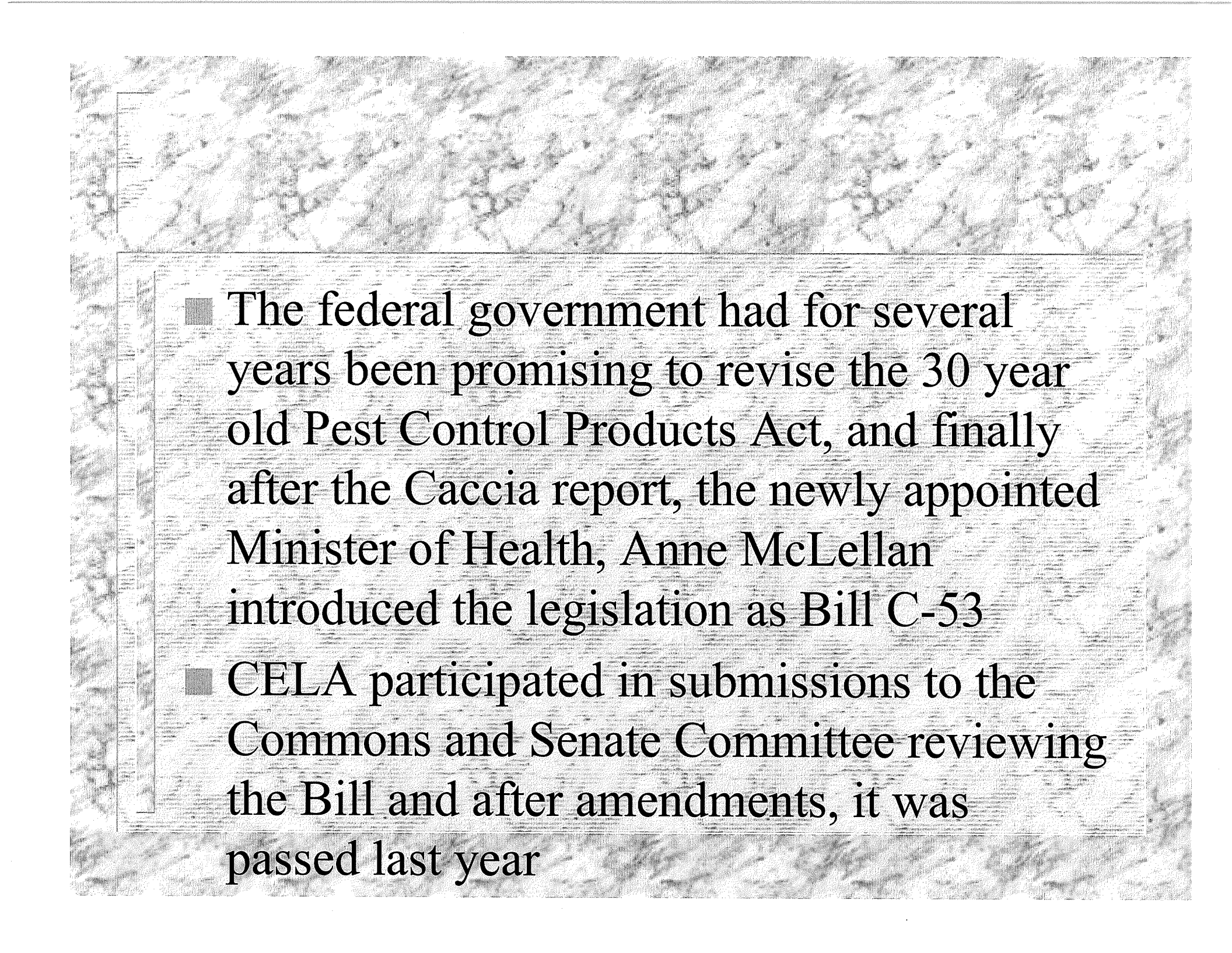
■ And with pesticides in work at the CEC, the North American Commission on Environmental Cooperation, a trilateral body under NAFTA

■ We've also worked on pesticides at the federal level, including submissions to the Standing Committee on Environment, leading to Charles Caccia's report on cosmetic use of pesticides



■ Part of the impetus for that review by the federal standing committee was CELA's study, published in May, 2000, "Children's Health and Standard Setting," prepared by CELA and the Ontario College of Family Physicians, Environment Committee

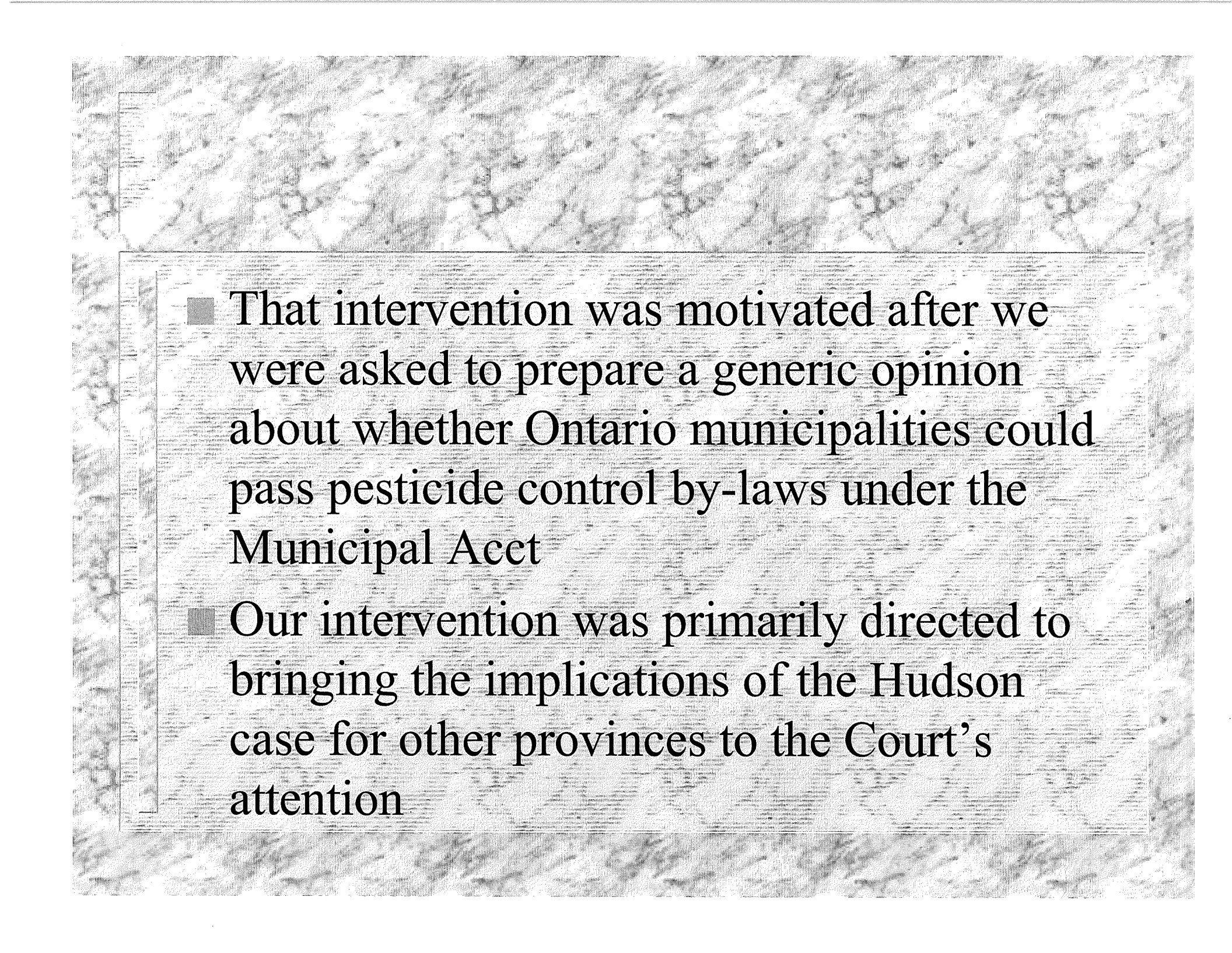
■ That study included detailed case studies comparing lead regulation and pesticide regulation in Canada



- The federal government had for several years been promising to revise the 30 year old Pest Control Products Act, and finally after the Caccia report, the newly appointed Minister of Health, Anne McLellan introduced the legislation as Bill C-53

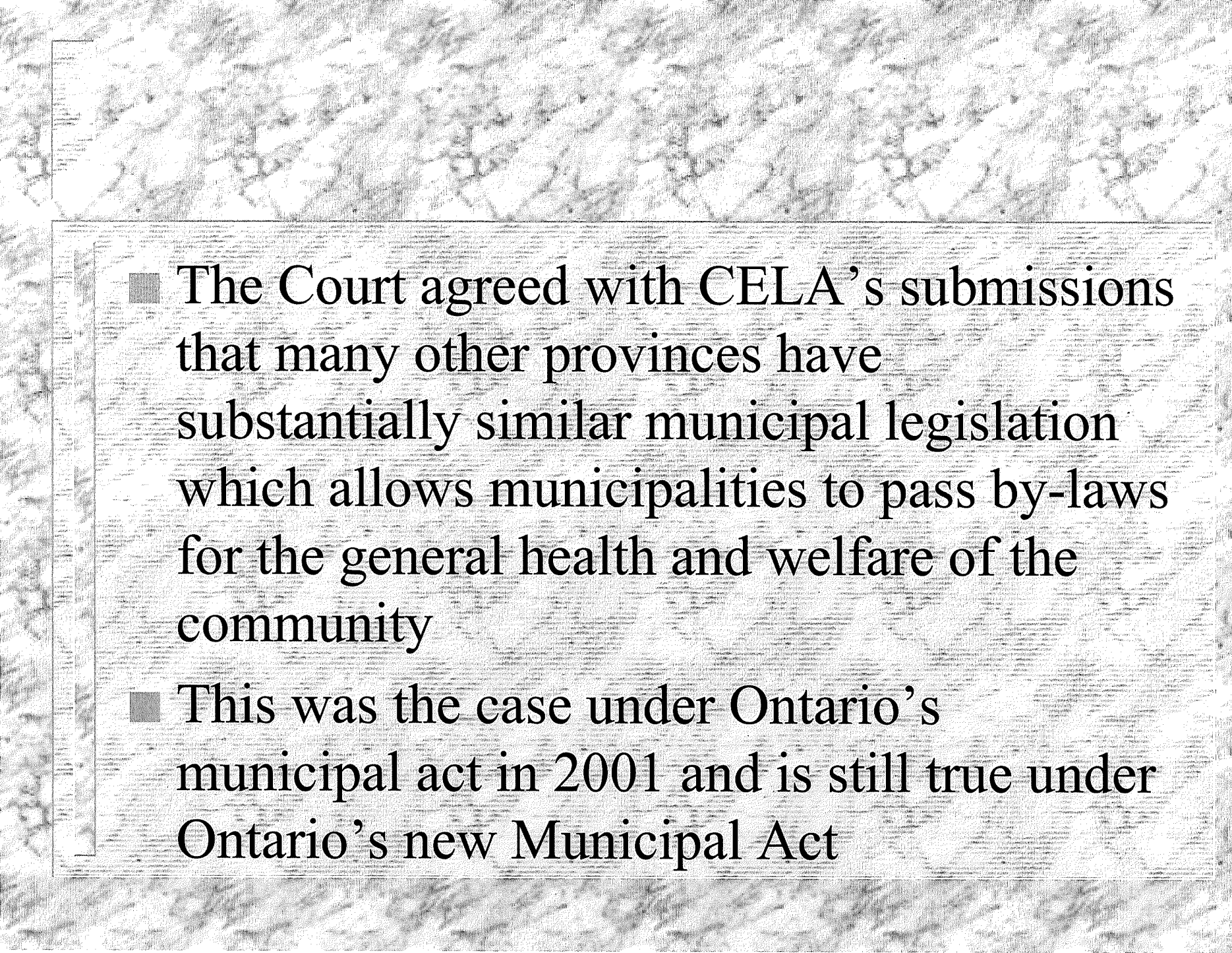
- CELA participated in submissions to the Commons and Senate Committee reviewing the Bill and after amendments, it was passed last year

- Regulations under the PCPA which will be necessary to put the new legislation into effect are under development and we expect to begin commenting on them very shortly
- CELA also represented 11 Intervenorors in the case of Hudson and Spray Tech, which involved a by-law controlling use of pesticides in the municipality



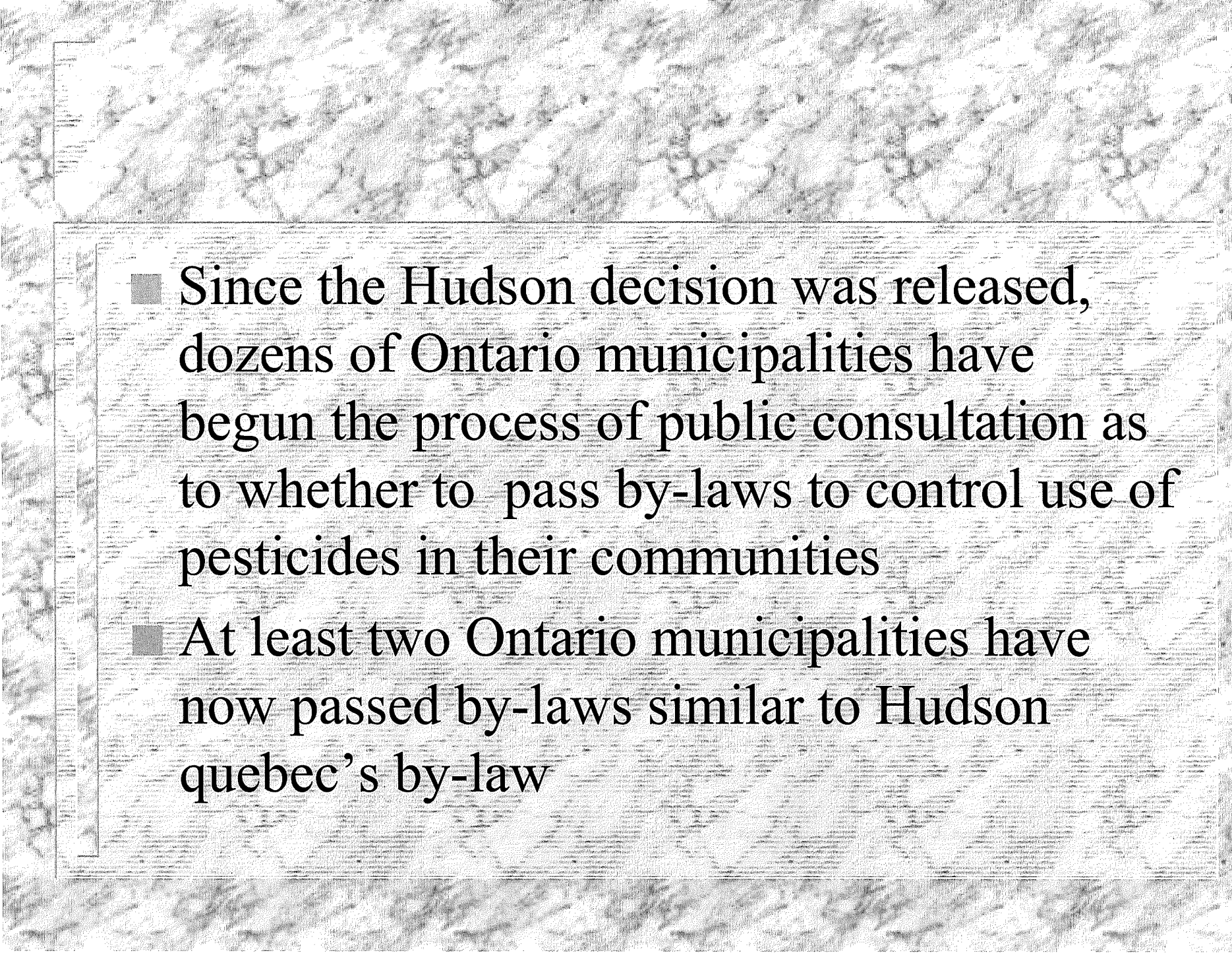
■ That intervention was motivated after we were asked to prepare a generic opinion about whether Ontario municipalities could pass pesticide control by-laws under the Municipal Act

■ Our intervention was primarily directed to bringing the implications of the Hudson case for other provinces to the Court's attention



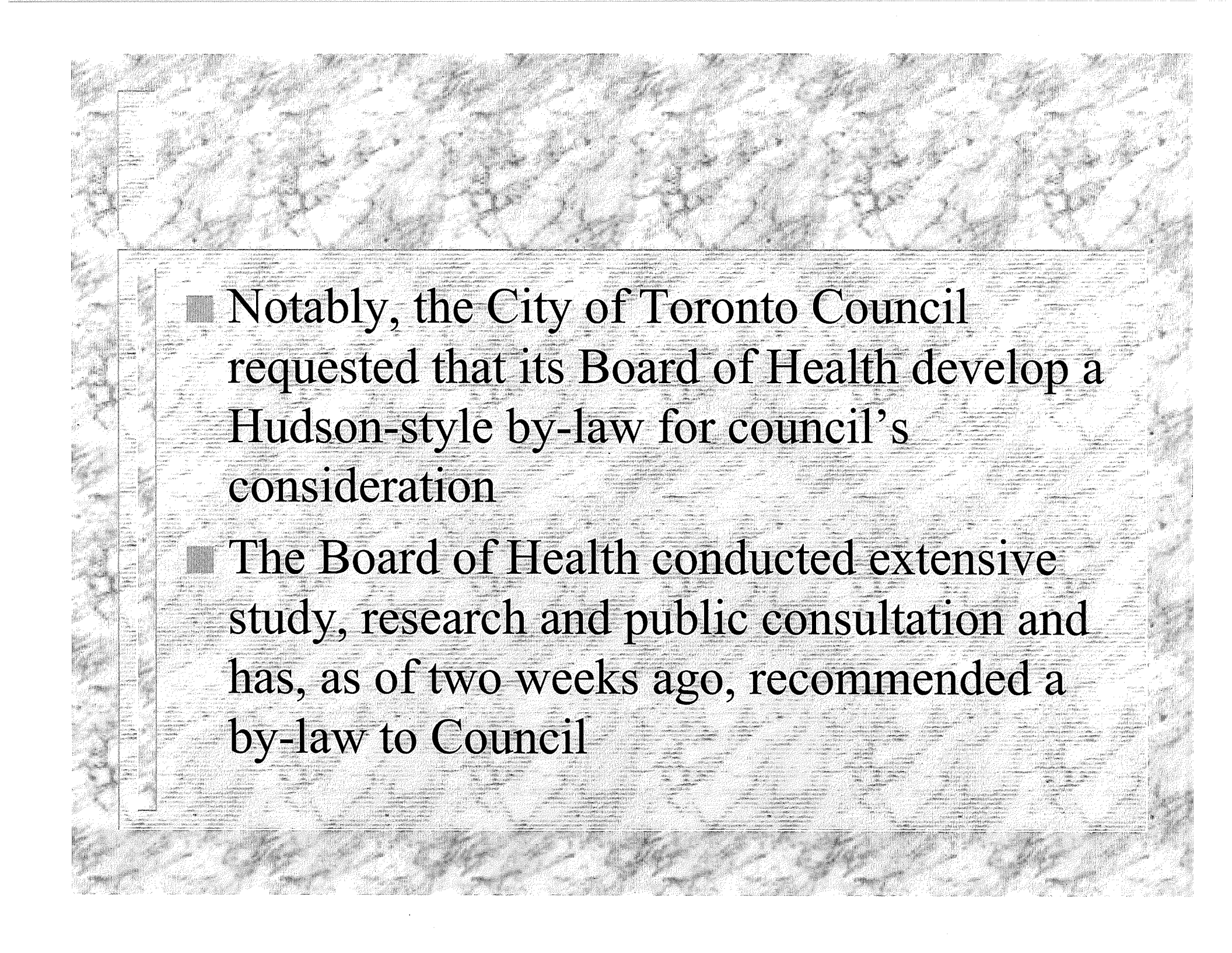
■ The Court agreed with CELA's submissions that many other provinces have substantially similar municipal legislation which allows municipalities to pass by-laws for the general health and welfare of the community

■ This was the case under Ontario's municipal act in 2001 and is still true under Ontario's new Municipal Act



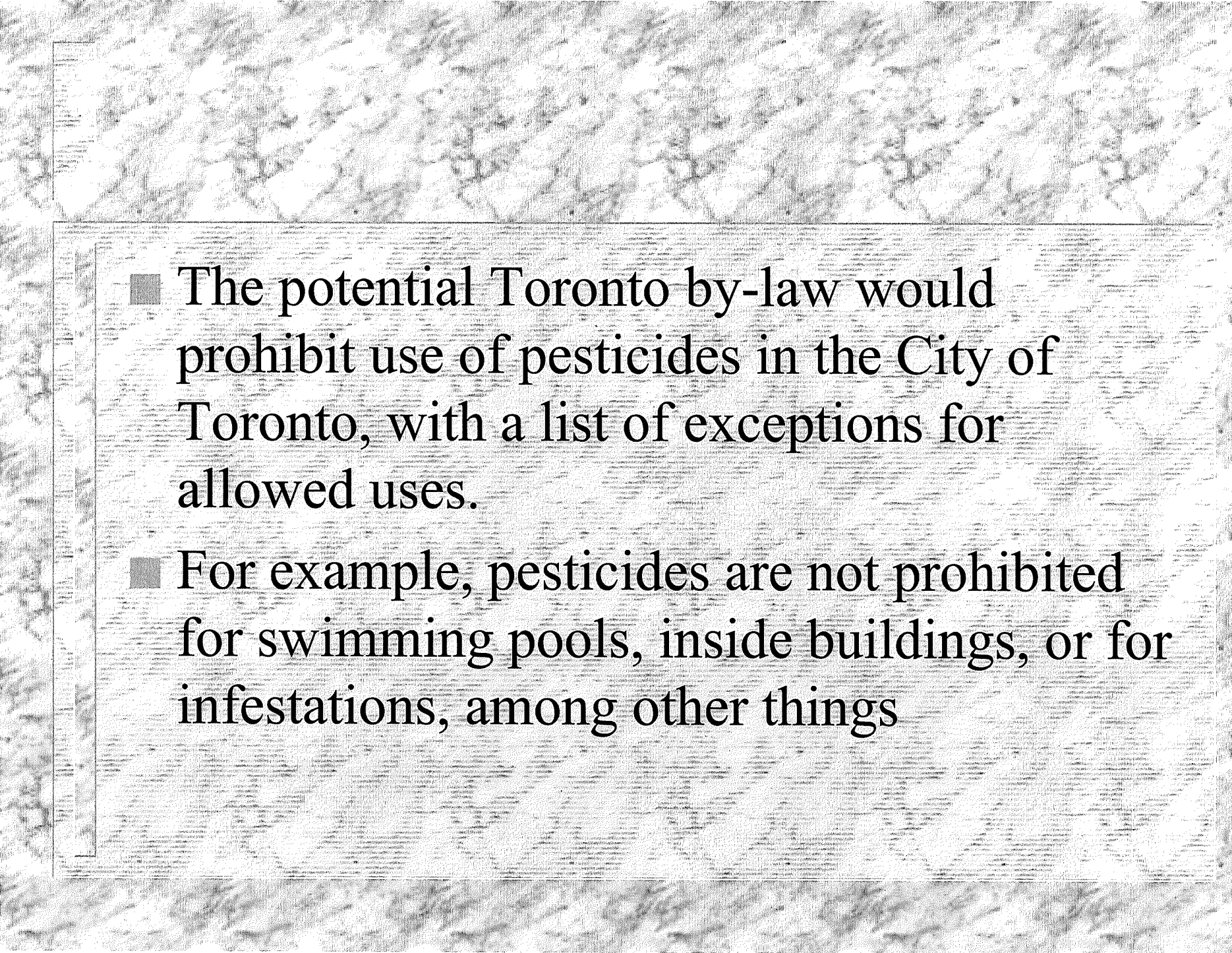
■ Since the Hudson decision was released, dozens of Ontario municipalities have begun the process of public consultation as to whether to pass by-laws to control use of pesticides in their communities

■ At least two Ontario municipalities have now passed by-laws similar to Hudson quebec's by-law



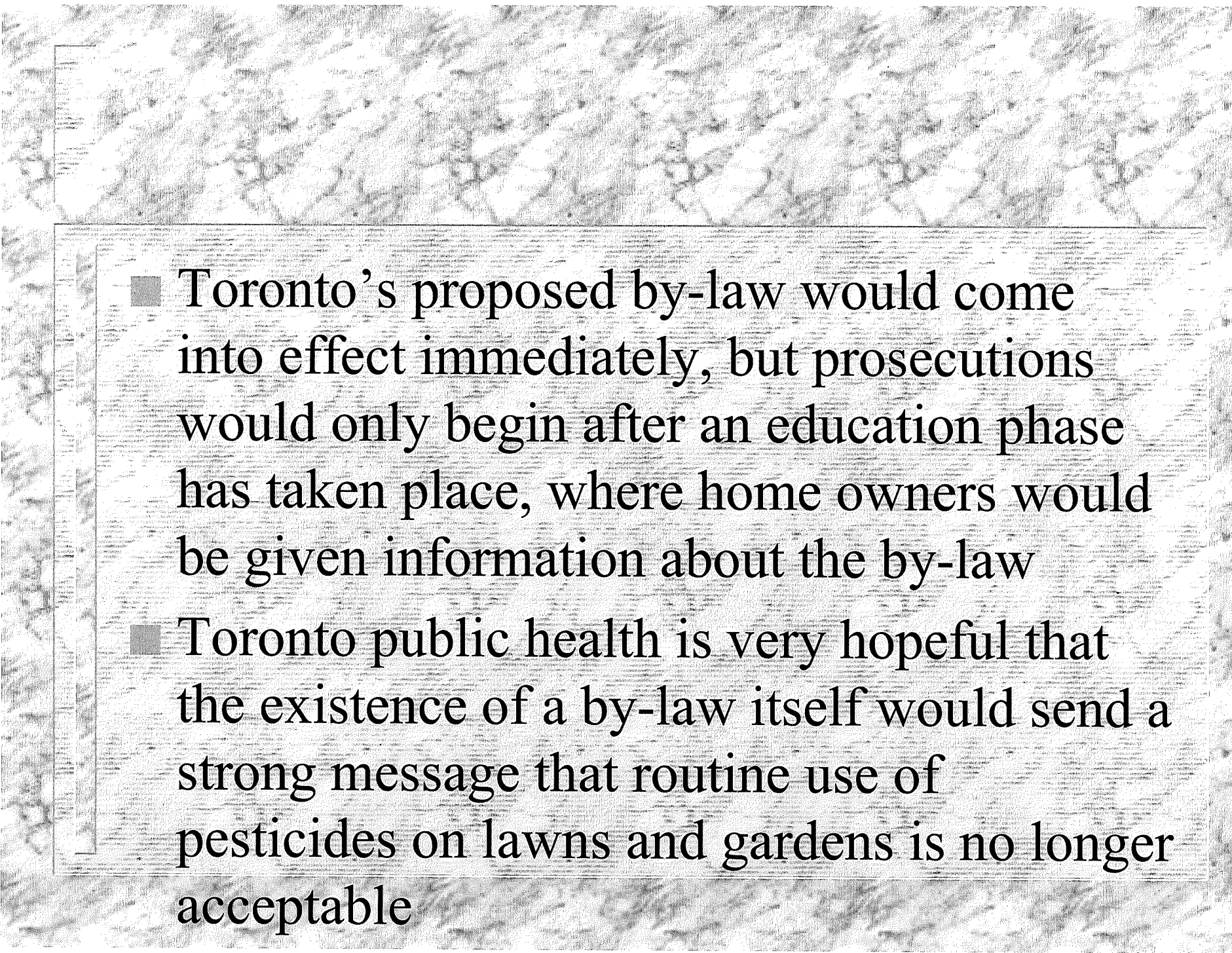
■ Notably, the City of Toronto Council requested that its Board of Health develop a Hudson-style by-law for council's consideration

■ The Board of Health conducted extensive study, research and public consultation and has, as of two weeks ago, recommended a by-law to Council



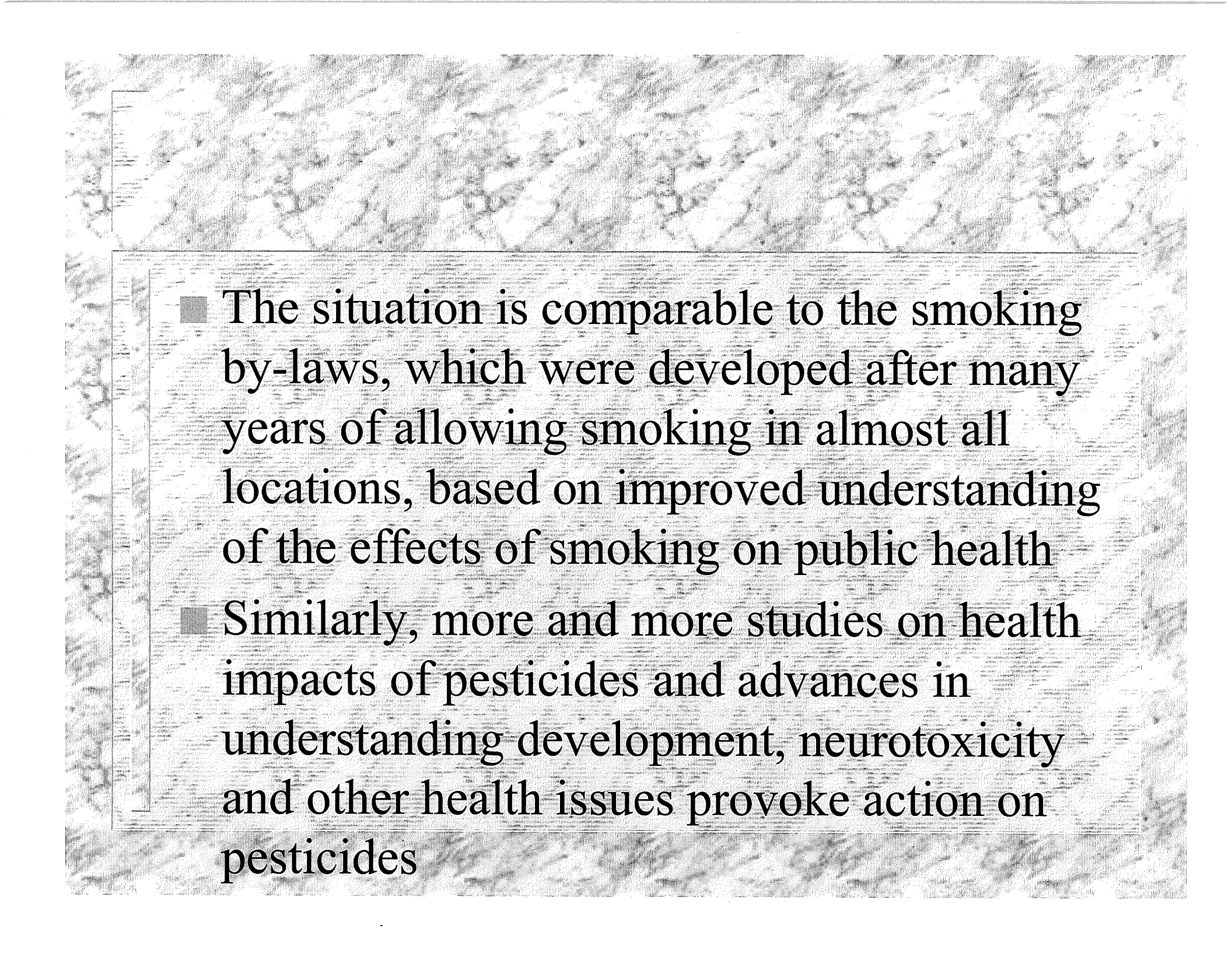
■ The potential Toronto by-law would prohibit use of pesticides in the City of Toronto, with a list of exceptions for allowed uses.

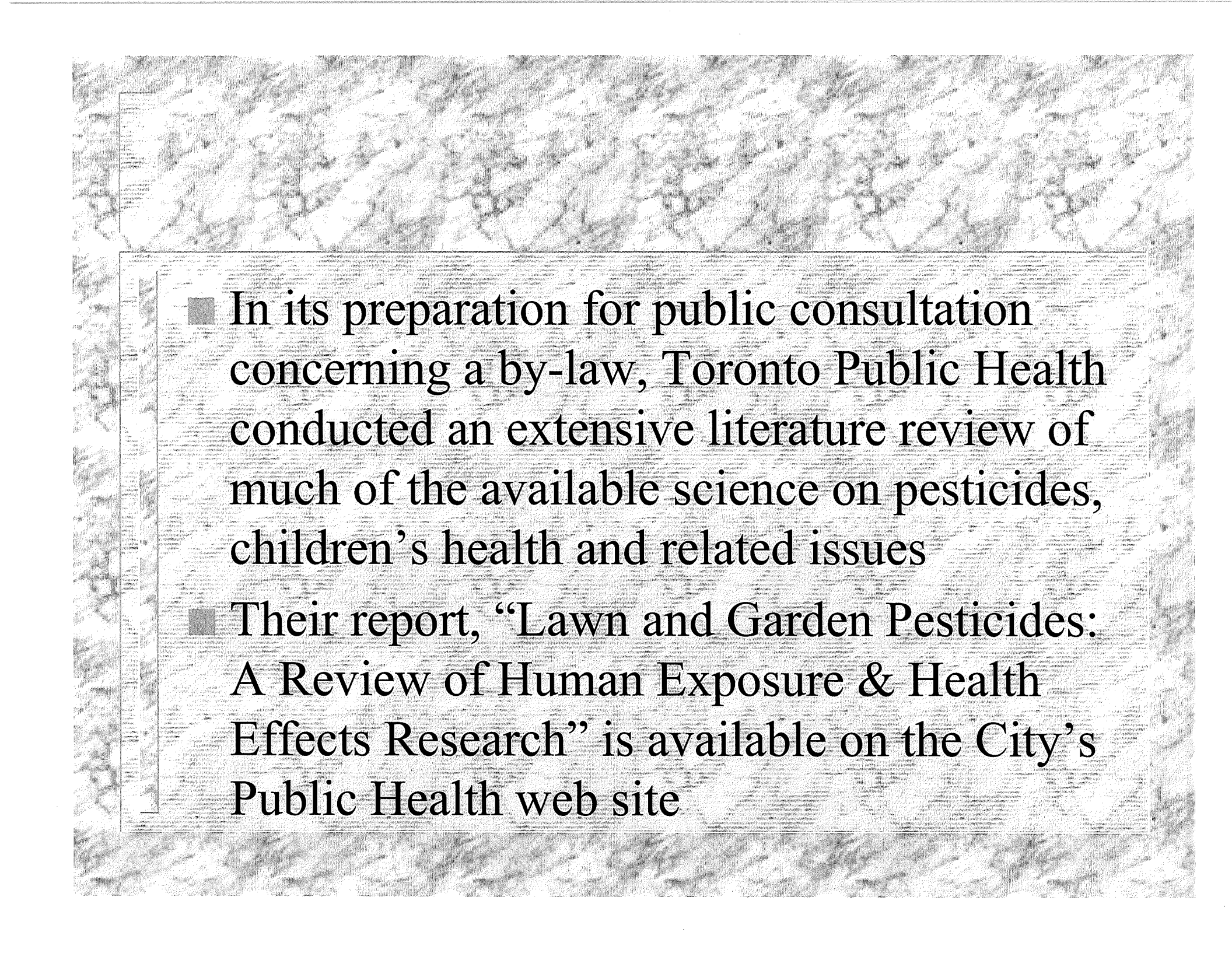
■ For example, pesticides are not prohibited for swimming pools, inside buildings, or for infestations, among other things



■ Toronto's proposed by-law would come into effect immediately, but prosecutions would only begin after an education phase has taken place, where home owners would be given information about the by-law

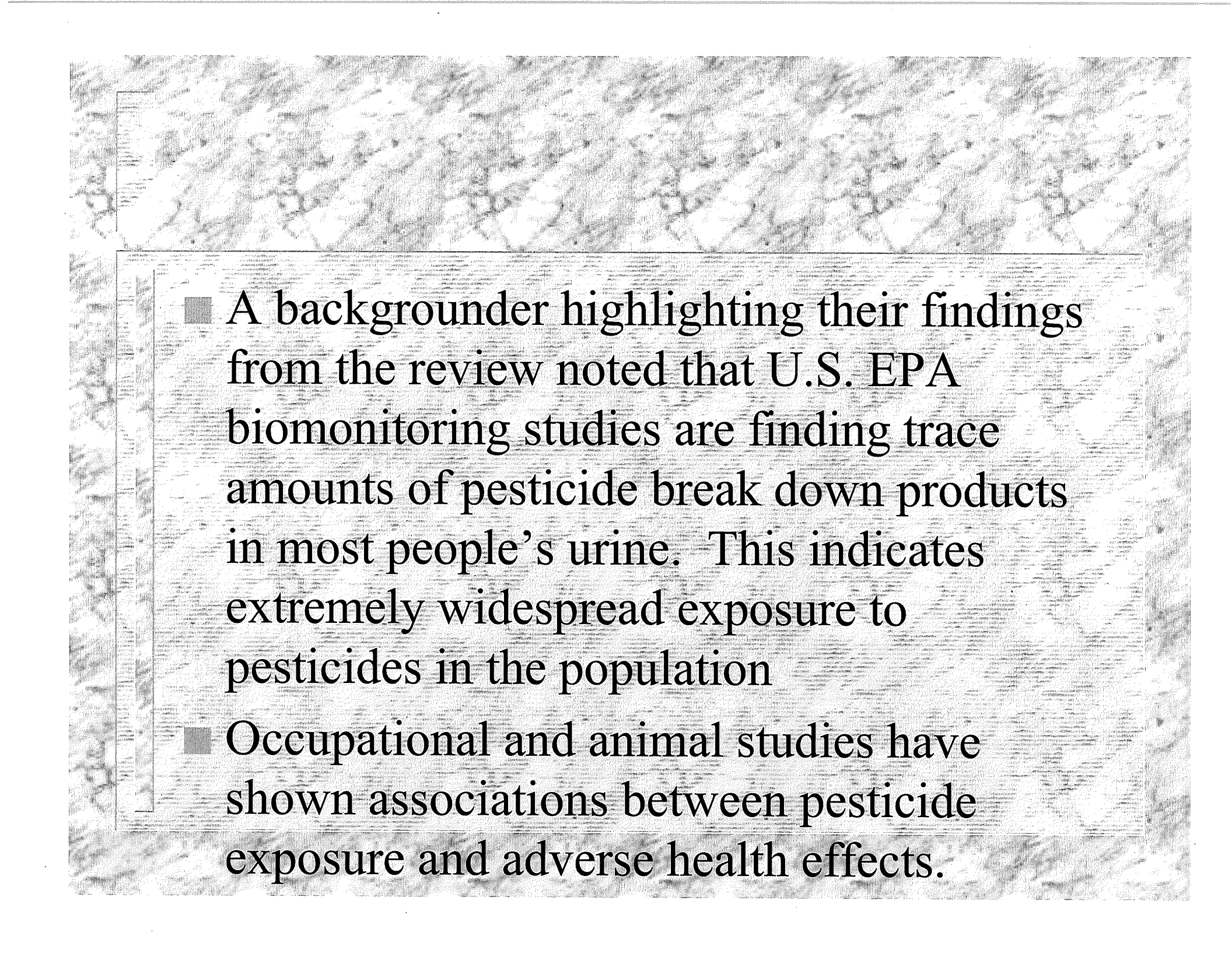
■ Toronto public health is very hopeful that the existence of a by-law itself would send a strong message that routine use of pesticides on lawns and gardens is no longer acceptable

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- The situation is comparable to the smoking by-laws, which were developed after many years of allowing smoking in almost all locations, based on improved understanding of the effects of smoking on public health
 - Similarly, more and more studies on health impacts of pesticides and advances in understanding development, neurotoxicity and other health issues provoke action on pesticides



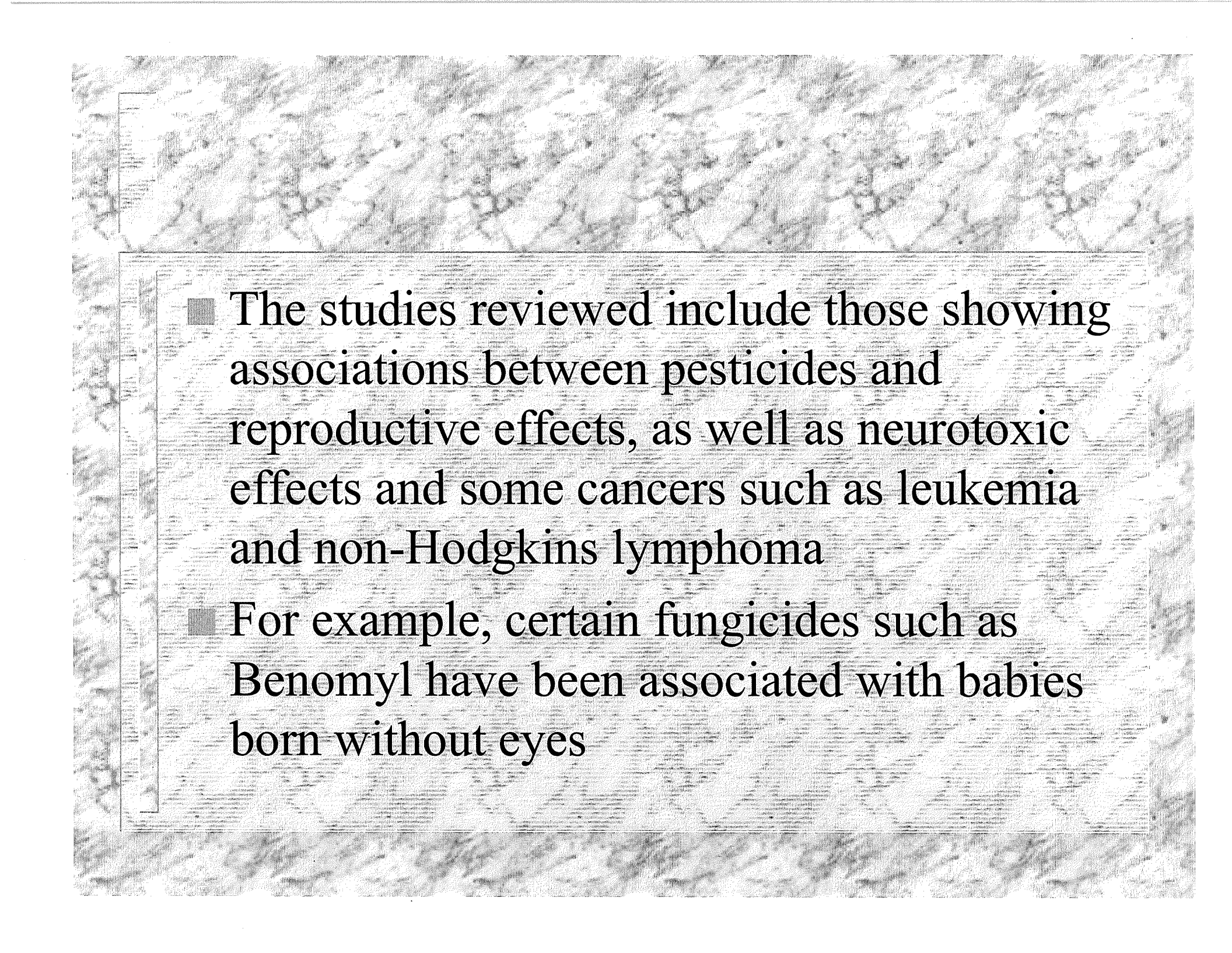
■ In its preparation for public consultation concerning a by-law, Toronto Public Health conducted an extensive literature review of much of the available science on pesticides, children's health and related issues

■ Their report, "Lawn and Garden Pesticides: A Review of Human Exposure & Health Effects Research" is available on the City's Public Health web site



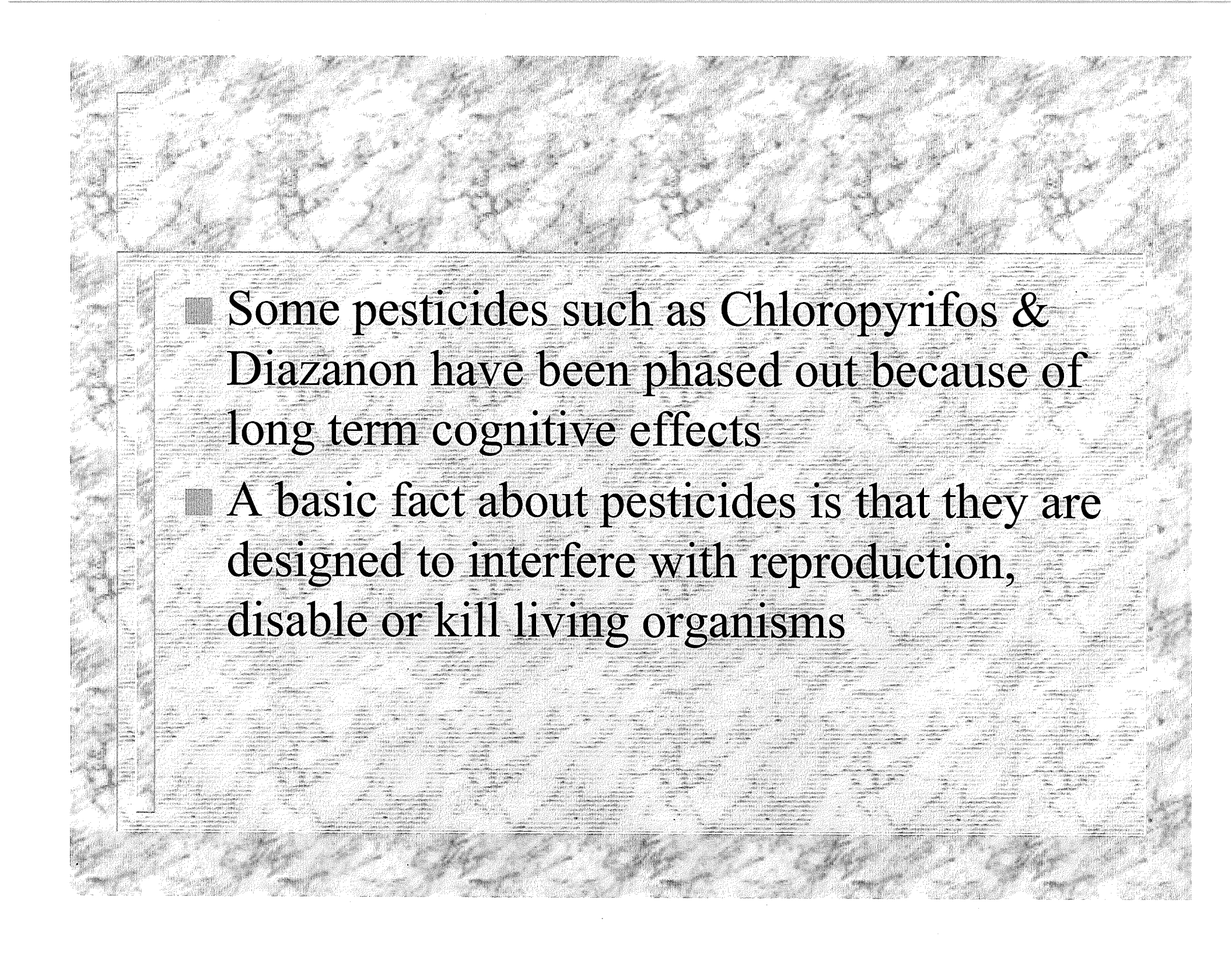
■ A backgrounder highlighting their findings from the review noted that U.S. EPA biomonitoring studies are finding trace amounts of pesticide break down products in most people's urine. This indicates extremely widespread exposure to pesticides in the population

■ Occupational and animal studies have shown associations between pesticide exposure and adverse health effects.



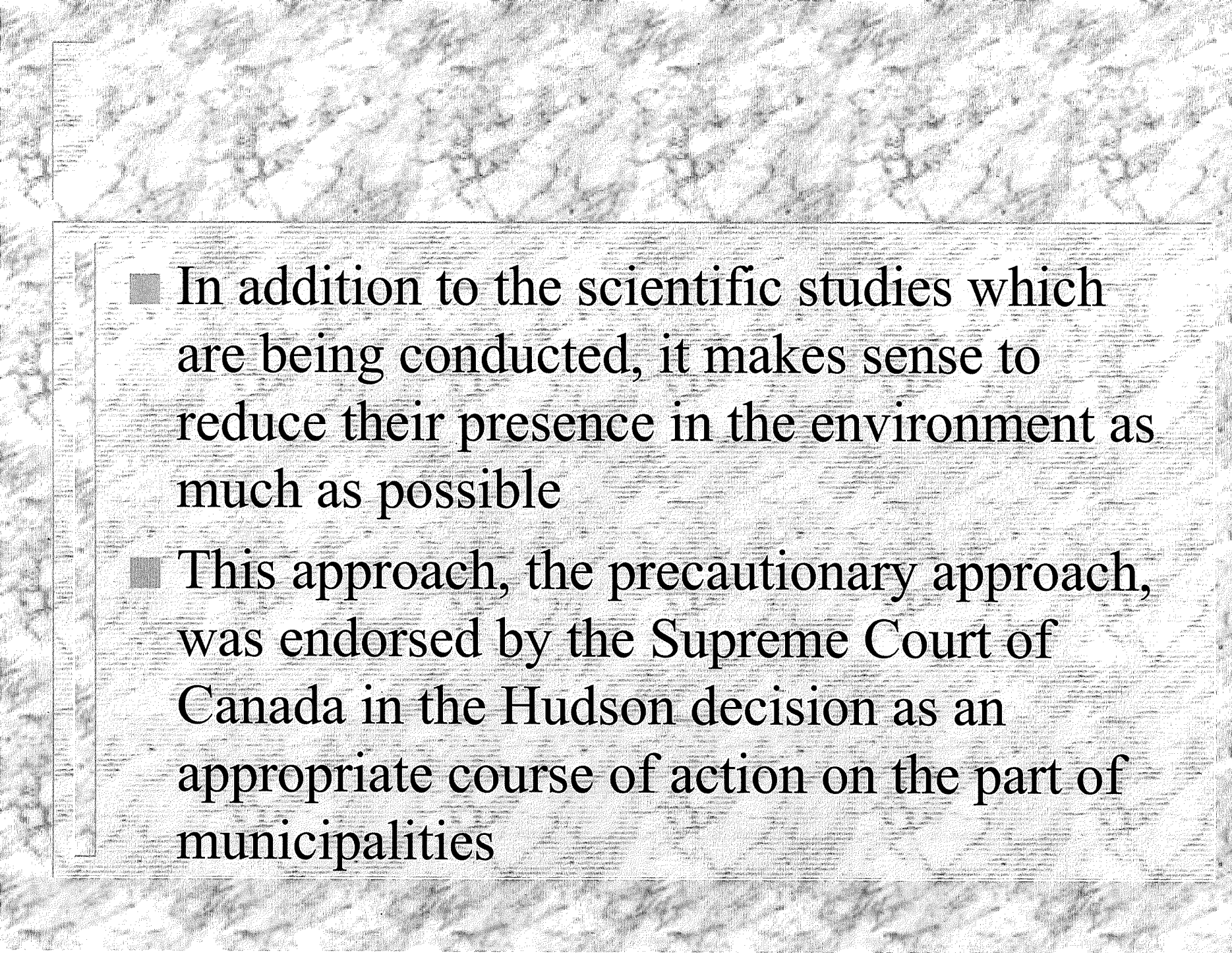
■ The studies reviewed include those showing associations between pesticides and reproductive effects, as well as neurotoxic effects and some cancers such as leukemia and non-Hodgkins lymphoma

■ For example, certain fungicides such as Benomyl have been associated with babies born without eyes



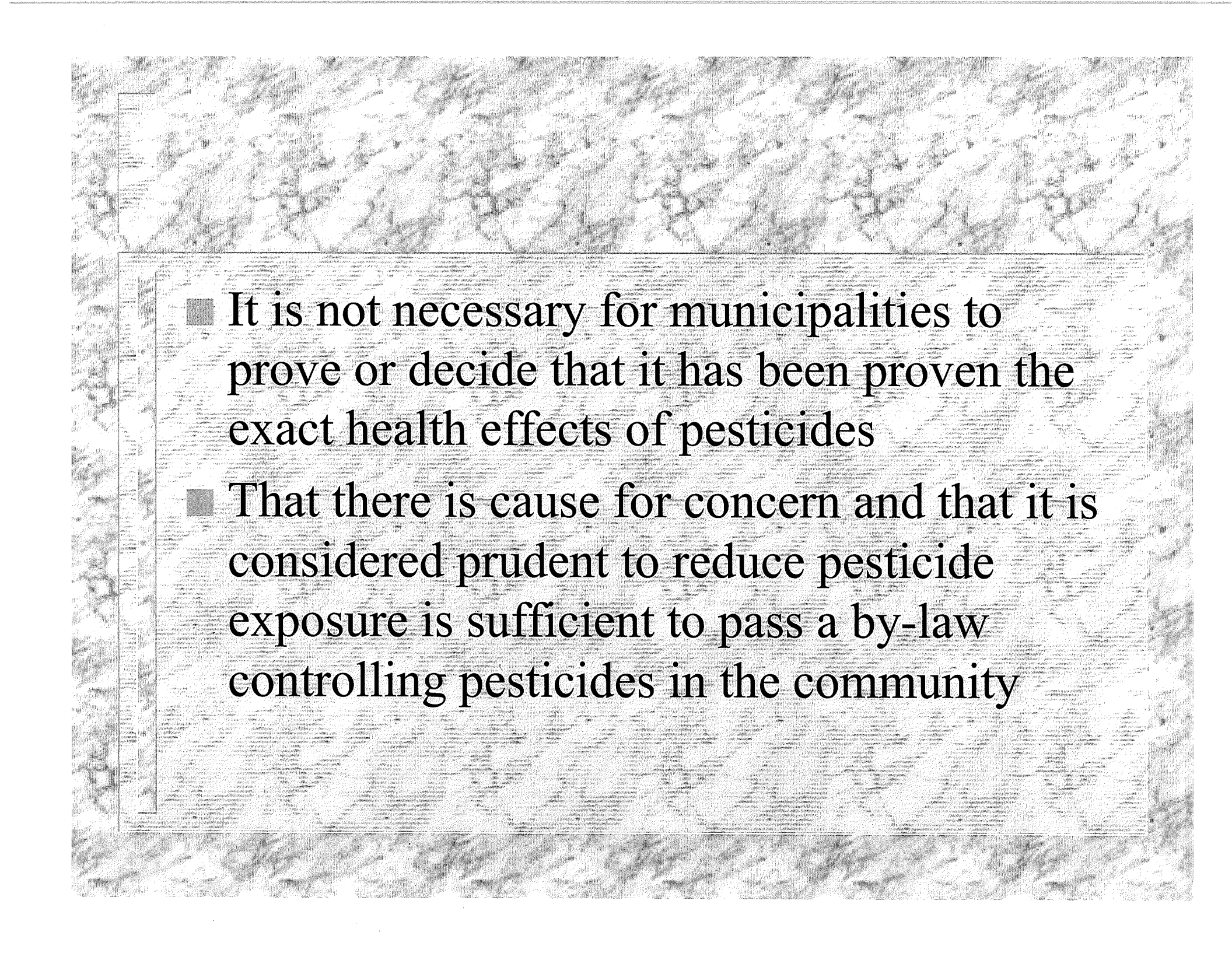
■ Some pesticides such as Chloropyrifos & Diazanon have been phased out because of long term cognitive effects

■ A basic fact about pesticides is that they are designed to interfere with reproduction, disable or kill living organisms



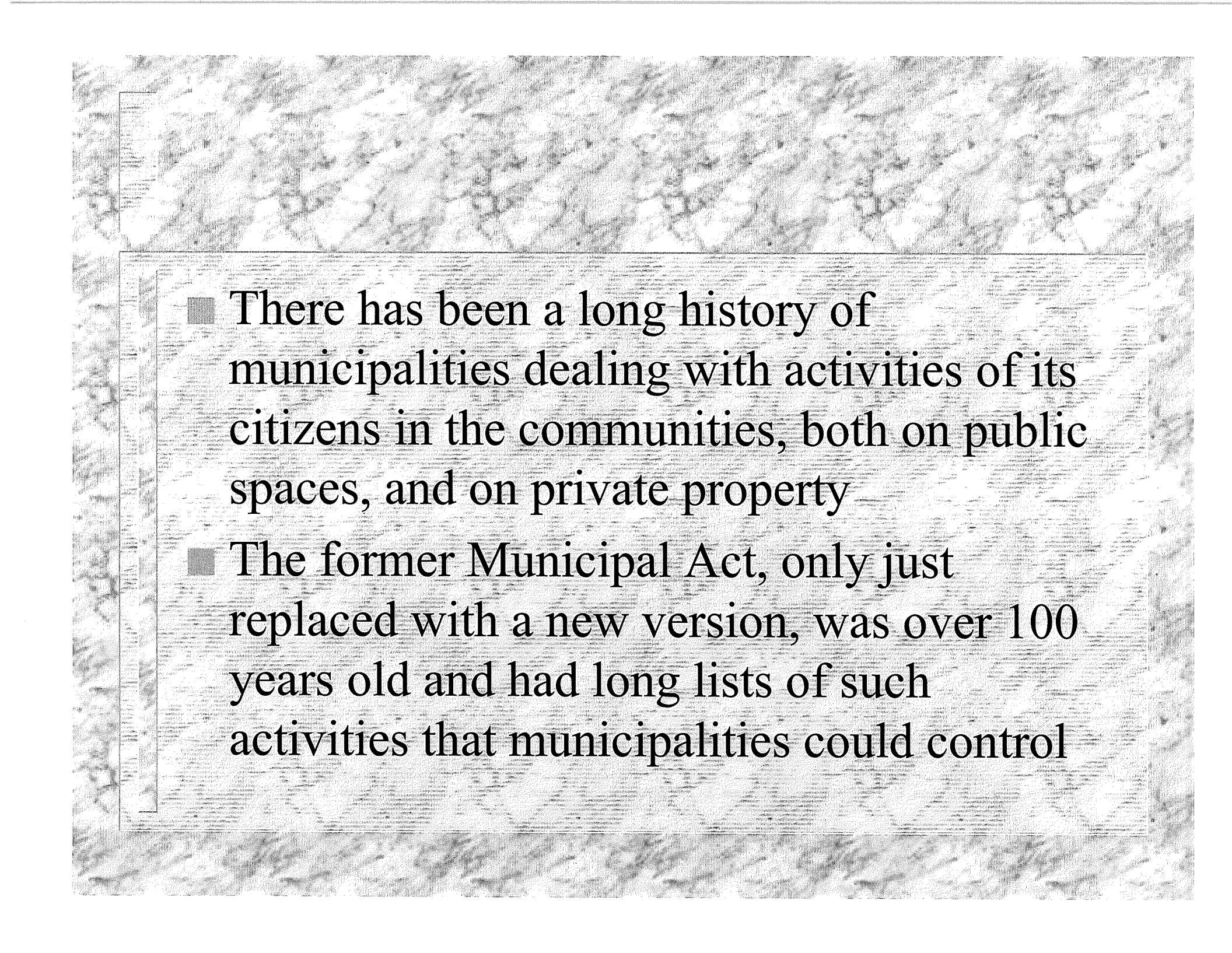
■ In addition to the scientific studies which are being conducted, it makes sense to reduce their presence in the environment as much as possible

■ This approach, the precautionary approach, was endorsed by the Supreme Court of Canada in the Hudson decision as an appropriate course of action on the part of municipalities



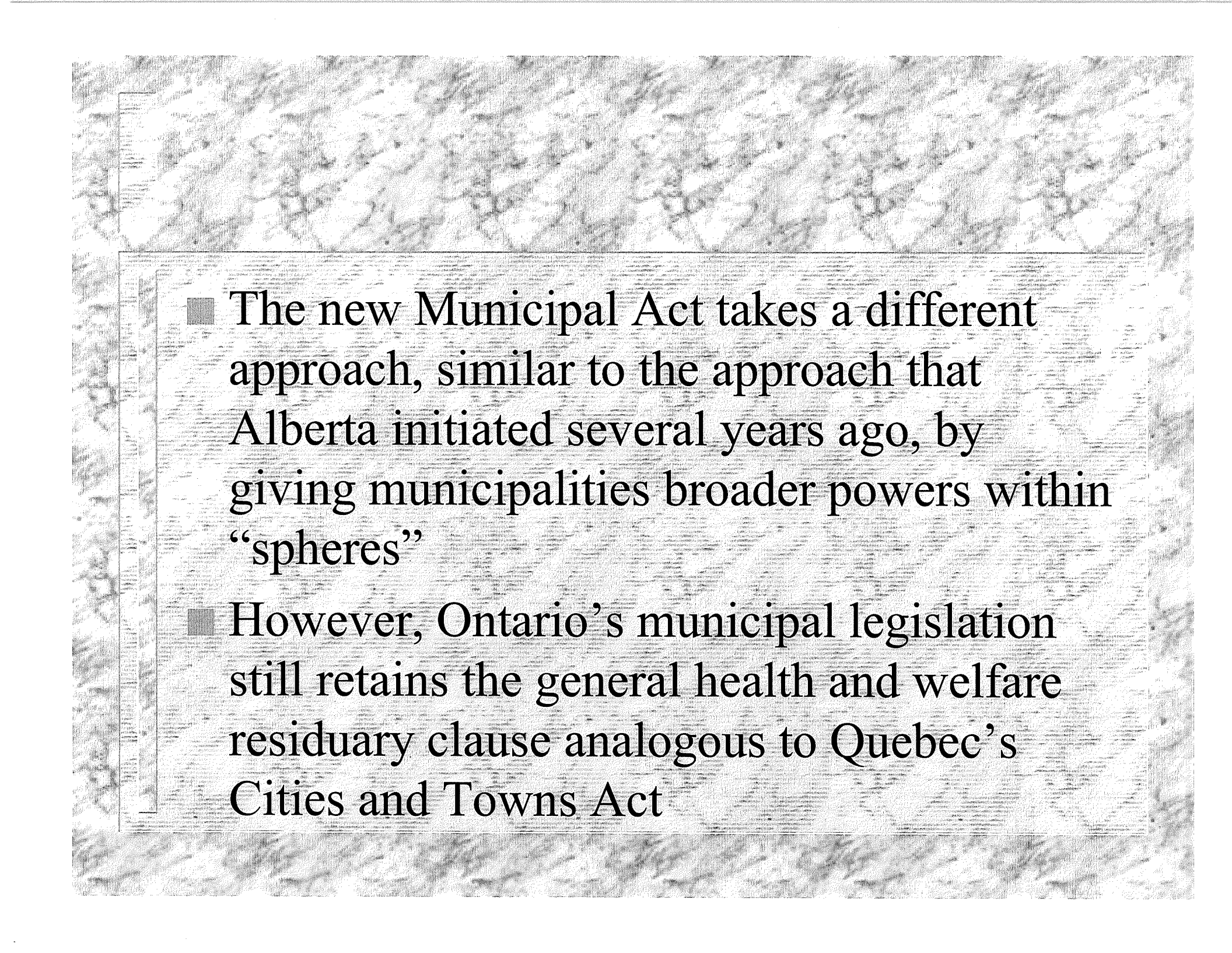
■ It is not necessary for municipalities to prove or decide that it has been proven the exact health effects of pesticides

■ That there is cause for concern and that it is considered prudent to reduce pesticide exposure is sufficient to pass a by-law controlling pesticides in the community



■ There has been a long history of municipalities dealing with activities of its citizens in the communities, both on public spaces, and on private property

■ The former Municipal Act, only just replaced with a new version, was over 100 years old and had long lists of such activities that municipalities could control



■ The new Municipal Act takes a different approach, similar to the approach that Alberta initiated several years ago, by giving municipalities broader powers within “spheres”

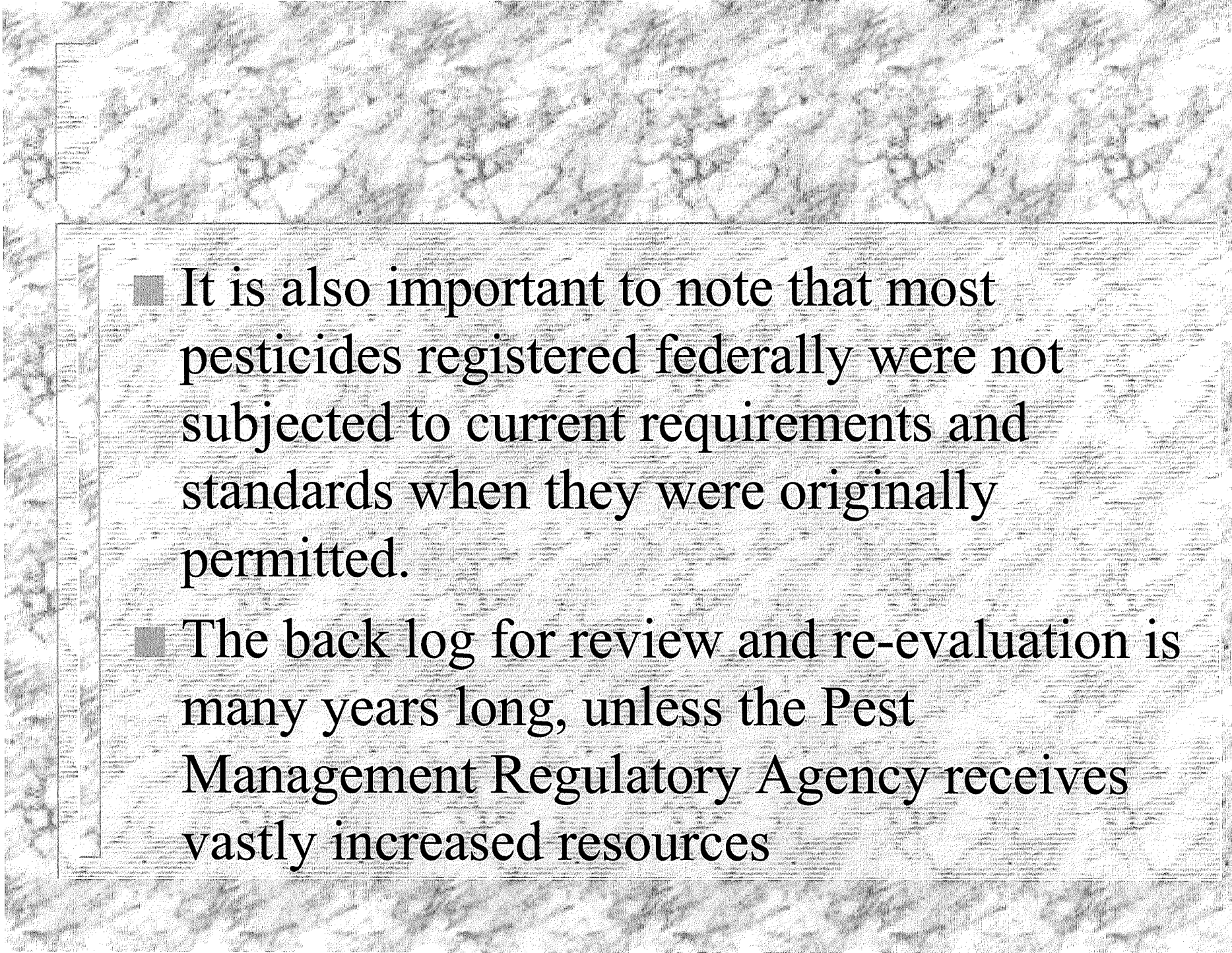
■ However, Ontario’s municipal legislation still retains the general health and welfare residuary clause analogous to Quebec’s Cities and Towns Act

■ Accordingly, the reasons of the Supreme Court of Canada in that decision will still prevail

■ This includes an analysis by the Court as to whether the municipal by-law conflicts with the relevant provincial or federal pesticide legislation

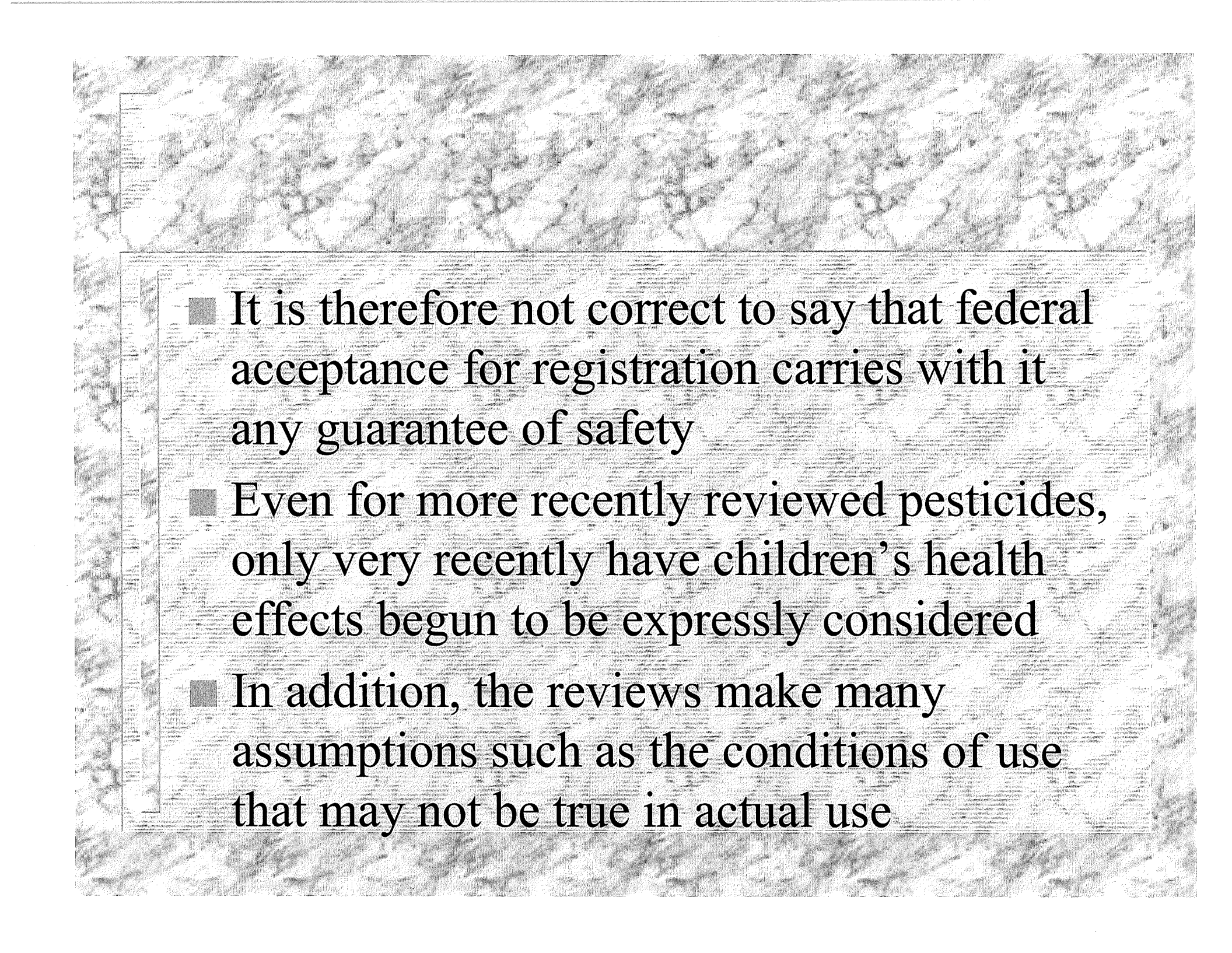
■ The Court concluded that the federal legislation is primarily a registration system, and the provincial legislation is primarily a means of controlling commercial activity concerning pesticides

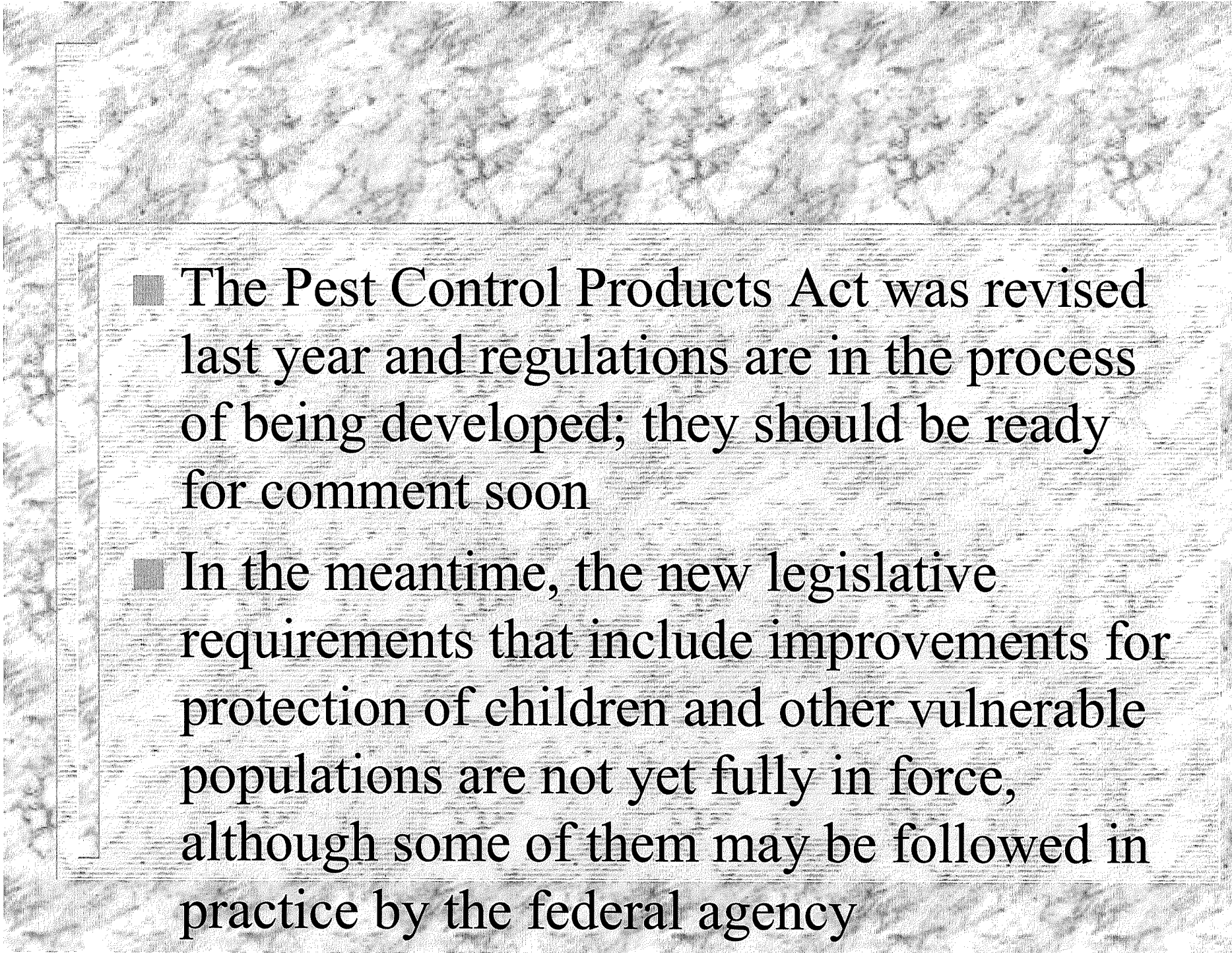
■ A municipality may pass a pesticides by-law and it will not be in conflict with the provincial or federal laws as they stand



■ It is also important to note that most pesticides registered federally were not subjected to current requirements and standards when they were originally permitted.

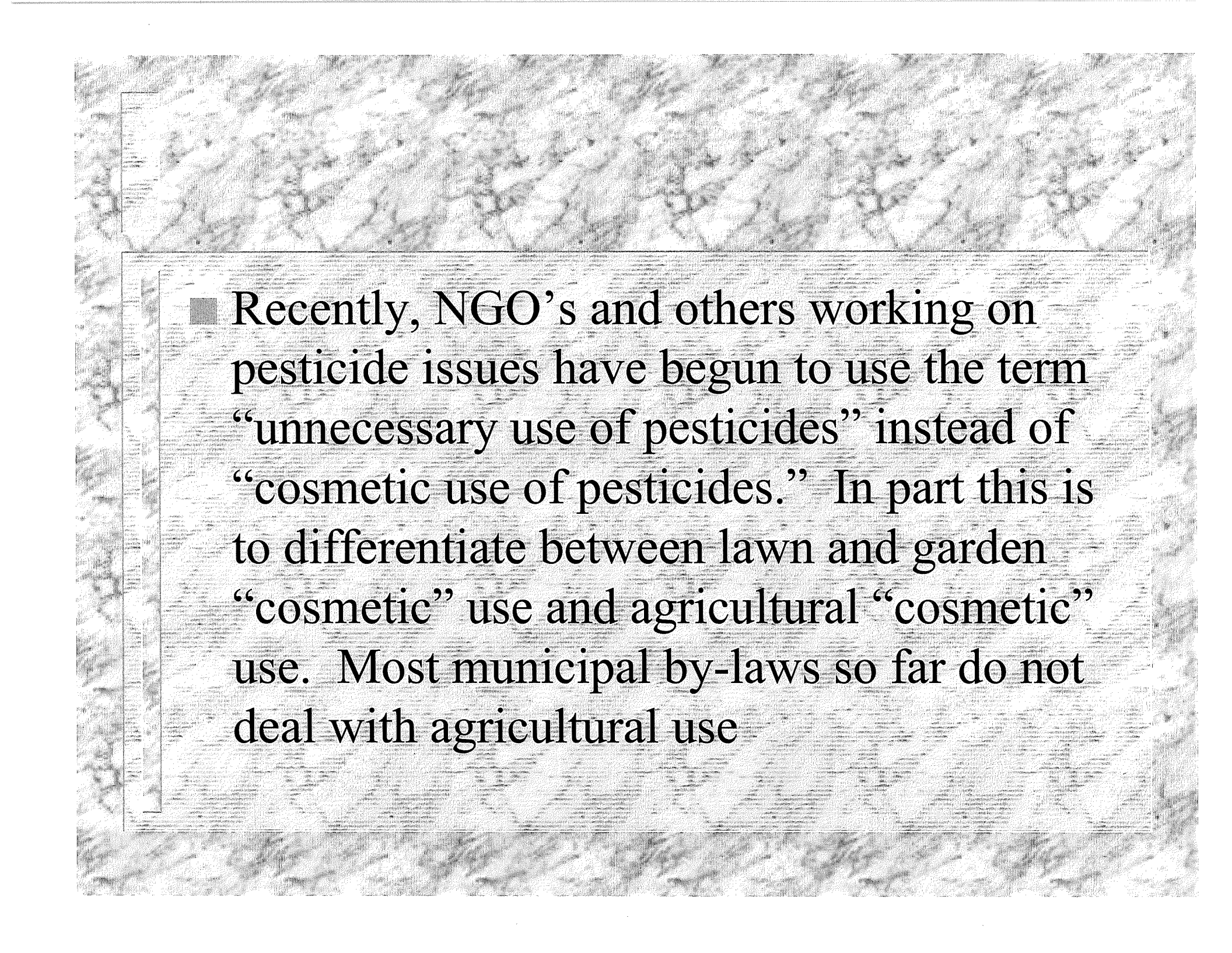
■ The back log for review and re-evaluation is many years long, unless the Pest Management Regulatory Agency receives vastly increased resources

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- It is therefore not correct to say that federal acceptance for registration carries with it any guarantee of safety
 - Even for more recently reviewed pesticides, only very recently have children's health effects begun to be expressly considered
 - In addition, the reviews make many assumptions such as the conditions of use that may not be true in actual use

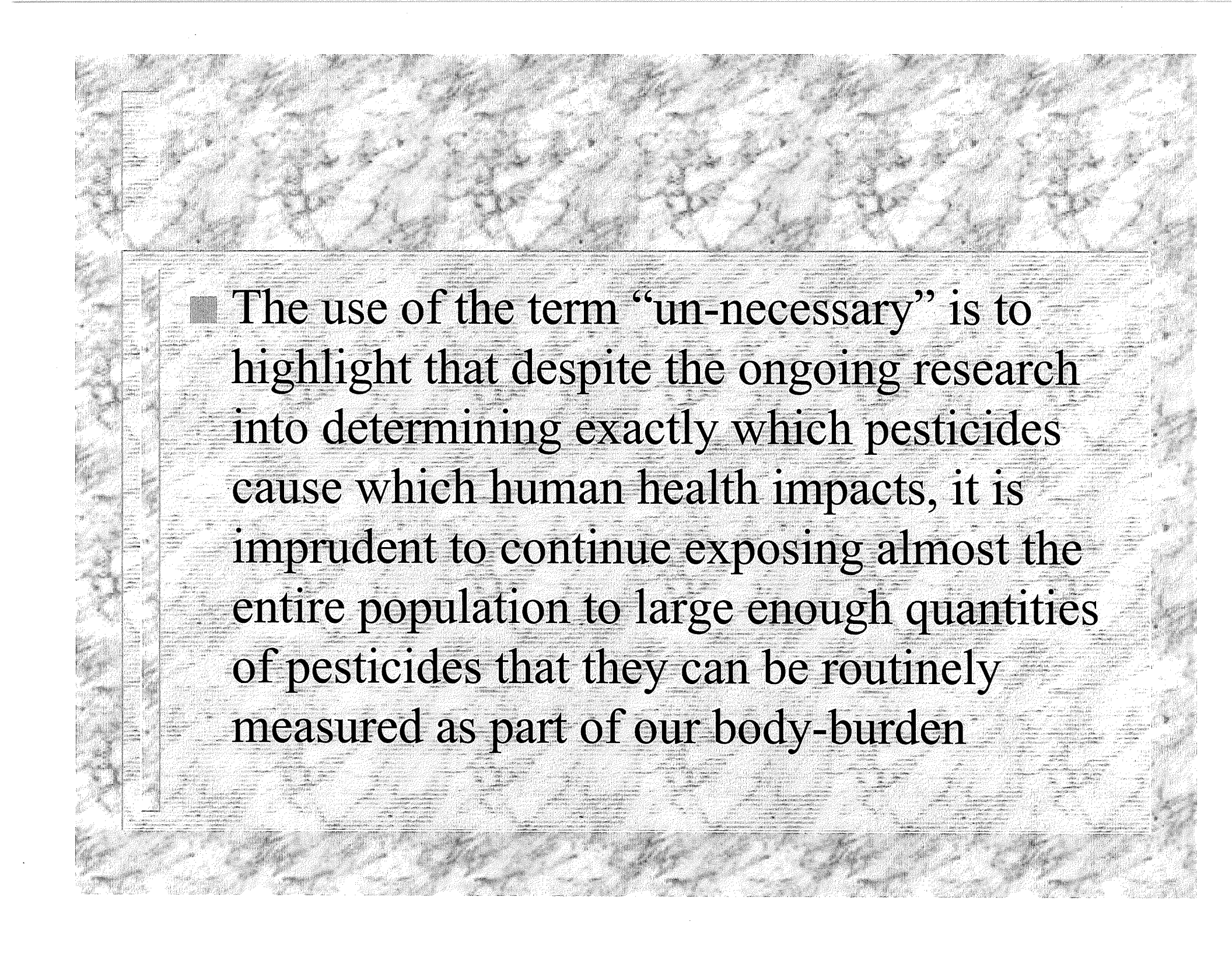


■ The Pest Control Products Act was revised last year and regulations are in the process of being developed; they should be ready for comment soon

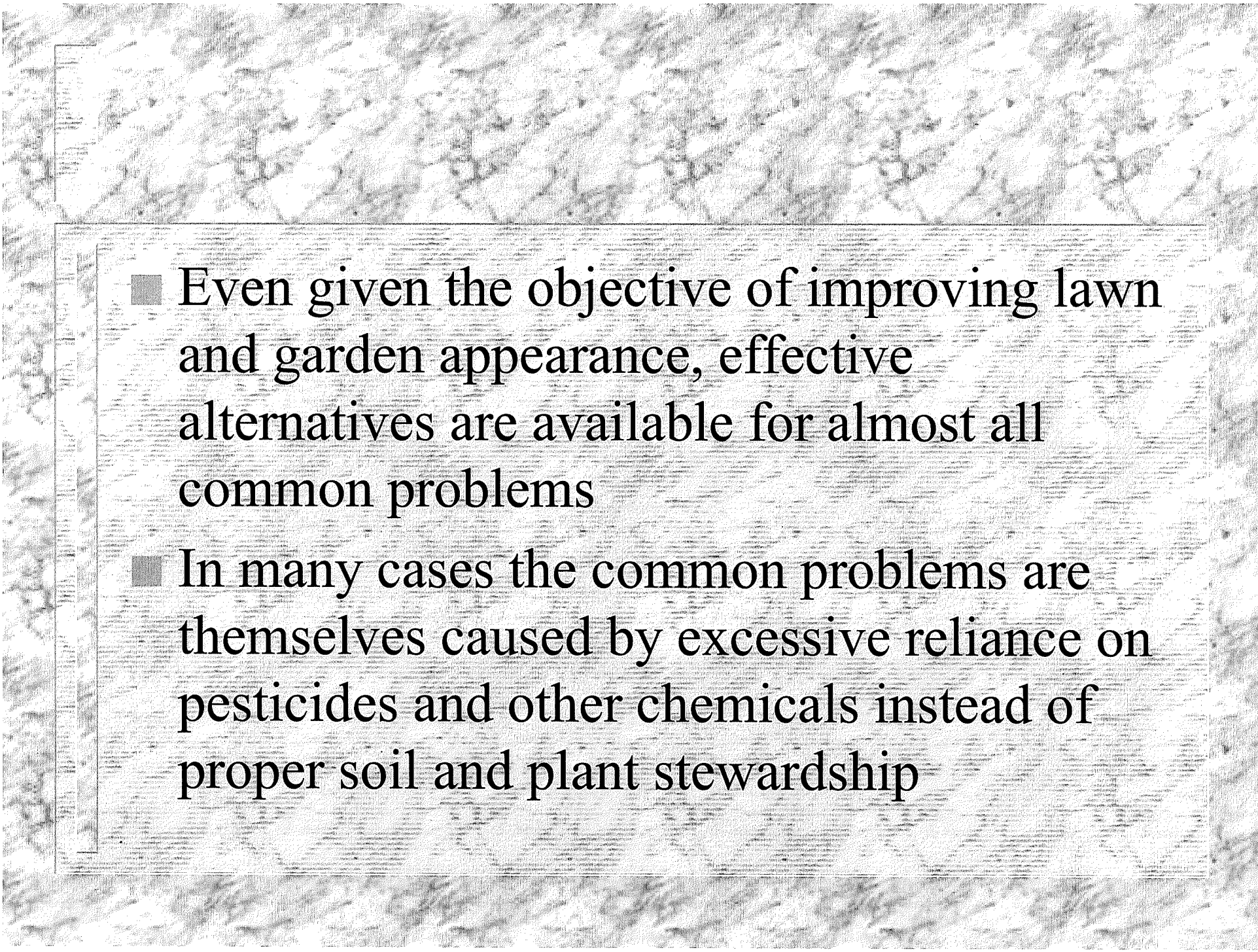
■ In the meantime, the new legislative requirements that include improvements for protection of children and other vulnerable populations are not yet fully in force, although some of them may be followed in practice by the federal agency



■ Recently, NGO's and others working on pesticide issues have begun to use the term "unnecessary use of pesticides" instead of "cosmetic use of pesticides." In part this is to differentiate between lawn and garden "cosmetic" use and agricultural "cosmetic" use. Most municipal by-laws so far do not deal with agricultural use

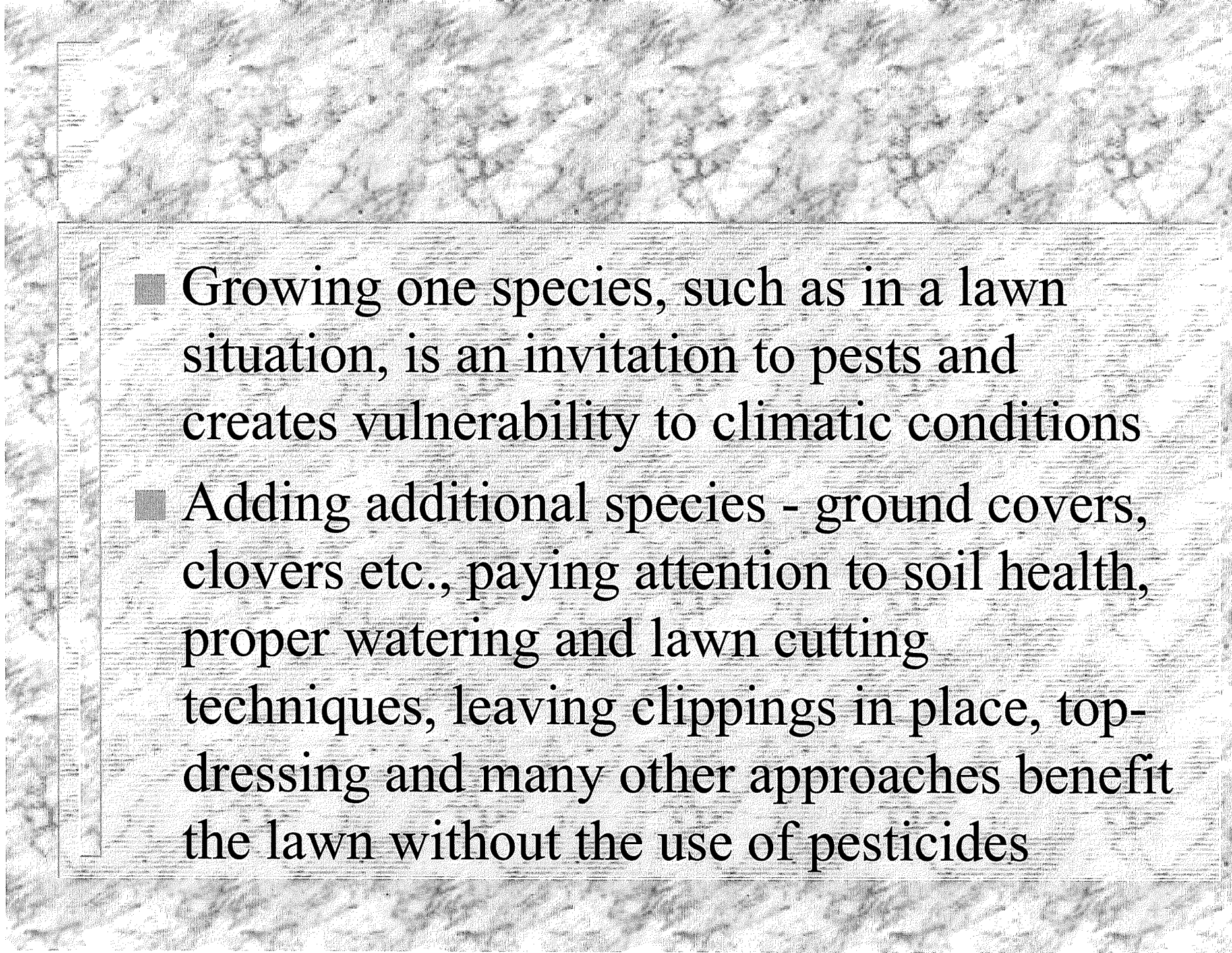


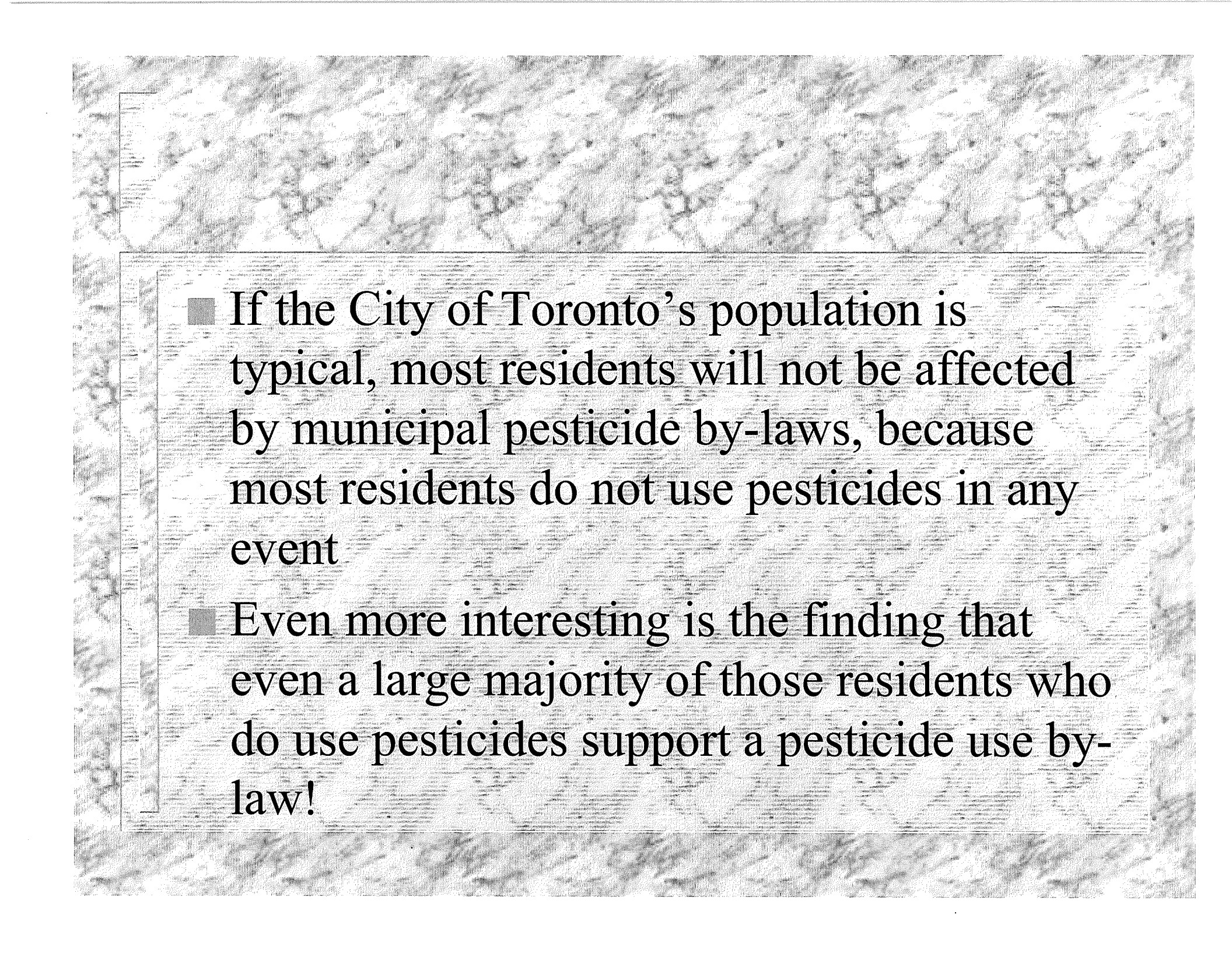
■ The use of the term “un-necessary” is to highlight that despite the ongoing research into determining exactly which pesticides cause which human health impacts, it is imprudent to continue exposing almost the entire population to large enough quantities of pesticides that they can be routinely measured as part of our body-burden



■ Even given the objective of improving lawn and garden appearance, effective alternatives are available for almost all common problems

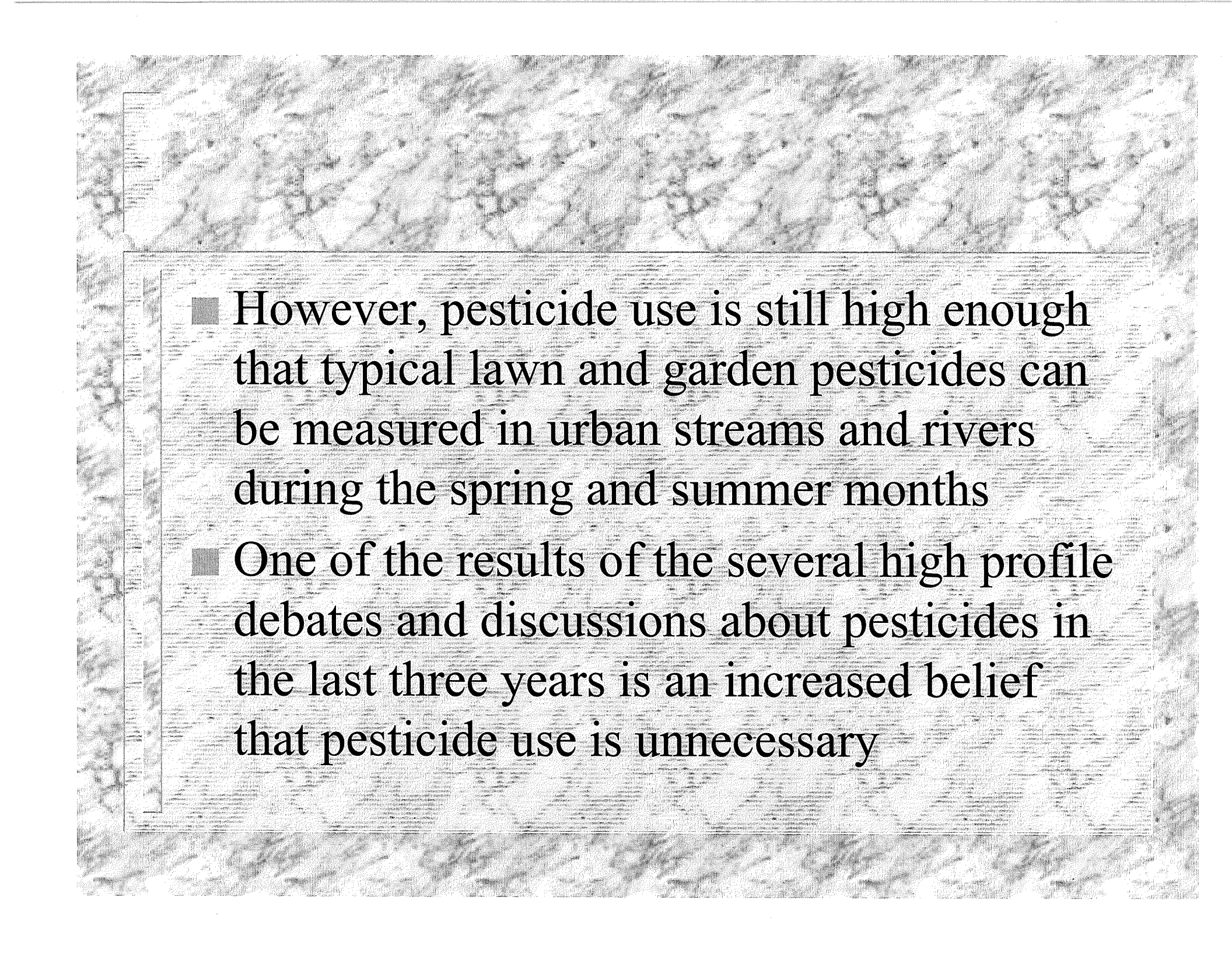
■ In many cases the common problems are themselves caused by excessive reliance on pesticides and other chemicals instead of proper soil and plant stewardship

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- Growing one species, such as in a lawn situation, is an invitation to pests and creates vulnerability to climatic conditions
 - Adding additional species - ground covers, clovers etc., paying attention to soil health, proper watering and lawn cutting techniques, leaving clippings in place, top-dressing and many other approaches benefit the lawn without the use of pesticides



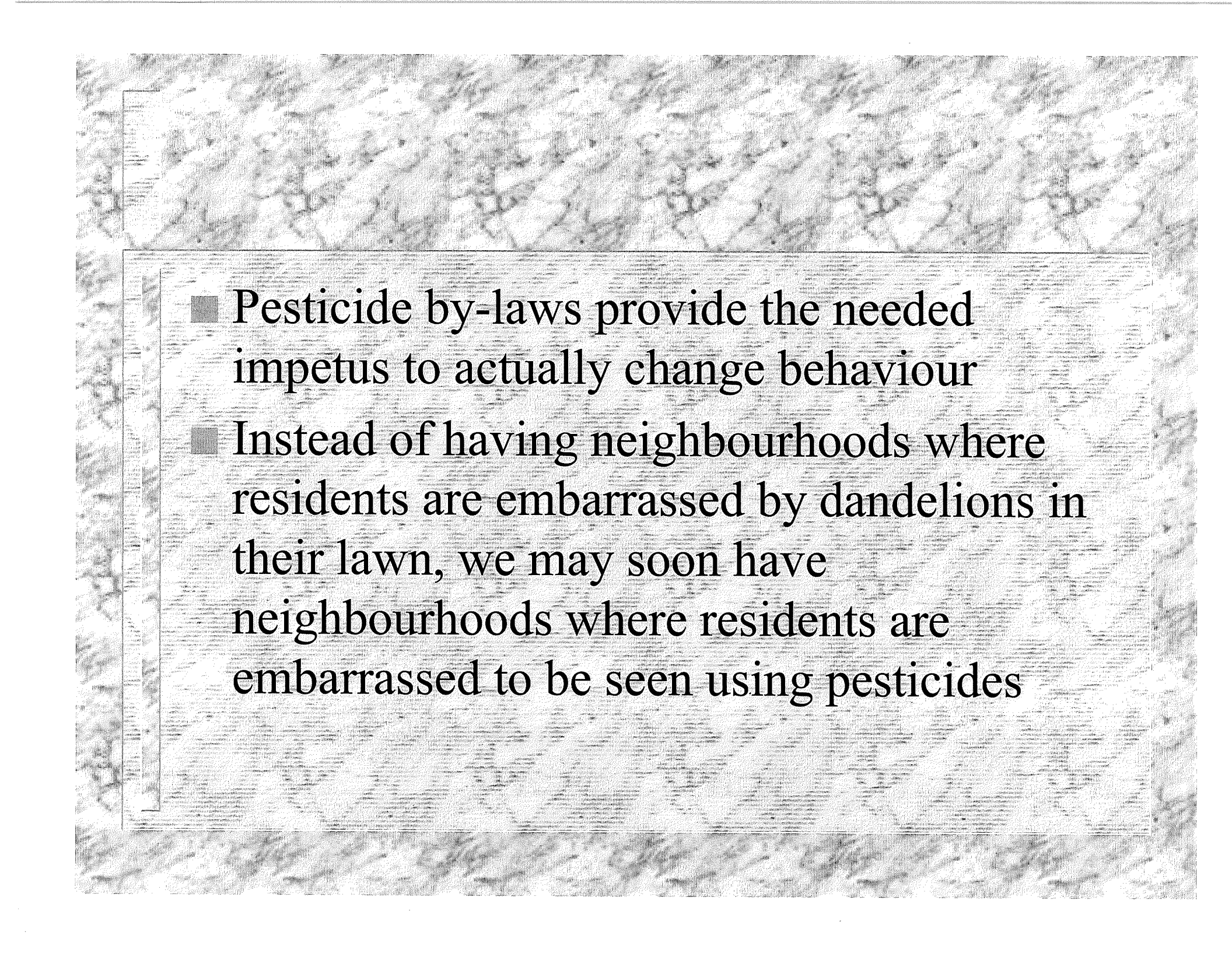
■ If the City of Toronto's population is typical, most residents will not be affected by municipal pesticide by-laws, because most residents do not use pesticides in any event

■ Even more interesting is the finding that even a large majority of those residents who do use pesticides support a pesticide use by-law!



■ However, pesticide use is still high enough that typical lawn and garden pesticides can be measured in urban streams and rivers during the spring and summer months

■ One of the results of the several high profile debates and discussions about pesticides in the last three years is an increased belief that pesticide use is unnecessary

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- Pesticide by-laws provide the needed impetus to actually change behaviour
 - Instead of having neighbourhoods where residents are embarrassed by dandelions in their lawn, we may soon have neighbourhoods where residents are embarrassed to be seen using pesticides