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New Brunswick Environmental Law Society

Province “Pussyfooting” on Pesticides

NBELS says municipalities have the power to act now

(MONCTON) Although the provincial government claims that it has a plan for restricting of the use of cosmetic pesticides in New Brunswick, environmental groups, the NBELS and thousands of concerned New Brunswickers continue to wait for action on the issue.

“The government says that it will take action, but we have been hearing this for over a year now”, says Michel DesNeiges of the NBELS. “By saying that it will now hold a series of discussions on the issue, the province has essentially succeeded in pushing any decision back for another year. We were assured last summer that legislation was coming in the fall. By the fall, we were told that a better plan would be put in place in the spring. Now the government has decided to start over again with consultations. That is not leadership, that is pussyfooting.”

The NBELS is encouraging municipalities to show the initiative and not wait for the provincial government before taking action on the issue.

This past winter, the Society studied the legal question of whether or not municipalities in New Brunswick can create their own by-laws to restrict the use of cosmetic pesticides. It has concluded that they can.

“In the context of our environmental law clinic, the NBELS created a legal committee to review the question. We have concluded that the Supreme Court of Canada has confirmed the legality of this type of action in New Brunswick”, says DesNeiges.

The question was addressed in the Supreme Court of Canada in 2001 in the *Spraytech v. Town of Hudson* decision. The Court found that the Town of Hudson could regulate the use of pesticides thanks mostly to an omnibus provision found in that province’s municipalities act. It also indicated that municipalities in other provinces could do the same thanks to similar legislation. According to DesNeiges, although the legislation in New Brunswick is less clear than in Quebec, New Brunswick was named by the Supreme Court as one of the Canadian provinces where these types of powers exist.

But the New Brunswick government and many municipalities have been reluctant to act on the Supreme Court declarations, saying they are vulnerable to lawsuits. “We don’t agree”, says Martin Aubin, a Dieppe lawyer and head of the legal committee that examined the question for the NBELS. “These things are always open to interpretation and challenge, but we think the law is clear: the Municipalities Act allows municipalities in New Brunswick to offer services that provide for the health, safety and welfare of their citizens. That surely means protecting them from toxic chemicals used for eradicating harmless weeds and insects.”

Martin Aubin says New Brunswick continues to lag behind more progressive provinces that have enacted or are on the verge of enacting strong provincial legislation to severely restrict the use of cosmetic pesticides. “The NBELS supports the idea of creating a provincial ban of these substances. In the meantime, municipalities here should adopt their own regulations. We’ll stand by them.”