

August 16, 2007  
New Brunswick Environmental Law Society

## **DIEPPE CITIZENS GROUP TO GET HELP ON PESTICIDES ISSUE**

(DIEPPE) A group of concerned citizens from Dieppe that seeks to get City Council to move on the reduction or elimination of cosmetic pesticides in the city is getting help from the New Brunswick Environmental Law Society.

The recently formed citizens group addressed council on August 13 and suggested quick action on a bylaw that would severely restrict the use of cosmetic pesticides on residential and commercial properties. They were essentially told that the City did not think it had that kind of power under the Municipalities Act.

As a result, the citizens group approached the New Brunswick Environmental Law Society in order to develop a research project in the hope that it will once and for all clarify the question of whether or not municipalities have this power.

“The NBELS believes that the question must be addressed publicly so that municipalities and individuals in the province know what can and can’t be done,” says Michel DesNeiges, Executive Director of the NBELS. “We are aware that a couple of municipalities in New Brunswick have obtained in-house legal counsel on whether or not the Municipalities Act accords such powers to towns and cities. These opinions have remained private. The NBELS proposes to make its findings public in order to stimulate the debate and favor action.”

The NBELS will provide the research via its soon to be launched Environmental Law Clinic.

### **BACKGROUND**

The New Brunswick Environmental Law Society has teamed-up with “Comité pour un milieu urbain sain” in order to further the effort to reduce cosmetic pesticide use in New Brunswick municipalities. The NBELS has chosen this issue as a research project in the context of its environmental law clinic, which will be launched in September.

“The Clinic is well suited to help answer these types of legal questions and to further law reform in New Brunswick”, says Michel DesNeiges, executive director of the NBELS and the Clinic’s Director.

According to DesNeiges, “there is tremendous confusion in New Brunswick on the cosmetic pesticide issue. We agree that the state of the law is unclear. But a Supreme Court of Canada decision in 2001 seems to indicate that New Brunswick municipalities can take action, just like 125 communities across Canada have done.”

The Supreme Court’s so-called “Hudson decision” (*Spraytech v. Town of Hudson*) fashioned a new process for testing by-laws for legality. No longer are municipalities subject to a test that requires them to prove that they clearly have the authority to enact a by-law. Rather, courts should only overturn a bylaw if it is enacted for a purpose unrelated to a purpose set out in governing legislation, if it conflicts with provincial or federal legislation, or if it otherwise interferes with a provincial or federal government program.

Where there are no specific provisions in municipal legislation providing for a power, as was the case with the Town of Hudson’s by-law, the Court recognized that municipalities may have the ability to act under general welfare or omnibus provisions.

The court even specifically mentioned New Brunswick as a province with such a provision. It is located in Schedule 1 of the Municipalities Act. It states that a municipality can provide “Any service deemed by the council to be expedient for the peace, order and good government of the municipality and for promoting the health, safety and welfare of the inhabitants...”

According to Mr. DesNeiges, “at first blush, it seems that municipalities in New Brunswick are affected by the Supreme Court’s decision and that a municipality like Dieppe can take action.”

- 30 -

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