

**Brief to the Parliamentary Standing  
Committee on Health reviewing Bill C-53,  
*Pest Control Products Act***

**Notes for an address to the Committee and an Appendix of  
Proposed Amendments to Bill C-53, Clause by Clause**

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Prepared by:

Theresa McClenaghan  
Kathleen Cooper  
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CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

517 COLLEGE STREET • SUITE 401 • TORONTO, ONTARIO • M6G 4A2  
TEL: 416/960-2284 • FAX 416/960-9392 • [www.cela.ca](http://www.cela.ca)

The Canadian Environmental Law Association is pleased to have an opportunity to speak to the Standing Committee on Health with respect to Bill C-53.

We are pleased that the Minister of Health introduced Bill C-53, which, in our view, was long over-due. In 2000, CELA published an in-depth report regarding children's health and standard setting in Canada.<sup>1</sup> One of our primary research questions was whether standard setting in Canada is protective of children and we took a close look at pesticide law in a case study to that report. Essentially our study concluded that environmental standard setting in general was not protective of children, and in particular, the legislation supporting pesticide standard setting was not protective of children. Our analysis also found that even where good intentions occur and child-protective measures are included, the end result is often standards that are not protective. This loss of child-protective measures results from the compromises that result from the lack of an overall precautionary approach and the ability of risk management exercises to dilute or eliminate child-protective measures.

Bill C-53 would introduce some requirements that would legislate a level of protection of children in assessing pesticides. These would include the limited time frame for pest control product approvals, provision for special reviews and requirements for periodic re-evaluations. Another critical component of the Bill is the requirement that all pest control products presently registered would have to be re-evaluated within a specified time frame under the new provisions of the Bill. Putting the burden of proving that pest control products are acceptable on the applicant is an essential improvement in Bill C-53 and one that we fully support. However, we have suggested definitions of

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<sup>1</sup> Canadian Environmental Law Association and Ontario College of Family Physicians Environmental Health Committee, *Environmental Standard Setting and Children's Health*, May 2000. At: [www.cela.ca](http://www.cela.ca)

“acceptable risk”, “unacceptable risk” and “harm” in our review of the Bill in order to better define the basis on which decisions will be made.

CELA suggests to this Committee that there is still room for substantial improvement to Bill C-53. We will focus the balance of our remarks on three areas that we think need attention and amendment before the Bill is passed into law.

These are:

1. Incorporation of the precautionary principle into all decisions made under the Act;
2. A legislated mandate and provisions for risk reduction with respect to pest control products approved for use in Canada;
3. Improvements to the public participation, right to know and access to information provisions of the Act.

We have prepared a chart with the amendments that we are suggesting and have included it as an appendix to this Brief.

Dealing first with the precautionary principle, we note that the precautionary principle is not included in the preamble, nor in most of the actual decisions to be made under the Act. A paradigm shift to invoke the precautionary principle in pest control product decision making is essential to better protect human and environmental health. The amendments that we are recommending would require regard to the precautionary principle for new pest control product decisions and for every special review or re-evaluation decision. We have also included a definition of the precautionary principle and in this regard we support the definition that was included in the report of the Standing Committee on Environment and Sustainable Development.

Dealing with the issue of reduced risks from pesticides in Canada, we have first

suggested an addition to the Mandate section of the Bill that would explicitly provide for reduced reliance on, risk of and use of pest control products by promoting ecosystem oriented, least toxic approaches to pest management, within a framework of pollution prevention. We have made suggestions in various sections to accomplish this mandate, including adding a definition for formulant, adding formulants to the definition of pest control product and requiring that where there are effective alternatives, only those pest control products that pose a lower risk of harm than the effective alternatives are approved for use in Canada. Appropriate amendments to the evaluation and decision sections for new applications, special reviews and re-evaluations have been suggested in this regard.

Another suggestion we make is for reduction and eventually phase out of non-essential uses of pest control products. Accordingly, we have suggested new sections to provide for special registration rules for lawn and garden pesticides between now and 2004, and an end to new product registrations for lawn and garden pesticides after January 1, 2004 unless the product is intended to protect public health or for normal agricultural use. We have made similar suggestions for pesticides intended to be used for recreational purposes such as on parks, golf courses and sports fields.

Particular to children, we have suggested an amendment requiring the Minister to ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pest control product. Another suggestion, borrowed from the U.S. *Food Quality Protection Act*, would require total infant and child diet studies and result in better monitoring methods and further investigations of those foods most eaten by infants and children. We make these and other child-protective suggestions so

that Bill C-53 can be expanded beyond the current narrow focus on child-protective measures related only to home and school pesticide use. This narrow focus unreasonably limits the child-protective measures contained in Bill C-53.

Public participation, right to know and access to information are critical components of the proposed Bill. We have suggestions to improve these elements. For example, we suggest amending the Bill to make it clear that names and content of active substances, formulants and contaminants, as well as results of tests to establish the product's efficacy and harmlessness shall all be deemed not to be confidential business information (and thus available through the proposed Registry for public review). We also suggest providing certain minimum labelling requirements in the legislation rather than in regulation because of the over-riding importance of some of the types of information including ingredient information, poison control and treatment information and several other matters. These labelling requirements would be intended to assist with health and safety protection, provide consumers with essential information to make informed decisions and increase the chances of uses in accordance with product design. We have also included suggestions to add a National Pesticides Sales Database, and an adverse effects database to Bill C-53 to improve data collection and study of pesticides use and effects.

We wish to note that CELA has collaborated with the World Wildlife Fund for over two years on appropriate provisions for a new *Pest Control Products Act*. Accordingly, many of the suggested amendments in our two briefs are in identical language. CELA has selected the precautionary principle, risk reduction, expedited review, public participation and children's health as the focus of our brief. We do endorse

World Wildlife Fund's brief as well, and in particular wish to draw to your attention their additional provisions for public participation, expedited review as well as additional definitions and amendments dealing with "acceptable", "harm", and "value".

Thank you for your time today. We would be pleased to answer any questions that the Chair allows.

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<b>C53 section #</b>	<b>C53 Text</b>	<b>Proposed amendment</b>	<b>Rationale</b>
Preamble	Does not include precautionary principle	Add clause: WHEREAS it is in the national interest that the precautionary principle be applied in managing the federal regulatory system	There is a current understanding that lack of full scientific certainty requires a paradigm shift in decision making – a paradigm shift which is manifested as the precautionary principle.
Section 2	Definitions	“precautionary principle” means that appropriate preventive measures are to be taken where there is reason to believe that a pest control product is likely to cause harm, even when there is no conclusive evidence to prove a causal relationship between the pest control product and its effects “scientifically-based” includes regard for the precautionary principle	This amendment puts the precautionary principle into the context of all pest control product decisions. There is almost never conclusive evidence, but decisions still need to be made.
Section 2	Definitions		“Science” and “precaution” are not mutually exclusive; decisions using the precautionary principle should also be “science-informed”
Section 2	Definitions	“acceptable risk” means that a preponderance of evidence demonstrates that there is very low likelihood of harm to human health, future generations, or the environment	This definition reflects that the decision as to whether the product is “acceptable” is a question of whether the applicant has met the burden of proof under the Act Note: <i>U.S. Food Quality Protection Act</i> defines “safe” as follows: “Determination of Safety – As used in this section, the term ‘safe’, with respect to a tolerance for a pesticide chemical residue, means that the Administrator has determined that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue,

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			including all anticipated dietary exposures and all other exposures for which there is reliable information.” Section 405(b)(2)(A)(ii)
Section 2	Definitions	“unacceptable risk” means that there has not been a demonstration, on a preponderance of evidence, that there is very low likelihood of harm to human health, future generations, or the environment.	Similarly, “unacceptable” means that the applicant has not met the burden of proof under the Act
Section 2	Definitions	“harm”, “harmful” or “harmfulness” means damage to human health or the environment, and includes, without limiting the generality of the foregoing, [toxicity, endocrine disruption and modulation, carcinogenicity, developmental neurotoxicity, mutagenicity, teratogenicity, reproductive impacts, groundwater contamination, volatilization and persistence in soil, water, air or mammalian tissue]	The term harm must be defined to avoid overly vague standards for the determinations to be made under the Act. The words in [] brackets would require definitions which could be done by providing for regulatory powers that incorporate the relevant scientific tests by reference.
Section 2	Definitions	“formulant” means the non-active ingredients including the solvent, diluent, adjuvant, emulsifier or other components that are not primarily responsible for the effects of the pest control product	A definition of formulant is required; at present the Act does not cover formulants; other amendments are proposed to include them under the Act. Formulants often have impact. Consumers and users should have the right to know what formulants are in pest control products.
Section 2	Definitions – “pest control product”	Add new clause (b.1) a formulant that is used in conjunction with anything described in paragraph (a); or	This amendment is required to ensure that formulants used in pest control products are considered under the Act
Section 4	Mandate	Add new clause (e) ensure that where there are effective alternatives, only those pest control products that pose a lower risk of harm than the effective alternatives are approved for used in	This amendment is required to promote decreased reliance on pesticides and to ensure reduction of risk from pesticides over time.

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		Canada.	
Section 4	Mandate	Add new clause (f) reduce reliance on, risk of and use of pest control products by promoting ecosystem oriented, least toxic approaches to pest management within a framework of pollution prevention	Pesticides are intentionally designed to kill living organisms; this amendment is required to decrease the burden on human health and the ecosystem of anthropogenic chemicals.
Section 7	Vulnerable sub groups	Amend section 7(7)(a)(I) by adding “the ill and those with environmental disabilities” after the word “seniors”	The same amendment should be made to s. 19(2)(b)(I). This amendment is necessary to provide for consideration of the effect of the pest control product on those persons who are ill or who have environmental disabilities during the evaluation of the pest control product.
Section 7	Applications for registration	Add a new clause 7(1.1) An application to register a pest control product shall include the following information on the active ingredient, the formulant and the interaction of the active ingredient and the formulant: (a) risks of harm to health, including toxicity, carcinogenicity, developmental neurotoxicity, endocrine disruption and modulation, reproductive impacts, mutagenicity and teratogenicity; (b) risks of harm to the environment, including direct impacts to plants, animals, including the most sensitive receptors and lifestages, ecosystems and secondary impacts, including food removal; (c) safety of use, manufacture, transport, storage, handling or disposal; (d) how the product can or cannot be used in	Bill C-53 lacks any indication of the kind of information to be considered by the Minister in determining acceptability.

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		<p>integrated pest management systems for specific crops;</p> <p>(e) the occurrence or potential occurrence of pest resistance to the pest control product and resistance management strategies;</p> <p>(f) the occurrence or potential for occurrence of groundwater contamination, volatilization, persistence in soil, water, air and mammalian tissue, and</p> <p>(g) any other information which may be prescribed.</p>	
Section 7(7)	Registration process	<p>Add a new section (7.1) In evaluating the health and environmental risks and value of a pest control product, the Minister shall have regard to the precautionary principle.</p>	<p>This section is required to include consideration of the precautionary principle for new registrations.</p>
Section 8	Registration	<p>Amend section 8(1) by adding after “If the Minister considers that the health and environmental risks and the value of the pest control product are acceptable,” the words, “and there is no less harmful yet equally effective pest control product available”</p>	<p>Toward the goal of pesticide use reduction, this section is intended to avoid continued registration of new pesticides where there are less harmful effective alternatives available.</p>
Section 8	Registration	<p>Add a new clause 8(4.1) The Minister shall refuse to register a pest control product where there is a less harmful yet equally effective registered alternative pest control product.</p>	<p>This section provides the obligation to refuse to register a pesticide where there are less harmful yet equally effective alternatives available.</p>
Section 8	Registration	<p>Add a new clause 8(4.2) The Minister shall refuse to register a pest control product intended to be sold directly to consumers, or for lawn, garden or cosmetic use unless it is intended to replace and is demonstrated by the applicant on a preponderance of evidence to pose a lower risk of harm to human</p>	<p>There are data that pesticide use is higher per hectare in some urban settings than in most agricultural settings. Most of this urban use is for non-essential cosmetic use. Thus there is higher exposure without sufficient necessity. This</p>

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		health, future generations, or the natural environment than a pesticide currently registered for that use.	amendment is required to gradually reduce the risk of pesticides used on lawns and gardens, subject to the time limitation for new registrations contained in the next amendment.
Section 8	Registration – non-essential cosmetic use	Add a new clause 8(4.2.1) Despite any other provision of this or any other Act, after January 1, 2004, the Minister shall refuse to register a pest control product intended for lawn or garden use where the primary purpose of the pest control product is non-essential. Without restricting the generality of the foregoing, non-essential means uses not intended to protect public health nor intended for normal agricultural use.	This amendment is required to provide for a phase-out of pesticides intended for non-essential lawn and garden use
Section 8	Registration	Add a new clause 8(4.3) The Minister shall refuse to register a pest control product intended to be used on parks, golf courses, sports fields or for other recreational use unless it is intended to replace and is demonstrated by the applicant on a preponderance of evidence to pose a lower risk of harm to human health, future generations or the natural environment than a pesticide product currently registered for that use.	This amendment is intended to reduce the risk of pesticides used in recreational settings over time, subject to the time limitation for new registrations contained in the next section.
Section 8	Registration	Add a new clause 8(4.3.1) Despite any other provision of this or any other Act, after January 1, 2004, the Minister shall refuse to register a pest control product intended to be used on parks, golf courses, sports fields or for other use on recreational lands where the primary purpose of the pest control product is non-essential. Without restricting the generality of the foregoing, non-	This amendment is required to provide for a phase-out of pesticides intended for non-essential use on recreational lands.

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New section 8(5.1)	Mandatory pest-registration monitoring	essential means uses not intended to protect public health nor intended for normal agricultural use. Add a new section 8(5.1) as follows: "A registrant of a pest control product shall, as a condition of registration, monitor and report to the Minister on environmental fate, and as to adverse effects of the product in the form and manner required by the Minister"	There is a similar requirement in the U.S. The PMRA committed eight years ago to impose this requirement.
New Section 8.1	Expedited Registration of Reduced Risk Pesticides	Add a new section 8.1 as follows: (a) Within 1 year of the coming into force of this section, the Minister shall, utilizing public comment, develop procedures and guidelines, and expedite the review of an application for registration of a pesticide or of an amendment to a registration that satisfies such guidelines. (b) Any application for registration or an amendment, including biological and conventional pesticides, will be considered for expedited review and such an application will qualify for expedited review if use of the pesticide proposed by the application may reasonably be expected to accomplish one or more of the following: (i) Reduce the risks of pesticides to human health; (ii) Reduce the risks of pesticides to non-target organisms; (iii) Reduce the potential for contamination of groundwater, surface water, or other valued environmental resources; (iv) Broaden the adoption of pesticide risk	This amendment is required to provide for expedited review of applications for pest control products which would reduce risks to human or ecosystem health if approved. The wording proposed is adapted from the U.S. <i>Food Quality Protection Act</i> , section 250.

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		reduction strategies or make such strategies more available or more effective.	
Section 16(1)	Re-evaluation	Add, following the words, “or the value of pest control products of the same class or kind”, the following words, “or where information provided pursuant to sections 12 or 13 identifies that there may be a less harmful yet equally effective registered alternative pest control product.”	This amendment would allow for a re-evaluation of a registered pest control product to be initiated where less harmful products become available.
Section 17(2)	Special review where O.E.C.D. ban	Delete the word “all” and substitute the word “any”. Change the marginal note to read “Where OECD restricts”	There may be cases where an O.E.C.D. country, for example, the United States, bans a particular use of a registered pest control product. In such a case, a special review should be required in Canada immediately. An example was the case of Dursban or chlorpyrifos.
Section 19(2)	Re-evaluation or special review	Add a new clause 19(2.1) In evaluating the health and environmental risks of a pest control product and in determining whether those risks are acceptable, the Minister shall have regard to the precautionary principle.	This amendment is required to include consideration of the precautionary principle in determining whether the risks are acceptable during a re-evaluation or special review.
Section 19(4)	Re-evaluation or special review	Add to section 19(4) the words, “and the provisions of section 8(1) and 8(4.1) to (4.3.1) apply with necessary modifications to this section.	This amendment is required to ensure that there is a gradual reduction of the risks of products registered for home and garden and recreational use, as well as a phase-out of these products by applying these same requirements to the assessment on re-evaluation or special review.
New Section 19(4.1)	Consideration of all submissions	Add a new section 19 (4.1) “In evaluating the health and environmental risks and the value of a pest control product, the Minister shall consider all submissions made by any person or persons.”	Members of the public may have valuable information even if not expressed in “scientific” language. Furthermore, public concern is relevant to issues such

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Section 20(2)	Precautionary principle	Delete text in 20(2) and substitute the following: 20(2) The Minister shall apply the precautionary principle when determining whether to cancel or amend the registration of a pest control product.	as acceptability of risk. The language in 20(2) of Bill C-53 is not in the context of pest control product decisions. This amendment puts the precautionary principle in the context of pest control product decisions, and further, applies the precautionary principle as defined to decisions to cancel or amend where the re-evaluation or special review has not been completed.
Section 21(1)	Confirmation	Replace the text in 21(1) with the following: “If the Minister considers that the health and environmental risks and the value of a pest control product are acceptable and there is no less harmful yet equally effective pest control product available after any required evaluations..... Add a new section 21(2.1) the words, “The provisions of section 8(1) and 8(4.1) to (4.3.1) apply with necessary modifications to this section.”	This amendment provides for reduction of risks from pesticides by requiring no approval on a re-evaluation or special review where there are less harmful, equally effective alternatives.
Section 21(2.1)	New		This amendment is required to ensure that there is a gradual reduction of the risks of products registered for home and garden and recreational use, as well as a phase-out of these products by applying these same requirements to the assessment on re-evaluation or special review.
Section 21	Confirmation, amendment, cancellation	Add a new section 21(6) as follows: In making any decision under this section, the Minister shall have regard to the precautionary principle.	This section is required to include regard for the precautionary principle in making the determination whether to confirm, amend or cancel registration of a pest control product.
Section 28(1)	Public Consultation	In clause 28(1)(a)(ii), delete the word “significantly”	Determination of “significance” should not be made prior to public consultation
New section	Appeal to Federal	New Section 39.1: Decisions of the Minister may	This section provides citizens and others

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39.1	Court	be appealed to the Federal Court of Canada, Trial Division, (a) on a question of law (b) on the ground that the Minister failed to apply the requirements of this Act.	with the means to ensure that the Act is being applied as required by Parliament.
New Section 42.1	Guidelines etc.	Add a new section 42.1 as follows: “The public shall be consulted as to policies, guidelines and codes of practice relating to the regulation of pest control products.”	Section 42(7)(e) provides for posting of such documents on the Electronic public registry “when proposed for public consultation” but this amendment is required to provide an obligation to carry out such consultation.
Section 43(5)	Confidential Business Information	Delete section 43(5) and replace it as follows: “For greater certainty, names and content of active substances, names and content of formulants, names and content of contaminants, results of the tests to establish the substance’s or product’s efficacy and harmlessness to humans, animals, plants and the environment are all deemed not to be confidential business information.”	
Section 43(5)	Confidential Business Information	Add a new section 43(5.1) “Information other than as listed in section 43(4) which must be provided in an application for registration or re-registration, re-evaluation or special review, or which must be reported or provided pursuant to sections 7, 12, 13, 16, 18, 19, 22, 28, 33, 34, 35, 41 is deemed not to be confidential business information.	The approach used by some jurisdictions is to provide that whatever the applicant must submit to obtain their approval is available for public review.
Section 43(6)	Designation not satisfactory	Delete the words “or (5)”	This is a consequential amendment to the above-noted amendment to section 43(5).
New Section	Add new 44.1	44.1 Every pesticide control product must carry a label indicating at least the following information: a) a list of every active ingredient with quantity	Consumers’ and users’ needs to know this type of information is extremely important and should be protected by legislation, not

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	<p>or proportion by volume</p> <ul style="list-style-type: none"> <li>b) a list of every formulant with quantity or proportion by volume</li> <li>c) a list of every formulant with quantity or proportion by volume</li> <li>d) a toll-free information telephone number for further information concerning the product including label translation into languages other than English and French</li> <li>e) poison control and treatment information instructions for use, including associated Integrated Pest Management instructions and any other terms and conditions regarding use associated with the registration of the product in clear, easy to follow terms</li> <li>f) a warning of the dangers of exceeding product concentration instructions</li> <li>g) a statement that it may be an offence to disregard product use information</li> <li>h) a statement that there may be provincial or municipal legislation or by-laws affecting the use or application of the product</li> <li>i) a statement as to protective measures that are recommended or required as the case may be, including storage, prohibition on changing containers or packages, prohibitions on mixing products, protective apparel, removal of children and vulnerable persons from the vicinity, warnings to neighbours and dangers to pets and animals</li> <li>j) a statement as to the particular target pest, the</li> </ul>	<p>left to regulation. For example, child poisonings by pesticides is known to be a significant cause of child injury in the United States (comparable Canadian information gathering in this regard is poor to non-existent and underscores the need for mandatory adverse effects reporting recommended in new section 8(5.1) above, and the Adverse Effects Database recommended in new section 44.3 below). This type of information will assist in reducing consumer over-use and mis-use of pesticides, and will assist with consumer education as to the intended use and target of the products. Both active ingredients and formulants must be listed so that consumers with allergies, special sensitivities and other vulnerable persons may take steps to avoid exposures that might be dangerous to them.</p>
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<p>New section 44.2</p>	<p>National Pesticides Sales Database</p>	<p>biological cycle to which the product is directed and the seasons or dates during which it is permitted to be used                  k) an address or web site at which the consumer may obtain a copy of the registration application and associated studies</p> <p>New Section 44.1:                  (a) The Minister shall establish a National Pest Control Product Use Inventory to track the use of registered pesticides in Canada which shall include at a minimum, (i) the aggregate sums of each registered pest control product sold and place sold, by municipality (ii) the results of a biannual usage survey which the Minister shall conduct nationally.                  (b) The information published pursuant to (a) shall be made available to the public on the electronic Registry of Pest Control Products.                  (c) The Minister may enter into an agreement or agreements with other Departments or with any province of Canada to coordinate or share information as to monitoring environmental fate and environmental and human health effects of pest control products.</p>	<p>This requirement makes use of the data required by section 8(b) of Bill C-53 and will enable tracking of pesticide use trends, will allow for monitoring of pesticide use and exposure on a geographic basis, will allow for tracking of response to special initiatives such as CEC action plans.</p>
<p>New S. 44.3</p>	<p>Adverse Effects Data Base</p>	<p>The Minister shall establish a central registry to gather data on adverse clinical responses to pesticides. The Minister shall provide a mechanism for protection of patient confidentiality in the gathering of such data. The Minister shall make aggregate data from the registry available to the public on the Electronic Registry of Pest</p>	<p>This amendment is required to provide for a mechanism by which cases of adverse clinical responses to pesticides can be reported and whereby such incidence can be measured and studied in aggregate and by pest control product</p>

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		Control Products, sorted by pest control product and by municipality.	
New s. 44.4	Total Diet Studies	A new section 44.4 added as follows: "The Minister shall conduct regional total diet studies biannually with specific additional research into infants' and children's consumption patterns and shall use the information from such studies to develop better monitoring methods and more intensive investigations of residue data on those foods most eaten by infants and children.	This amendment is required to obtain better information as to infants' and childrens' diets in Canada and to then better monitor the exposure from the food most eaten by infants and children. The studies are to be conducted regionally because of the variations within Canada of childrens' diets.
New s. 44.5	Exposure of Infants and Children	In making any determination under this Act, the Minister shall ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pest control product, including the taking into account of potential pre- and post-natal toxicity of the pest control product to infants and children.	This section is required to ensure special attention to protection of infants and children in all decision making as to pest control products under the Act. The wording is adapted from the U.S. Food Quality Protection Act where it applies to determination of threshold effects from pesticide residues on food. As drafted here, it would apply not only to food, but to all pathways.
New S. 44.6	Pesticide Use Reduction Plans	A new section 44.6 shall be added as follows: "The Minister shall establish Pesticide Use Reduction Plans by sector, with numerical pest control product reduction targets and dates. To be determined	This amendment is required to establish goals and to measure the effectiveness of the Act in reducing reliance on pesticide control products in Canada.
Section 67(3) & (4)	NAFTA and WTO		Bill C-53 provides regulation making power for the purpose of implementing, in relation to pest control products, Article 1711 of NAFTA or Article 39(3) of TRIPS. Time did not permit inclusion of this item.