

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CROPLIFE CANADA**

**Applicant**

- and -

**THE CORPORATION OF THE CITY OF TORONTO**

**Respondent**

APPLICATION UNDER section 273(1) of the *Municipal Act*, S.O. 2001, c.25.

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**AFFIDAVIT OF KATHLEEN COOPER**

I, Kathleen Cooper, of the Town of Lindsay, in the Province of Ontario, MAKE OATH

AND SAY:

1. I am currently the Senior Researcher at the Canadian Environmental Law Association (CELA), and have been on staff at CELA since 1987. I therefore have knowledge of the matters hereinafter deposed to.
2. CELA is a non-profit, public interest group, established in 1970, to use existing laws to protect the environment and to advocate environmental law reform.

3. CELA was incorporated as the Canadian Environmental Law Association/L'Association Canadienne du Droit de L'Environnement by Letters Patent from the Government of Canada on September 21, 1981 as a corporation without share capital.
4. CELA is also an Ontario Legal Aid Clinic providing summary advice to the public and representing low income citizens or citizens' groups in environmental cases.
5. As part of CELA's law reform mandate, CELA has had a long history of interest and active involvement in issues relating to pesticide use and control. CELA's involvement has included participating in research regarding the links between pesticide use and control and human and environmental health, monitoring scientific research and new developments in governmental policy, participating in consultations on regulatory change, acting as a resource for media, the public, and regulatory agencies, and working with other organizations to foster a better understanding of the dangers of pesticides and a more rigorous approach to their control.
6. CELA's then Executive Director, Toby Vigod, was a member of the Pesticide Registration Review Team, a multistakeholder body that met for several years in the late 1980s and early 1990s to advise on changes to federal pest control legislation. The final report of the Pesticide Registration Review Team report subsequently resulted in a detailed response from the federal government, the many details of which have been implemented within the federal

government's revisions to federal law and policy concerning pesticide registration and use in Canada.

7. CELA staff have produced the following articles and publications related to pesticides, pesticide regulation, and the impact of pesticides on human and environmental health:

*Government and Herbicides.* J.F. Castrilli and A. Lancaster, November, 1978.

*Submissions to the International Joint Commission (IJC) on the Report Respecting Pollution of the Great Lakes by Land Use Activities, JC Public Hearings.* J.F. Castrilli, November, 1978.

*Great Lakes Water Pollution Control: The Land Use Connection.* J.F. Castrilli and A.J. Dines. 1980.

*"The IBT Affair"* - Submissions to the Ontario Pesticides Advisory Committee. Pollution Probe and CELA, October, 1980.

*Concerns with Pesticides - A Public Viewpoint.* Address to the Third Ontario Crop Protection Conference. T. Vigod, November, 1980.

*Is Our Water Safe to Drink? Do We Need a Safe Drinking Water Act?* G. Patterson, March 1986. (Adapted from *Water Fit to Drink? The Need for a Safe Drinking Water Act in Canada*, 1982.) T. Vigod and A. Wordsworth, February, 1982.

*Captan: The Legacy of the IBT Affair.* Submissions on Pesticide Law and Policy to the Consultative Committee on IBT Pesticides. T. Vigod and A. Wordsworth.

*Submissions on Bill 138, An Act Respecting the Protection of the Health of the Public to the Standing Committee on Social Development.* T. Vigod, September, 1982.

*Herbicides and Environmental Protection: A Legal Perspective.* An address to the Symposium on Herbicides and Environmental Policy, York University, Centre for Research on Environmental Quality. T. Vigod, March, 1984.

*Federal Pesticides Law: Prospects for Reform* - Submissions to the Standing Committee on Environment and Forestry. J. Castrilli and T. Vigod, February, 1988.

*Comments* regarding Regulation 751 of the *Pesticides Act* in a letter to the Ministry of the Environment, Director under the *Pesticides Act*. K. Cooper, May, 1989.

*Use of pesticides on Metro Parks Property*. Letter to Metro Parks, Recreation and Property Committee. K. Cooper, January, 1991.

*A Healthful Environment: Privilege, Right or Responsibility?* A draft paper prepared for Social and Economic Rights in Canada - a National Conference, December 12 - 13, 1991. B. Rutherford, December, 1991.

*It's Still About Your Health*. A submission on CEPA Review: The Government Response Environmental Protection Legislation Designed for the Future - A Renewed CEPA - A Proposal. CELA and CIELAP, March, 1996.

*Our Future, Our Health: A Statement of Concern by Environmental Organizations in Ontario*. R. Nadarajah (CELA), M. Winfield (CIELAP), D. Macdonald (U. of T.), March, 1997.

*A Taste of Canada - Comments and Analyses on Toxic Chemicals in Your Meals and Bioengineered Food made in Canada*. B. Mausberg and P. Muldoon, April, 1997.

*Everyday Carcinogens: Stopping Cancer Before It Starts* - Workshop on Primary Cancer Prevention, McMaster University, March 26 & 27, 1999. CELA's participation by S. Miller, K. Cooper, March, 1999.

*Environmental Standard Setting and Children's Health*. A report by the Children's Health Project, a joint effort of the Canadian Environmental Law Association and the Ontario College of Family Physicians Environmental Health Committee. K. Cooper, L. Vanderlinden, T. McClenaghan, K. Keenan, K. Khatter, P. Muldoon, A. Abelsohn, May 2000. 391 pp. In particular, Chapter 9, Case Study No. 2: Regulating Pesticides to Protect Children's Health. (This report is updated and summarized in: McClenaghan, T., K. Cooper, L. Vanderlinden, P. Muldoon, A. Abelsohn, K. Khatter, and K. Keenan. (2003) *Environmental Standard Setting and*

Children's Health: Injecting Precaution into Risk Assessment, *J. Env'l Law and Practice* 12(2): 141-279.

*Briefing note* on Bill C-53, An Act to protect human health and safety and the environment by regulating products used for the control of pests, CELA and World Wildlife Fund. April 5, 2002.

*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 to Bill C-53, Clause by Clause. T. McClenaghan and K. Cooper. May 2002.

*Brief to the Senate Committee on Social Affairs, Science and Technology* reviewing Bill C-8, Pest Control Products Act. Notes for an address to the Committee and an Appendix of Proposed Amendments to Bill C-8, Clause by Clause. T. McClenaghan, K. Cooper, November 2002.

CELA and World Wildlife fund *Statement on Pesticide Bylaws*. New federal legislation does not override, duplicate, or negate the legitimacy of local pesticide bylaws. Nor is it yet in force. April 30, 2003.

8. CELA is currently represented on the Pest Management Advisory Committee, a national multi-stakeholder committee made up of industry, government, and non-governmental organizations, which advises the Pest Management Regulatory Agency and the federal Minister of Health on issues of federal policy and law related to pesticides. I have served two terms on this committee and CELA Counsel, Ramani Nadarajah, served on the Committee prior to my joining it in 2000.
  
9. CELA worked with the Ontario College of Family Physicians Environmental Health Committee on a two year collaborative research effort addressing the effects of toxic substances, including pesticides, in children's health and investigated whether standard-

setting provided adequate protection. This work has resulted in several scholarly and popular writing, often focused on the issue of pesticides and children. An interim publishing step during the course of this research included presenting results of the investigation into pesticides to the Standing Committee on Environment and Sustainable Development in its review of the federal *Pest Control Products Act*.

10. When the federal government undertook its review of the *Pest Control Products Act*, CELA undertook written and oral interventions on revisions to the Act to the Parliamentary Standing Committee on Health (in May of 2002) and the Senate Committee on Social Affairs, Science and Technology (in November of 2002).
11. CELA has made oral (at the Pest Management Advisory Council meeting in June of 2003) and written submissions (in the summer of 2003) to the Pest Management Regulatory Agency on its consultations regarding proposed regulations under the new *Pest Control Products Act*.
12. CELA Counsel, Theresa McClenaghan, served on an Advisory Committee to the Auditor General's Commissioner on Environment and Sustainable Development concerning its review of operations in the Pest Management Regulatory Agency published in the Commissioner's Annual Report on October 7, 2003.
13. CELA's legal clinic work has also frequently concerned pesticide use and control in both its summary advice work and on behalf of specific clients.

14. In 1999, at the request of several clients and groups involved in issues regarding local use and control of pesticides, CELA prepared a draft legal opinion as to the authority of Ontario municipalities to pass by-laws controlling the use of pesticides on private property. This was prepared as a "generic" opinion, intended to be available to the public and others who wanted to make use of it for the purpose of considering municipal by-laws to control the application of pesticides on private properties in a municipality.
  
15. In 2000, CELA was granted intervention status in the Supreme Court of Canada consideration of an appeal by Spraytech and Chemlawn of the Hudson, Quebec bylaw controlling the application of pesticides on private property. In written arguments, CELA represented itself and ten public interest community groups from Ontario and one individual from Quebec. In June of 2001, the Supreme Court found unanimously that the Town of Hudson had the authority to pass the bylaw.
  
16. Following on the Supreme Court decision, CELA began to receive requests for assistance from community groups from across Canada wanting to establish municipal pesticide bylaws. In response, CELA chose to focus efforts on Toronto with the objective of providing generic enough materials for use by individuals and groups in other municipalities but with a clear focus on assisting groups in Toronto to obtain a pesticide bylaw in Canada's largest municipality.

17. During 2001 and 2002, CELA participated in various public and consultation meetings held by the City of Toronto as part of consultations sought by City Council towards the development of a pesticide bylaw for Toronto.

18. In the summer of 2002, CELA met with the Ontario College of Family Physicians and the Toronto Environmental Alliance to form the Partnership for Pesticide Bylaws, a group whose principle objective was to obtain a pesticide bylaw in Toronto. This Partnership grew to over a dozen organizations and made numerous interventions, on behalf of the Partnership, and by individual members, throughout 2002 and 2003, as the City of Toronto continued its consultations. Interventions were made at the Toronto Board of Health, and before the Works Committee, the Economic Development and Parks Committee, and in meetings held directly with City staff in the Department of Public Health and the City Legal Department. Meetings were also held with members of City Council and their staff. CELA participated in, and or assisted with the organization of, just about every single one of these meetings.

19. During the fall of 2001, CELA Counsel undertook a review of the revised Ontario Municipal Act (INSERT PROPER CITE?) to determine if any changes would affect the interpretation of the statute by the Supreme Court of Canada. Although not a complete legal opinion, CELA counsel did not see any changes that changed the law in a way that would alter the Supreme Court's interpretation. A thorough legal opinion conducted jointly for the municipalities of Waterloo, (CAN'T RECALL THE OTHERS)

20. During debates over the content of a Toronto pesticide bylaw, CELA Counsel undertook another “generic” legal opinion concerning the powers of municipalities to pass pesticide bylaws in Ontario. This opinion was done in response to numerous inquiries from municipal staff and community groups from across Ontario.
  
21. Throughout 2001, 2002 and 2003, CELA staff have responded to hundreds of requests from the public for information about pesticide bylaws and the issue of pesticides and children’s health. CELA staff have participated in public speaking forums of various kinds across Ontario including as keynote speakers or on panels with physicians, horticulturalists, pesticide industry representatives and others. Communities have included Caledon, Perth, Guelph, (ADD MORE \_ NEED FILES AT OFFICE< ADD TAM TOO)
  
22. CELA maintains an extensive environmental law resource library that includes substantial materials on pesticides and pesticide regulation.
  
23. CELA produces a newsletter, *The Intervenor*, which includes updates and reports on CELA activities and acts an educational tool for CELA members and the public regarding current issues in environmental law and policy. Law reform and legal clinic activities that relate to pesticide use and control are reported in *The Intervenor*. Several articles were written during 2001, 2002 and 2003 concerning the municipal ---- add from website

24. CELA is interested in this application to the Ontario Superior Court of Justice in that CELA is concerned that municipal powers to adopt by-laws for the control of pesticide use within the municipality be preserved.

SWORN BEFORE ME at the )  
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City of Toronto, this )  
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day of October, 2003. )

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Kathleen Cooper

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A commissioner for taking oaths, etc.