



Dr. Marcos A. Orellana
Special Rapporteur on Toxics and Human Rights
Office of the High Commissioner for Human Rights
United Nations Office Geneva, Avenue Giuseppe Motta 48,
CH-1202 Geneva, Switzerland
By email to: srtoxicsshr@ohchr.org

March 17, 2025

Re: Call for Input - Access to Justice and Effective Remedies in the Context of Toxics

Dear Dr. Marcos A. Orellana:

I am writing on behalf of the non-profit public health organization, the Centre for Health Science and Law (CHSL)¹ to inform your upcoming report. CHSL encourages your efforts to emphasize the importance of governments proactively furnishing the public with usable data about releases of toxic chemicals and pesticides into the environment through intentional and accidental releases, including geographically delimited releases and ensuring that members of the public, civil society organizations, and academic researchers have standing to obtain practicable enforceable legal means to prevent harmful releases and seek compensations and remediation where harm has already occurred.

Ensuring that advancing the public interest is the guiding principle of public policy requires reconciling human rights with business interests, especially because the global revenue of so many pesticide manufacturers vastly exceed the GDPs of so many low- and middle-income countries.

Much of the impediment to effective regulation of pesticides and toxic chemicals may be misconceptions about the independence from industry of the Canadian regulator. For instance, The Pest Management Regulatory Agency (PMRA) commissioned a [public opinion poll of 2,206 Canadians](#) in 2023 that found: Only 26% of respondents would believe what a “pesticide manufacturer spokesperson” said about the risks of pesticides yet only 35% of respondents believed that PMRA even considers industry data in approving pesticides.²

¹ The Centre for Health Science and Law CHSL and its predecessor (the Canadian operations of the Center for Science in the Public Interest) have advocated nutrition labelling reforms, advertising restrictions, sodium reduction measures, a ban on trans fat, and a national, publicly funded school food program. We have commented on and promoted several amendments to the Food and Drug Regulations since 2000. CHSL is a founding member of the Geneva Global Health Hub (G2H2) and a member of the International Association of Consumer Food Organizations. CHSL is one of the few health-focused Canadian NGOs accredited by the UN Economic and Social Council (ECOSOC). I have been personally active in international standard-setting advocacy and expert deliberations at the Codex Alimentarius Commissions (since 1998), World Health Organization (since 2005), UN General Assembly (since 2011), and several UN Human Rights Council committees and working groups (since 2018). CHSL provided technical assistance through UNICEF to 10 national governments and intergovernmental organization in Africa to help nationally implement the WHO *International Code on the Marketing of Breast-milk Substitutes* and other nutrition-related regulations in 2018-2022 and is currently reviewing a pre-Gazette proposal to reform Divisions 24 and 25 of the *Food and Drug Regulations*.

² Health Canada. “Awareness and Confidence in Canada’s Pesticide Regulatory System Findings Report Prepared for Health Canada Supplier” Ipsos. July 14, 2023. Registration Number: POR 088-22, at pages 35 and 55.

Tellingly, Ipsos reported (at page 32) findings from its focus groups as follows:

“Finally, nearly all participants were against the involvement of pesticide companies in the pesticide regulation process, given their ‘vested interest.’ Participants felt that their focus would be on profit and pushing their own agendas, rather than considering the interests of consumers and the environment. Similarly, some expressed similar sentiments about the involvement of Agriculture and Agri-Food Canada, stating that they may have a vested interest in the success of farmers, rather than public safety.” [at page 32]

- 77% believe Canada's pesticide regulatory system is better than or about the same as the European Union system, presumably without knowing that:
 - 41 pesticides sold in Canada in 2021 have been banned in at least 30 countries, including the European Union;³
 - 100 pesticides sold in Canada are banned or not approved in at least one other OECD country, and
 - Only one pesticide banned in Canada is approved for use in the European Union (Ziram) but even that one was still sold in Canada by registrants (between 500 KG and 1,000 KG) even though doing so after December 14, 2019 was prohibited.⁴

PMRA repeatedly justified its decision to ignore thousands of studies on the most widely used pesticide in Canada, Glyphosate, published in peer-reviewed studies as follows:

“[After explaining the basis for PMRA’s belief in the trustworthiness of company-applicant-provided studies, PMRA added:]...Studies conducted by academic laboratories often have lower statistical power due to the use of fewer animals, investigate far fewer toxicological endpoints, and lack sufficient detail in their published form. These

Available at: https://publications.gc.ca/collections/collection_2023/sc-hc/H114-39-2023-eng.pdf The question posed to 2,206 respondents was, as follows:

³ Pest Action Network International. PAN International Consolidated List of Banned Pesticides. Updated May 2022. London, UK. Available at: <https://pan-international.org/contact/> This list was cross-referenced with Health Canada’s “Pest Control Products Sales Report for 2018,” Ottawa. 2020. Available at:

https://publications.gc.ca/collections/collection_2020/sc-hc/h111-3/H111-3-2018-eng.pdf Ethylene oxide was listed by PAN as banned in Canada but was actually only banned as a food additive (in 2017), but was reapproved for use as a pesticide in 2013 and sold in an amount between 1,000 KG to 5,000 KG 2021. Pest Management Regulatory Agency of Health Canada. Re-evaluation Decision RVD2013-02 Ethylene Oxide. December 19, 2013. Decision not published by made available on request at

<https://www.canada.ca/en/health-canada/services/consumer-product-safety/reports-publications/pesticides-pest-management/decisions-updates.html>

Ziram and Its Associated End-use Products for Agricultural Uses Final Decision December 14, 2018. Decision not published, but made available on request at

<https://www.canada.ca/en/health-canada/services/consumer-product-safety/reports-publications/pesticides-pest-management/decisions-updates.html>

⁴ Ziram and Its Associated End-use Products for Agricultural Uses Final Decision December 14, 2018. Decision not published by made available on request at

<https://www.canada.ca/en/health-canada/services/consumer-product-safety/reports-publications/pesticides-pest-management/decisions-updates.html>

limitations prevent regulatory authorities from performing an in-depth analysis of study results”⁵

Key questions and types of input/comments sought

1. Relevant jurisprudence:

Decisions made by government regulatory agencies, such as the Pest Management Regulatory Agency, are subject to judicial review, usually based on a reasonableness standard, explained and clarified in 2019 by the Supreme Court of Canada in *Canada v. Vavilov*.⁶ However, depending on the context, that review may involve considerable deference to regulators making decisions involving technical scientific judgements. For instance, in a recent review of a re-registration of a pesticide despite safety concerns raised by environmental groups based on 62 studies published in peer-reviewed journals. The Court found that the Agency’s bare acknowledgement that it was aware of the studies and discounted their importance to be insufficient.⁷ It ordered that they provide a meaningful explanation of its consideration within six months, but it remains unclear if the Agency will offer cursory dismissals as it has in the past, for instance by generally preferring “seller sponsored” studies over ones published in scientific journals.

According to a comprehensive database of Canadian jurisprudence, [Canlii](#), there have been only 17 reported human rights tribunal decisions concerning the harm to human health of pesticides or toxic chemicals. This is significant because human rights tribunals have many fewer impediments to access to justice than traditional courts. Human rights commissions investigate allegations and provide legal support to complainants. See, for instance, the Ontario (provincial) Human Rights Legal Support Centre (HRLSC), which “Provides advice, support, and legal representation to people who file applications with the tribunal.” In traditional courts (where 1,609 cases were heard, often involving allegations of negligence or breach of statutory duties), complainants/plaintiffs nearly always must either retain expensive legal counsel in the commercial marketplace or self-represent in a highly complex, slow-moving legal system, with unforgiving deadlines for interlocutory motions, and expectations for comprehensive understanding of procedural rules and large volumes of case law and filing formalities that are not intuitive. In Canada, publicly funded legal aid is generally available only to defendants in serious criminal matters that are very low income (typically only to those eligible for social assistance or earning statutory minimum wages).

Five of those 17 human rights tribunal rulings⁸ were rendered in the past decade:

- R. v. Hydro-Québec, 1997 CanLII 318 (SCC), [1997] 3 SCR 213, <<https://canlii.ca/t/1fqzr>>; Hydro Quebec was found to be violating an interim order under the *Canadian Environmental Protection Act* for allegedly dumping polychlorinated biphenyls (PCBs) into a river. The respondent brought a motion seeking to have sections of the *Act* and interim order declared *ultra*

⁵ See pages 31-32 of the PMRA glyphosate Re-evaluation Decision – RVD2017-01 which is now available at: https://publications.gc.ca/collections/collection_2017/sc-hc/H113-28/H113-28-2017-1-eng.pdf

⁶ Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 (CanLII), [2019] 4 SCR 653, <<https://canlii.ca/t/j46kb>> Available at: <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/18078/1/document.do>

⁷ *Friends of the Earth Canada v. Canada (Attorney General)*, 2025 FC 300 (CanLII), <<https://canlii.ca/t/k9lrw>>.

⁸ A sixth ruling used the term “toxic” as a metaphor for a hostile social environment at work.

vires the Parliament of Canada since they do not fall within any federal head of power. However, the court found that the impugned provisions were valid legislation under criminal law power and that the presence of toxic substances in the environment is a matter of national concern.

- *Klewchuk v. City of Burnaby* (No. 6), 2022 BCHRT 29 (CanLII), <<https://canlii.ca/t/jmd77>>: The court dismissed an allegation of relation for filing a human rights complaint alleging discrimination on the basis of disability related to an employee's allergy to latex, etc. on the basis that the reason for her failure to be promoted was related to competence and suitability and the toxicity issue was collateral.
- *Krywyj v. Steele*, 2022 HRT0 8 (CanLII), <<https://canlii.ca/t/jmr9x>>: The complainant alleged discrimination and harassment in housing because of disability, and reprisal for seeking accommodation whose disabilities required a smoke, fragrance and chemical-free living space as an accommodation when she rented a room in the respondent's rental house on a short-term basis. The court concluded, in part: that the allegations that the respondent rooming-house landlord "created laundry fumes, burned incense in the house, put out ashtrays to encourage smoking on the patio...used fragrance that would drift into her space...On their face, these activities are regular and expected activities. In the normal course, these activities are not considered negative, unusual...Further, for reasons discussed above, the applicant has not established that any of these activities were harmful to her because of her disabilities..." (at para 52]
- *Foote v. Essence Pilates and another*, 2021 BCHRT 77 (CanLII), <<https://canlii.ca/t/jgkx3>>: The complainant alleged that the respondent fitness studio discriminated against him on the basis of physical and mental disability when the studio filled his spot in his weekly classes with other clients, and subsequently barred him permanently. The tribunal concluded that the complaint reasonably accommodated him by offering alternate classes during the painting activities elsewhere, but returned the matter for mediation the *prima facie* case for discrimination in the permanent barring. (paras 108-110).
- *Dzafic v. Edmonds Place Housing Co-operative*, 2017 BCHRT 58 (CanLII), <<https://canlii.ca/t/h0qfn>>: A resident with multiple comorbidities living in a coop housing unit complained that the Co-op installed vinyl plank flooring in the bathroom and planned to do so throughout the unit which he and his medical doctor claim gassing-off from chemicals used to glue the vinyl plank caused him shortness of breath, throat irritations, coughing and nausea that will cause both short-term and long-term negative side effects on his health, and would be detrimental to his cancer recovery process, his allergies and respiratory and heart conditions. Instead, he sought to have the Co-op install laminate. The tribunal denied an application by the Coop to summarily dismiss the complaint and referred the matter back to mediation and the usual dispute resolution process. [paragraphs 4, 7 and 43)
- *Biondic v. Intact Financial Corporation*, 2017 HRT0 80 (CanLII), <<https://canlii.ca/t/gx2bx>>: The applicant alleged that smoke from tobacco and drugs, and paint and a caustic product cause her shortness of breath, burning in her throat and chest and feelings of irritability, joint swelling, pain and stiffness, heart palpitations, sleep disturbances. While the applicant did send multiple letters to the Tribunal (mostly asking for filing extension) and testified at least one hearing, she had failed to meet multiple filing deadlines, while initiating several additional complaints to the Tribunal. The Tribunal dismissed her complaint as an abuse of process and denied her request to anonymize her complaint which she argued was necessary to conceal her location from a stalker against whom she has a restraining order. [paras.43 and 99 and Supplementary reasons para. 20]

There may have been more favourable unreported resolutions to human rights complaints in such forums, though there were no specific mention of claims related to toxic chemicals or pesticides in the most recent annual reports of the federal, Ontario, or British Columbia human rights commissions. However, the reported outcomes appear to indicate that human rights tribunals may be unwelcome forums for providing relief to persons harmed by toxic chemicals.

There may be a common law duty to disclose risks of toxic chemicals that is more protective than regulatory safeguards under, for instance, the *Pest Control Products Act* and *Canadian Environmental Protection Act*. For example, the Supreme Court of Canada held that there is a general duty to disclose risks to consumers in *Hollis v. Dow Corning Corp*:

*A manufacturer of a product has a duty in tort to warn consumers of dangers it knows or ought to know are inherent in the product's use. This duty is a continuing one, requiring manufacturers to warn not only of dangers known at the time of sale, but also of dangers discovered after the product has been sold and delivered. All warnings must be reasonably communicated, and must clearly describe any specific dangers that arise from the ordinary use of the product. The duty to warn serves to correct the knowledge imbalance between manufacturers and consumers by alerting consumers to any dangers and allowing them to make informed decisions concerning the safe use of the product.*⁹

Hollis cited with approval in paragraph 20 the Supreme Court of Canada's own 1972 decision in *Lambert v. Lastoplex Chemicals*:

*Manufacturers owe a duty to consumers of their products to see that there are no defects in manufacture which are likely to give rise to injury in the ordinary course of use. Their duty does not, however, end if the product, although suitable for the purpose for which it is manufactured and marketed, is at the same time dangerous to use; and if they are aware of its dangerous character they cannot, without more, pass the risk of injury to the consumer.*¹⁰

Lambert has been cited with approval by dozens of Canadian courts, including recently by the Alberta and Ontario Courts of Appeal.¹¹ Coincidentally, the *Lambert* case was about the harm caused by the pilot light of a methane-fueled furnace (i.e., natural gas) igniting an aerosolized sealant causing an explosion that inflicted serious heat-related injury and property damage.

Common law duties to warn about the risks of consumer products require private lawsuits to enforce compliance.

2. Contributions of international instruments:

⁹ *Hollis v. Dow Corning Corp.*, 1995 (Supreme Court of Canada), [1995] 4 *Supreme Court Reports* 634. Available at: <https://canlii.ca/t/1frdr>

¹⁰ *Lambert v. Lastoplex Chemicals*, 1971 CanLII 27 (SCC), [1972] *Supreme Court Reports* 569. Available at: <https://canlii.ca/t/1twsz>.

¹¹ *St Isidore Co-op Limited v AG Growth International Inc*, 2020 Alberta Court of Appeal, 447 (CanLII). Available at: <https://canlii.ca/t/jc2xz> and *Burr v. Tecumseh Products of Canada Limited*, 2023 Ontario Court of Appeal 135 (CanLII). Available at: <https://canlii.ca/t/jvw3n>

Consider recognizing the progress made by the United Nations Human Rights Council's efforts to negotiate a [legally binding treaty by its "Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights"](#) and encouraging member states to conscientiously and expeditiously come to an agreement as soon as possible in the Chair's pathway to a treaty by 2027, 11 years after the Open-Ended Working Group was mandated to do so. Its current draft, addresses issues related to the

- i. burden and onus of proof,
- ii. disclosure/discovery of evidence and access to information,
- iii. solicitors costs,
- iv. flexible statutes of limitation
- v. sufficient legal assistance to victims/rights-holders and mutual assistance between governments
- vi. rules about the applicable law are conducive to pursuing just results
- vii. a victim fund (to financially support plaintiffs/complainants) and awarding solicitors' costs
- viii. standing of complainants/plaintiffs, including class and public interest representatives
- ix. prevention of rights violations (by governments) and abuses (by commercial actors), including exercising due diligence throughout the supply chain
- x. conflict-of-interest safeguards in public policy and lawmaking,
- xi. definitions and scope of application
- xii. procedural rights in law enforcement and reform, including protection against reprisals
- xiii. access to remedy
- xiv. considerations about the primacy of human rights in relation to contractual, commercial or trade rights (which often have superior enforcement and compliance mechanisms
- xv. undertakings by state parties to enact treaty-implementing national legislation;
- xvi. protecting vulnerable people and communities and using equity as a guiding principle
- xvii. recognizing the typical imbalance of power between alleged corporate rights abusers and complainants/plaintiffs
- xviii. international cooperation,

Future negotiations will be supported by five commissioned legal experts.

HRC Decision 56/116 (entitled "Enhancing the support capabilities of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, established by Human Rights Council Resolution 26/9") decided, *inter alia*, that:

..."starting in 2025, for a period of three years, the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights will convene no more than 10 full-day intersessional thematic consultations each year, in Geneva, ... for the purpose of discussing clusters of articles of the draft legally binding instrument currently being negotiated in line with the mandate established by the Human Rights Council in its Resolution 26/9".

Due diligence standards set and monitored by lending institutions (such as the International Financial Corporation World Bank Group¹²) and new European Union requirements for large companies to

¹² IFC. Setting ESG Standards & Advancing Sustainable Finance. IFC. undated. Available at: <https://www.ifc.org/en/what-we-do/sector-expertise/sustainability>

conduct human rights due diligence assessments throughout their supply chains (with full implementation by July 2029) may provide meaningful protection against harm from toxic chemicals and pesticides.¹³

3. Collective claims:

A national class action alleging harm from Non-Hodgkin's Lymphoma caused by glyphosate was certified by an Ontario Superior Court in December 2023. The certification paves the way for settlement negotiations and further steps in the trial process, the first of which was a case conference in January 2025 pursuant to which the presiding judge issued an order on March 3, 2025 approving a timetable for exchange of pleadings on an approximately 150-day completion schedule.¹⁴ A central argument of Bayer-Monsanto is that glyphosate must be safe because it has been approved by Health Canada's Pest Management Regulatory Agency and government regulators in other countries. On that point, Justice Grace cited with approval the late Ontario Justice Edward Belobaba in an analogous defective metal hip implant case:

...regulatory compliance is not dispositive of common law duties. Health Canada is an imperfect regulator and Canadian courts have repeatedly certified class actions involving medical products that were not recalled and were still on the market.¹⁵

However, the 2024 Annual Report to shareholders of Bayer Inc. (owner of Monsanto, the original patent holder of glyphosate and significant producer) published in March 2025 states:

Roundup™ (glyphosate): A large number of lawsuits from plaintiffs claiming to have been exposed to glyphosate-based products manufactured by Bayer's subsidiary Monsanto Company ("Monsanto")...[and] allege personal injuries resulting from exposure to those products, including non-Hodgkin lymphoma (NHL) and multiple myeloma, and are seeking compensatory and punitive damages. The plaintiffs are claiming, inter alia, that the glyphosate-based herbicide products are defective and that Monsanto knew, or should have known, of the risks allegedly associated with such products and failed to adequately warn its users. Additional lawsuits are anticipated...As of

¹³ See: European Commission. Corporate Sustainability Due Diligence. Brussels: EC, 2025. Available at: https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en

¹⁴ Centre for Health Science and Law. MEDIA STATEMENT FOR THE RECORD Ontario superior court certifies Canada-wide class action seeking compensation for cancer alleged to be caused by Bayer-Monsanto's glyphosate-containing Round-Up pesticide. Ottawa: CHSL, January 2, 2024 Available at: <http://healthscienceandlaw.ca/wp-content/uploads/2024/01/January2-2024-Ontario-Court-Certifies-NationalGlyphosateClassAction.pdf> See also, Justice J. Kalajdzic's Order dated March 3, 2025 in Walker and Deblock v. Monsanto, Bayer, et al. Court File #CV-19-00000699-00CP

¹⁵ *DeBlock v. Monsanto Canada ULC*, 2023 ONSC 6954 (CanLII), <<https://canlii.ca/t/k1129>> at para. 186. See also: Centre for Health Science and Law, MEDIA STATEMENT FOR THE RECORD: Ontario superior court certifies Canada-wide class action seeking compensation for cancer alleged to be caused by Bayer-Monsanto's glyphosate-containing Round-Up pesticide. January 2, 2024. Available at: <http://healthscienceandlaw.ca/wp-content/uploads/2024/01/January2-2024-Ontario-Court-Certifies-NationalGlyphosateClassAction.pdf>

January 31, 2025, Monsanto had reached settlements and/or was close to settling in a substantial number of claims. Of the approximately 181,000 claims in total, approximately 114,000 have been settled or are not eligible for various reasons.

As of January 31, 2025, there have been 27 Roundup™ trials concluded before both federal and state courts in California, Missouri, Oregon, Arkansas, Delaware, Illinois and Pennsylvania. In 17 of those trials, favorable outcomes were achieved on behalf of Monsanto, including 13 defense verdicts, one hung jury resulting in a mistrial, one mistrial based on plaintiff's motion, one directed verdict on behalf of Monsanto, and one dismissal of plaintiff's claims with prejudice mid-trial. In the other 10 trials, the plaintiffs were awarded compensatory damages and, in most cases, a multiple thereof in punitive damages. A few of these cases have been settled later, but in most cases Monsanto has filed post-trial motions or appealed the jury verdicts. Our motions challenge these verdicts based on, in our opinion, numerous evidentiary and legal errors, as well as unconstitutionally excessive damage awards....As of December 31, 2024, Bayer's provision for the glyphosate litigation totaled US\$5.9 billion (€5.7 billion). Bayer continues to believe there is no reason for safety concerns in connection with the products mentioned above....As of January 31, 2025, a total of 29 Canadian lawsuits (class actions and individual actions) relating to Roundup™ are pending against Bayer. The lead class action was partially certified and will proceed on the merits. Bayer believes it has meritorious defenses and intends to defend the safety of glyphosate and our glyphosate-based formulations vigorously.¹⁶

4. Environmental and human rights principles:

As indicated when the United Nations General Assembly passed its historic resolution affirming the right to a healthy environment in 2022, most member states's constitutions proclaim a people's right to a healthy environment or a declaration of the state's duty to protect the environment. Canada is not among them, however, in 2023, the Canadian Parliament assented to S-5, which amended the *Canadian Environmental Protection Act* to incorporate a limited right to a healthy environment within the scope of that Act's. An implementation framework is pending though there are concerns that the "right" may be reduced to a non-justiciable "consideration," or left to expensive, iterative articulation by judge-made law largely because no quasi-judicial human rights tribunal has been identified to adjudicate breaches of that right and no penalties have been specified for its breach. These shortcomings could be remedied by regulatory reforms promulgated by the executive branch of the federal government, but doing so has not yet been identified as a priority by the government.¹⁷

According to the database of national constitutions at www.ConstitutionProject.org, approximately 4 out of 5 national governments have some form of acknowledgement of the right to a healthy environment (or corresponding state duties to protect the environment).

¹⁶ Bayer. *Annual Report 2024: Health for all, hunger for none*. Available at: Yes: <https://www.bayer.com/sites/default/files/2025-03/bayer-annual-report-2024.pdf> dated March 5, 2025: <https://www.bayer.com/en/investors/integrated-annual-reports>

¹⁷ Toxics Caucus of the Canadian Environmental Network. Submission in the consultation on Right to a Healthy Environment Draft Implementation Framework and in the Canadian Environmental Protection Act, 1999. December 4, 2024. Available at: <https://drive.google.com/file/d/1fC-fwvEL-sE3t7BVjvOvvwWFjQ1x16QD/view>

The constitutions of Argentina, Ecuador, Micronesia, Paraguay, and Venezuela prohibit the import of toxic chemicals into their territories. Guatemala's constitution expressly recognizes the importance of protecting vulnerable communities by declaring that the State:

“will see to the establishment and programming of the primary attention to health, and for the improvement of the conditions of the basic environmental sanitation of the least protected communities.”

Some constitutions expressly recognize the duty of the state to make reparations for harm caused by toxic substances. For instance, Paraguay's constitution stipulates that:

“Ecological crime will be defined and sanctioned by the law. Any damage to the environment will result in the obligation to repair and to indemnify.”

Interestingly, some constitutions expressly prohibit the manufacturing, testing, storage and/or use of chemical weapons (e.g., Bolivia, Cambodia, Columbia, Dominican Republic, Ecuador, Iraq, Myanmar, Palau, and Paraguay); though the volume of fatalities attributed to routine use of pesticides and toxic chemicals in commerce annually ([2 million deaths/year according to WHO](#)) far exceeds the sum of all fatal uses of chemical warfare in armed conflict.

5. Role of access to information and public participation:

Pesticides and toxic chemicals are regulated differently; both can harm workers and make their ways the bodies of humans through the market and community uses, though there is a general rural/urban differentiation. In Canada, reports of their use and introduction into the social and natural environments are reported differently and in ways that are suboptimal for measuring potential harm, especially inequitable harm. Exposure to toxic chemical risk comes from systematic and accidental releases into the environment through shipping, use in the public, commercial, and residential, infrastructure, occupational settings, cleaning, adhesive, personal care and other consumer products, storage and transportation, and waste disposal. Establishing a legal case for obtaining remedies for discriminatory would be aided by obtaining quantified and geo-located differential exposure of human equity groups to harm from toxic chemicals and pesticides from facility releases into neighbouring communities that have high proportions of visible minorities, socioeconomic disadvantage, or low fluency in official languages.

Access to such information is a key prerequisite for communities participating in environmental impact assessments when they are required and public consultations on regulatory measures to scientifically evaluate and reevaluate active ingredients in pesticides (required at least every 15 years), registrations and re-registrations of licensed formulations of pesticides (required every 5 years), and administrative and regulatory decisions regarding toxic chemicals. Public consultations often expect input to be provided within 60-day windows where technical expertise is expected on subsets of an estimated 30,000 chemicals, 1,400 active ingredient pesticides sold in Canada and 7,500 registered pesticide formulations (which often differ toxicologically from the active ingredients). Effectively participating in consultation is extremely onerous. The federal government employs more than 2,200 public servants in the work of regulating toxic chemicals, pesticides, and substance waste management,¹⁸ but funds only a handful of

¹⁸ Although actual spending for fiscal year 2023-2024 has not been updated yet, the combined number of Full-time Equivalent public servants dedicated to Health Canada's "Health Impacts of Chemicals Program" and Environment and Climate Change Canada's "Substance and Waste Management Program" rose from 1,216 in fiscal year 2022-2023 to 1,623 in 2024-2025, a 33% rise. See: Government of Canada. Actual and Planned Full-Time Equivalents (FTEs) by Program: Government of

civil society organizations to participate the governance and chemical-specific consultations, typically on short-term grants.¹⁹ In April of 2024, that funding was suspended completely for several months and the funds were re-routed to sole-source contracts with open applications available only for one funding for a fraction of a full-time equivalent open for transparent application with an unfunded 14-month gap.²⁰

Problems with access to information is exacerbated by weak and imprecise rules about access to confidential business information that weigh heavily in favour of commercial actors and impede access to non-confidential documents that are co-mingled with confidential documents and fail to require that vast amounts of quantitative research findings be provided in machine-readable format suitable for re-analysis by independent experts.²¹

The government of Canada agreed to honour the 2022 *Kunming-Montreal Global Biodiversity Framework* (GBF) to [reduce the overall risk from pesticides by at least half by 2030](#). However, the Health Canada's 2020-2021 report to Parliament indicated (at page 11), that [Canadian annual sales of all pesticides increased by 20% between 2014 and 2018](#), alone. The most recent (2022-2023) report to Parliament reported different numbers but [revealed a persisting 25% rise for 2014 and 2015 sales, rather than the expected downward trend](#) (at page 14). While it remains conceivable that many high-high toxicity pesticides have been replaced by lower-toxic and rising sales quantities, the government does not publicly report the amounts of sales of all pesticides and does not appear to have a formula for calculating overall toxicity, setting annual targets for a reducing harm or usage or publicly reporting progress. To meet this target by 2030 the federal government should establish:

- enforceable,
- quantified,

Canada. Updated August 19, 2024. Available at:

[https://www.tbs-sct.canada.ca/ems-sgd/edb-bdd/index-eng.html#rpb/-/\(table.-.'programFtes.-.'subject.-.'gov_gov.-.'column s.-.'\(-.'*7b*7bpa_last_year_5*7d*7d.-.'*7b*7bpa_last_year_4*7d*7d.-.'*7b*7bpa_last_year_3*7d*7d.-.'*7b*7bpa_last_year_2*7d*7d.-.'*7b*7bpa_last_year*7d*7d.-.'*7b*7bplanning_year_1*7d*7d.-.'*7b*7bplanning_year_2*7d*7d.-.'*7b*7bplanning_year_3*7d*7d\)\)](https://www.tbs-sct.canada.ca/ems-sgd/edb-bdd/index-eng.html#rpb/-/(table.-.'programFtes.-.'subject.-.'gov_gov.-.'column s.-.'(-.'*7b*7bpa_last_year_5*7d*7d.-.'*7b*7bpa_last_year_4*7d*7d.-.'*7b*7bpa_last_year_3*7d*7d.-.'*7b*7bpa_last_year_2*7d*7d.-.'*7b*7bpa_last_year*7d*7d.-.'*7b*7bplanning_year_1*7d*7d.-.'*7b*7bplanning_year_2*7d*7d.-.'*7b*7bplanning_year_3*7d*7d)))

¹⁹ Although actual spending for fiscal year 2023-2024 has not been updated yet, the combined number of Full-time Equivalent public servants dedicated to Health Canada's "Health Impacts of Chemicals Program" and Environment and Climate Change Canada's "Substance and Waste Management Program" rose from 1,216 in fiscal year 2022-2023 to 1,623 in 2024-2025, a 33% rise. See: Government of Canada. Actual and Planned Full-Time Equivalents (FTEs) by Program: Government of Canada. Updated August 19, 2024. Available at:

[https://www.tbs-sct.canada.ca/ems-sgd/edb-bdd/index-eng.html#rpb/-/\(table.-.'programFtes.-.'subject.-.'gov_gov.-.'column s.-.'\(-.'*7b*7bpa_last_year_5*7d*7d.-.'*7b*7bpa_last_year_4*7d*7d.-.'*7b*7bpa_last_year_3*7d*7d.-.'*7b*7bpa_last_year_2*7d*7d.-.'*7b*7bpa_last_year*7d*7d.-.'*7b*7bplanning_year_1*7d*7d.-.'*7b*7bplanning_year_2*7d*7d.-.'*7b*7bplanning_year_3*7d*7d\)\)](https://www.tbs-sct.canada.ca/ems-sgd/edb-bdd/index-eng.html#rpb/-/(table.-.'programFtes.-.'subject.-.'gov_gov.-.'column s.-.'(-.'*7b*7bpa_last_year_5*7d*7d.-.'*7b*7bpa_last_year_4*7d*7d.-.'*7b*7bpa_last_year_3*7d*7d.-.'*7b*7bpa_last_year_2*7d*7d.-.'*7b*7bpa_last_year*7d*7d.-.'*7b*7bplanning_year_1*7d*7d.-.'*7b*7bplanning_year_2*7d*7d.-.'*7b*7bplanning_year_3*7d*7d)))

²⁰ Letter to Ministers of Health and Environment from the Canadian Environmental Network Toxics Caucus re: Suspending funding for civil society engagement in the Chemical Management Plan. October 25, 2024. Available at: <https://drive.google.com/file/d/11opK6pU646u1ewssutlicHNRFI-5yIVc/view>

²¹ See: Centre for Health Science and Law's submission to Health Canada on its proposal to address confidential business information in the regulation of pesticides. August 24, 2024. Available at: <http://healthscienceandlaw.ca/wp-content/uploads/2024/09/Aug24-2024.ConfidentialTestData-Pesticides.pdf>; and submission by the Canadian Environmental Network's Toxics Caucus submission to Health Canada's Chemical Management Plan leadership concerning its draft Plan of Priorities, December 4, 2024. Available at: <https://drive.google.com/file/d/11opK6pU646u1ewssutlicHNRFI-5yIVc/view>

- time-delimited,
- targets,
- with annual quantitative published progress reports.

Sellers are required by law²² to report the amount sold to the PMRA and the Regulatory Impact Assessment that accompanied the final regulations in the *Canada Gazette* clearly indicated that one of the purposes of such reporting was publishing the totals for each approved active ingredient.²³ However, the sales data are reported for each substance in wide ranges only (e.g., “> 25 million kg in a year when the actual total sold was 46 million kg), rather than specific totals.²⁴ This makes it impossible for members of the public or researchers to acquire such data through data that are available from commercial sources that sell such data in a variety of formats for thousands of dollars which is prohibitively expensive for public interest organizations, concerned citizens and many plaintiffs.

A formal request for information about the precise amounts of pesticides sold in Canada filed under the federal Access to Information Act on January 3, 2023 remains unfulfilled. The fact that annual amounts of glyphosate sold for the years were disclosure when requested during litigation makes it clear that such information is available; that data indicates that the amount of glyphosate used in Canada (56,000 tonnes) is approximately half of the amount used in the United States (125,000 tonnes in 2014²⁵) though the population exceeds Canada by 9-fold), and exceeds the amount used in the European Union (approx. 44 tons²⁶). The disclosure of the amounts of Likewise, a request for "communications about proposed new requirements for consumer chemical products" on July 21, 2023 remains unfulfilled.

²² *Pest Control Products Sales Information Reporting Regulations* (SOR/2006-261). Available at: <https://laws-lois.justice.gc.ca/PDF/SOR-2006-261.pdf>

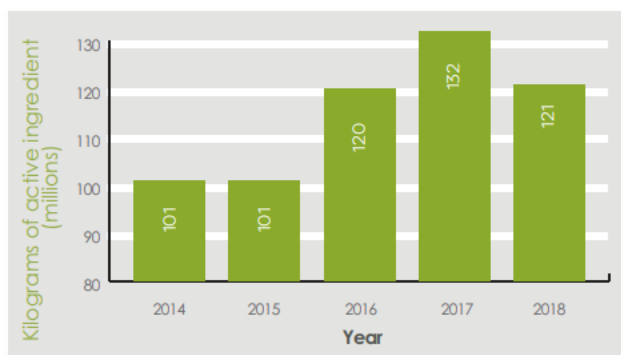
²³ The RIAS states, in part:

Under the PCPA, the Minister must establish a Register of Pest Control Products containing extensive information about pesticides, including sales information provided by registrants to the Minister pursuant to subsection 8(5). The public does not have access to any information in the Register that is recognized by the Act as confidential business information (CBI). The definition of CBI in the PCPA includes the monetary value of sales of pesticides (at page 1677) ... Environment Canada and PMRA have made arrangements to ensure that pesticide information collected under these Regulations will not be collected in duplicate under Environment Canada's National Pollution Release Inventory. PMRA will be able to share information with Environment Canada as required to support their requirements. This arrangement will minimize the regulatory burden on registrants. (at page 1680)... PMRA must ensure that the public is allowed access to information in the Register, such as sales information, while at the same time preventing the monetary value of sales from being disclosed. PMRA intends to roll up the sales information for enduse products containing active ingredients found in three or fewer products into groups of products before it is placed in the Register and thereby subject to public disclosure. To address the concern regarding the possibility of erroneous public perceptions about the extent of pesticide use, PMRA will ensure that publicly released reports on pesticide sales clearly state that the figures represent quantities "made available for sale to users" only. (1685)

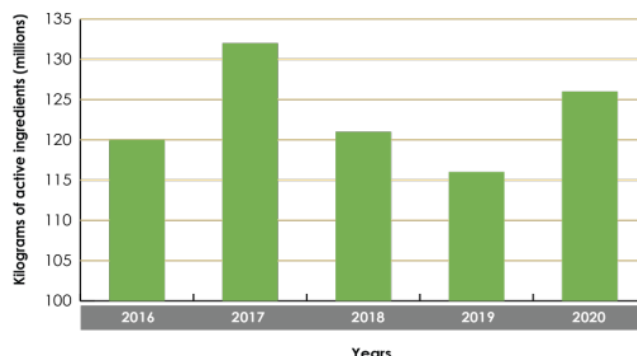
²⁴ Health Canada. Pest Control Products Sales Report for 2016. Ottawa: Health Canada, 2018 at page 19. Available at: https://publications.gc.ca/collections/collection_2020/sc-hc/h111-3/H111-3-2016-eng.pdf

²⁵ Benbrook CM. Trends in glyphosate herbicide use in the United States and globally. *Environ Sci Eur.* 2016;28(1):3. doi: 10.1186/s12302-016-0070-0. Epub 2016 Feb 2 at page 5. Available at: https://pmc.ncbi.nlm.nih.gov/articles/PMC5044953/pdf/12302_2016_Article_70.pdf

²⁶ Antier C, Andersson R, Auskalnienė O, Barić K, Baret P, Besenhofer G, Calha I, Carrola Dos Santos S, de Cauwer B, Chachalis D, Dorner Z, Follak S, Forristal D, Gaskov S, Gonzalez Andujar JL, Hull R, Jalli H, Kierzek R et al (2020). A survey on the uses of glyphosate in European countries. INRAE. Available at: <https://edepot.wur.nl/522852>



Quantity of Pesticides Sold in Canada (2016-2020)



Glyphosate sales data	
The 2007 data did not go through a thorough quality assurance process due to the quantity of errors found. The numbers provided here are not to be considered accurate.	
Year	Kilograms of active ingredients sold
2007	37100782.06
2008	27774711.56
2009	28133097.24
2010	34342279.52
2011	34674229.42
2012	40514947.17
2013	44200607.66
2014	39232741.39
2015	35457721.95
2016	46491786.55
2017	56007308.14

Document Released Under the Access to Information Act by Health Canada / Document divulgué en vertu de la Loi sur l'accès à l'information par Santé Canada

Most PMRA decisions are not published but made available only on request at: <https://www.canada.ca/en/health-canada/services/consumer-product-safety/reports-publications/pesticide-s-pest-management/decisions-updates.html>

Parliament has recognized the importance of decisions taken by 38 OECD countries (22 of which are members of the European Union) in section 17 of the *Pest Control Products Act*, which states:

Special review where OECD ban

(2) Without limiting the generality of subsection (1), when a member country of the Organisation for Economic Co-operation and Development prohibits all uses of an active ingredient for health or environmental reasons, the Minister shall initiate a special review of registered pest control products containing that active ingredient.

The Minister has conducted only [17 such special reviews of pesticides](#), however of the 577 [pesticide sold in Canada in 2018 \(and presumably approved for used here\)](#), 56 were banned in at least 22 OECD countries of the EU or banned in at least one OECD country and not approved in the EU (49 more pesticides).²⁷ Considering this, it seems that the Minister does not automatically conduct Special Reviews as required by Parliament in section 17(2) of the *Act*. Furthermore, of the 16 Special Reviews

²⁷ Pest Action Network International. PAN International Consolidated List of Banned Pesticides. Updated May 2022. London, UK. Available at: <https://pan-international.org/contact/> This list was cross-referenced with Health Canada's "Pest Control Products Sales Report for 2018," Ottawa. 2020. Available at: https://publications.gc.ca/collections/collection_2020/sc-hc/h111-3/H111-3-2018-eng.pdf

conducted on pesticides since 2008, only one led to a substance being banned in Canada; 13 of those 16 pesticides are banned in between 28 and 109 countries.²⁸

Likewise, at least 95 pesticides that were sold on the Canadian market in 2021 are on the Pesticide Action Network list of 297 highly hazardous pesticides as of December 2016, though at least one (Chlorpyrifos) was later banned in Canada and is expected to be off the market by next year. [The Pesticide Action Network list is cited by the United Nations Environment Programme](#) and includes pesticides that are banned in at least one country or not approved and considered to be highly or extremely hazardous by PAN.

A Baltimore law firm estimated that [Bayer had paid US\\$11 billion in glyphosate settlements by November 2023](#), though has not yet admitted liability. Not even the [US Attorney General nor the U.S. Supreme Court thought it fair to interfere](#) with the lawsuits claiming compensation for glyphosate causing Non-Hodgkin's Lymphoma in farm workers. According to [Health Canada's 2017 decision to approve glyphosate until April 27, 2032](#), 'Canada and the [U.S. Environmental Protection Agency] have been collaborating on the re-evaluation of glyphosate.' In 2023, the [New York Attorney General's office ordered Bayer-Monsanto to cease claiming glyphosate is "non-toxic."](#)

A consortium of six European environmental groups began the first step to challenge, in the European Court of Justice, the European Commission's recent reapproval of glyphosate for 10 years. according to the PAN Action Network, the European Commission, the European Food Safety Authority (EFSA) and the European Chemicals Agency (ECHA) have failed to uphold their obligation to protect European citizens and the environment by not adhering to the EU law and case law on Pesticide Regulation and the precautionary principle. They stated:

"The authorities have systematically rejected all data from the independent scientific literature, basing their assessment solely on data supplied by manufacturers." And "Given the evidence uncovered in the US court cases of Monsanto's efforts to influence previous EU approval procedures, we would have expected the authorities to scrutinise the glyphosate manufacturers' studies particularly closely this time. However, the authorities repeated the conclusions of previous approval procedures in a copy-and-paste manner - even when the arguments were based on outdated manufacturer studies that are now generally considered unacceptable...After 2 rounds of votes among Member States the Commission failed to obtain a qualified majority. In the second vote, only Member States representing 42% of the EU population supported this proposal, but the Commission still decided to move forward and impose the reapproval of glyphosate."

The NGOs argue, much like Canadian NGOs and class representatives have in recent Canadian litigation, that the European Food Safety Agency and the European Chemicals Agency:

1. Cherry-picked the science
2. Ignored new science finding that glyphosate is carcinogenic (cancer causing)
3. Genotoxicity shown in non-industry studies
4. Did not properly assess neurotoxicity

²⁸ Health Canada's Pest Management Regulatory Agency. Decisions and updates. Accessed February 10, 2024. Available at: <https://www.canada.ca/en/health-canada/services/consumer-product-safety/reports-publications/pesticides-pest-management/decisions-updates.html#dataset-filter>

5. Did not adequately assess the impact of Glyphosate on the microbiome
6. EFSA failed to disclose vital information on insect, bird and amphibian toxicity
7. Did not properly assess the impact of complete and representative pesticide formulation (rather than the active ingredient in isolation).²⁹

[Section-80.1 of the Pest Control Products Act mandates a Parliamentary review](#) of the Act every seven years. In 2023, Health Canada conducted a “targeted review” in anticipation of the House of Commons scrutiny (that is now 3-5 years overdue³⁰), but failed to fundamentally come to terms with PMRA’s:

- a) stated preference for seller-sponsored studies,
- b) persistent refusal to consider litigation findings about glyphosate risk,
- c) reliance on the U.S. Environmental Protection Agency’s flawed scientific evaluation process for glyphosate,
- d) secretiveness about the 89,000-page Canadian application dossier for glyphosate,
- e) failure to consider thousands of studies ([now more than 17,000](#)) assessing glyphosate published in peer-reviewed scientific journals,
- f) bizarre use of outdated US food consumption data to estimate Canadian dietary exposure to glyphosate,
- g) reliance on a mischaracterization of the precarious regulatory status of glyphosate in Europe, and
- h) general failure to apply conflict-of-interest safeguards

all of which seem to exhibit a general bias in favour of pesticide manufacturers over health and environmental protection and seem to require proof of certainty of risk as the threshold for warning farmers and consumers on labels. See CHSL’s August 2023 [submission to the “targeted review”](#) and July 2023 [statement about the resignation of the Chair of Health Canada’s Pest Control Products Scientific Advisory Committee](#).

In February 2022, the [Canadian Federal Court of Appeal ordered Health Canada to re-consider an objection to part of its glyphosate reapproval decision, but Safe Food Matters is back in Federal Court arguing that Health Canada failed to adhere to guidance from the Court of Appeal](#). CHSL indicated by correspondence to [Federal trial court that it would refrain from perfecting its application to intervene until the Court ruled on a motion by Safe Food Matter requesting to the Court to consider evidence of regulatory capture](#) which would include evidence that the Ontario and California courts already acknowledged are persuasive of conduct by the company warranting punitive damages. The Court has not yet ruled on the motion.

²⁹ Pesticide Action Network. Statement: NGOs initiate legal challenge against EU glyphosate re-approval. January 25, 2024. Available at:

<https://www.pan-europe.info/press-releases/2024/01/ngos-initiate-legal-challenge-against-eu-glyphosate-re-approval>

³⁰ According to the official consolidation of the *Act*, Statutory Instrument SI/2006-93 ordered the *Act* to come into force on June 28, 2006. As such, the second review was due to be referred to the Parliamentary Committee by June 28, 2020. The first section 80.1 review of the *Act* was commenced by the House of Commons Standing Committee on Health on December 9, 2014, and tabled in the House of Commons on April 28, 2015, which, at best, means the pending review is three years overdue. See: The Statutory Review of the Pest Control Products Act, 2015 Report of the Standing Committee on Health Ben Lobb Chair April 2015 41st Parliament, 2nd session. Available at:

<https://www.ourcommons.ca/Content/Committee/412/HESA/Reports/RP7937703/hesarp10/hesarp10-e.pdf>

6. Barriers to justice:

See section 2 concerning international instruments.

Until 2022, there was divided judicial opinion about the qualification of civil society organizations to bring legal challenges to laws or government practices alleged to infringe the rights of vulnerable parties. In *British Columbia v. Council of Canadians with Disabilities*, a provincial attorney general petitioned the court to strike a claim seeking constitutional relief from an allegedly discriminatory law after the co-applicant natural persons withdrew from the case for reasons unrelated to the merits of or their desire for a successful outcome. Ultimately, the civil society organization appealed to the Supreme Court of Canada which ruled that so long as the representative organization is able to furnish the court with a sufficient factual matrix to inform a decision (and other uncontested requirements are met), standing should be granted.³¹

Court filing fees are generally nominal in Canada and all provinces operate small claims courts for disputes involving less than the equivalent of US\$12,000-US\$40,000. However, class actions and claims for personal injuries such as wrongful death and long-term or permanent disability resulting from exposure to toxic chemicals or pesticides are very complex and require the assistance of expensive legal counsel and expert witnesses for which there is no public assistance. If legal actions are brought against large companies, there is a risk of further expense and delay due to appeals of interlocutory motions and trial decisions. In recent years, apparent successes in judicial reviews and appeals where court orders lacked precision, regulators simply modified their behaviour as little as possible to comply with the court directive. Because courts generally do not remain seized of matters when they issue orders, public health and environmental protection groups must choose between accepting relief that does not seem meaningful or compliant with the spirit of the order, or launching fresh lawsuits.

https://docs.google.com/document/d/1ag-RqRSOm07e5fADG9DzhwtX7yxRi_GB/edit

The vast majority of judicial decisions in Canada are made in traditional fixed urban physical courts buildings in cities and towns. COVID-19 did stimulate the use of remote participation and viewing of court hearings, though generally at the discretion of the presiding judge. The three north territories of Canada—Nunavut, Northwest Territories and Yukon are home to only 0.3% of the population of Canada but comprise one-third of Canada's landmass. As such, they make expensive use of circuit courts which is described in a federal government document: [Legal Service Provision in Northern Canada Summary of Research in the Northwest Territories, Nunavut, and the Yukon](#).

Finally, federal and most provincial governments operate quasi-judicial consumer protection offices that operate on a complaint-based system to address misleading or deceptive commercial advertising that could be used to achieve remedies for products or services that provide inadequate warnings about toxic chemicals or pesticides. Section 9 of the *Competition Act* provides an application for a formal inquiry by the Commissioner of Competition if endorsed by six adult Canadian residents.³² However, if an unsatisfactory result is achieved, petitioners would have to accept the result or retain expensive legal representation to appeal to the Federal Court. For instance, the federal *Competition Act* states:

³¹ *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27 (CanLII), [2022] 1 SCR 794, <<https://canlii.ca/t/jpx81>>.

³² *Competition Act*, R.S.C., 1985, c. C-34. Available at: <https://laws-lois.justice.gc.ca/PDF/C-34.pdf>

74.01 (1) *A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,...*

(b.2) makes a representation to the public with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that is not based on adequate and proper substantiation in accordance with internationally recognized methodology. the proof of which lies on the person making the representation.

Furthermore, the quasi-criminal standard is set out, in part, as follows:

False or misleading representations

52 (1) *No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever; knowingly or recklessly make a representation to the public that is false or misleading in a material respect...*

General impression to be considered

(4) *In a prosecution for a contravention of this section, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the representation is false or misleading in a material respect...*

Offence and punishment

(5) *Any person who contravenes subsection (1) is guilty of an offence and liable*

(a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both; or

(b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding one year, or to both.

While the Competition Act does not expressly impugn marketing like advertising that omits the disclosure of material facts as the Quebec Consumer Protection Act, the Ontario *Consumer Protection Act*,³³ and numerous competition acts elsewhere, the use of the “general impression” test in the *Competition Act* test appears to import that feature. In offering guidance on the meaning of the “general impression” test in the context of the Quebec *Consumer Protection Act*, the Supreme Court of Canada offers guidance applicable to the federal *Competition Act*. The Court opined:

[45] Section 218 [of the Quebec Consumer Protection Act] guides the application of all these provisions of Title II. It explains the approach to be used to determine whether a representation is to be considered a prohibited practice. Its wording is based to a large extent on that of s. 52(4) of the Combines Investigation Act, R.S.C. 1985, c. C-23, a slightly different version of which can now be found in s. 52(4) of the Competition Act, R.S.C. 1985, c. C-34 ...[78] For all these reasons, ... A court asked to assess the veracity of³⁴a commercial representation must therefore engage, under s. 218 C.P.A., in a two-step

³³ *Consumer Protection Act*, 2002, S.O. 2002, c. 30, Sched. A, paragraph 14(2)(14). Available at: <https://www.ontario.ca/laws/statute/02c30>

³⁴ *Richard v. Time Inc.*, 2012 SCC 8, [2012] 1 SCR 265. Available online at: <https://canlii.ca/t/fq9tg>

analysis that involves — having regard, provided that the representation lends itself to such an analysis, to the literal meaning of the words used by the merchant — (1) describing the general impression that the representation is likely to convey to a credulous and inexperienced consumer; and (2) determining whether that general impression is true to reality. If the answer at the second step is no, the merchant has engaged in a prohibited practice. [emphasis added]

7. **Differentiated impacts on groups in vulnerable situations:** Barriers faced by individuals and groups in situations of vulnerability, such as Indigenous Peoples, tribal peoples, women, children, rural communities, or defenders of environmental rights, to access justice and remedies in toxic contamination cases, including the differentiated impacts they experience.

In a very real sense, all communities are vulnerable in relation to the most worrisome form of exposure to toxic chemicals because toxics are often invisible and companies that manufacture toxic chemicals: pesticides, synthetic adhesives, plastics (that can contain a variety of toxic chemicals depending on their use), etc. are often very large with extensive legal and economic powers.

The private sector's potential impact on health is often underestimated.

Approximately half of 60 million annual deaths worldwide are attributable to malnutrition in all its forms (food companies), tobacco, inadequate water supply and hygiene, alcohol, exposure to toxic chemicals and pesticides, and suboptimal breastfeeding. And half of the \$100 trillion global economy comprises the consumer price and cost of externalities of unhealthy diet, tobacco, alcohol, toxic chemicals and pesticides, greenhouse gas emissions from ruminant animals, fossil fuels, and the machines they power.³⁵ Enormous pressure on government is brought to bear by large global companies the annual revenue of which often exceeds the gross national income of most national economies.³⁶

According to the [World Health Organization, toxic chemicals \(including pesticides and other chemicals\) cause two million deaths annually worldwide](#), which is on the same order of magnitude as deaths due to poor diet (8 million), [tobacco \(8 million\)](#), and [alcohol \(2.6 million\)](#).

We are not aware of official Canadian estimates of harm caused by toxic chemicals; it may be much higher than the sum of 6,388 deaths attributed to occupational exposure to carcinogens and 2,215 to lead exposure in the general population ([Inst. for Health Metrics and Evaluation, 2021](#)). Even these may be underestimated ([Kromhout, 2020](#)) and do not include threats from many of the 30,000 chemicals to which Canadians are exposed ([Federal Budget 2024](#) at p. 227). Risks of toxic chemicals may be under-estimated by Canadians; PHAC estimated that 238 Canadians die from food poisoning annually ([Thomas, et al., 2015 at 824](#)), likely <<3% of deaths caused by toxic chemicals. Canadian government and academic researchers concluded: “Although previous reviews have investigated inequitable exposures via specific routes of exposure (e.g., indoor air pollution and outdoor air pollution), none, to our knowledge, have focused on carcinogenic exposures more broadly” ([Larsen, 2023 at 2](#)). Their

³⁵ Statement: Summit of the Future Ensuring the primacy of human rights and effective accountability to achieve the Sustainable Development Goals United Nations Headquarters, New York, Sept 22-23, 2024 Available at: <https://tinyurl.com/SDG-accountability>

³⁶ Joint Statement: Summit of the Future Ensuring the primacy of human rights and effective accountability to achieve the Sustainable Development Goals, United Nations Headquarters, New York, Sept 22-23, 2024. Available at: https://docs.google.com/document/d/1ag-RqRSOm07e5fADG9DzhwtX7yxRi_GB/edit?usp=sharing&oid=114905893466759901286&rtpof=true&sd=true

scoping review of 57 articles included 46 concerning the United States. The sole Canadian study addressed general air pollution ([Kershaw, et al., 2013 at 7 and 265-278](#)) and 45 focussed on air pollution, tobacco, or food environments. Occupational exposures were excluded from the scope. ([Larsen et al., 2023 at 4](#)). In 2015, Carex Canada developed a methodology to quantify chemical risk ([Peters et al., 2015, pp. 64-71](#)) that was later cited by [43 PubMed-indexed articles](#), seven of which concerned Canadian exposures, but only in occupational settings. International studies found that exposures are often concentrated in socioeconomically disadvantaged populations ([Larsen et al. 2023 at 2](#)) and that “neighborhoods with higher proportions of low-income residents, racialized people, or same-sex couples had higher exposures to carcinogens and environments that may influence cancer risk...with most research still focusing on air pollution.” ([at 1](#)) A team of Canadian academic and provincial government researchers estimated that 19 chemicals and radiation cause 4,750 new cancers per year in Ontario which they indicated is approximately half the number of cancers attributed to tobacco annually in Ontario and less than the number of cancers attributable to alcohol; data was insufficient to quantify harm of several known carcinogens ([Greco et al. 2020 at 7-8](#)). Consider that tobacco is estimated to cause 45,000 deaths in Canada and alcohol is estimated to cause 18,000 deaths nationally annually due to all causes ([Canadian Partnership Against Cancer](#) and [Canadian Substance Use Costs and Harms Scientific Working Group](#), 2018). Researchers estimated that endocrine-disrupting chemicals caused \$24.6 billion (2010 dollars) in Canada, largely due to impaired cognitive function, but also through contributions to obesity and diabetes. They noted that concern about implementing safeguards against the harms of endocrine disruptors has been stressed by the Endocrine Society, World Health Organization, and the UN Development Program ([Malits, 2022 at 5-7](#)) and was expected to be a key target of reforms then proposed by *Bill C-28* (and later enacted by *Bill S-5*) establishing the right to a healthy environment in [paragraph 2\(1\)\(a.2\)](#) and requiring the government to publish an implementation strategy and annual reports in [section 5.1 the Canadian Environmental Protection Act](#).

The [National Strategy Respecting Environmental Racism and Environmental Justice Act, 2024](#) obliges the Minister of Environment to table in Parliament its first national strategy and reporting elements to promote efforts across Canada to address the harm caused by environmental racism and injustice by June 2026. To effectively identify instances of environmental injustice visited upon vulnerable individuals and communities, human rights defenders need access to three types of anonymized data:

- Detailed demographic information about individual and community vulnerability such as official language fluency, literacy, ethnic or religious identity, and income;
- Quantitative information about exposure to toxic chemicals and pesticides from by mapped local facility emissions, and information about exposures through the consumer marketplace and workplace;
- electronic medical records including toxicology results and diagnoses.

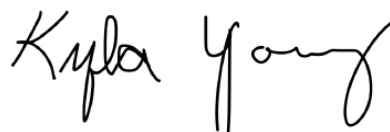
8. Good practices in integral or comprehensive reparations:

We are not aware of exemplary judicial or administrative mechanisms for making whole parties or environments harmed by exposure to toxic chemicals or pesticides, though it bears recalling that prevention is the best form of relief and genuine commitment to implementing the more robust of the domestic and international commitments described in the draft Legally Binding Instrument on business and human rights is a vital measure to ensure remediation where prevention is not achieved.

Respectfully submitted,



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