



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—Ottawa): Bill Jeffery, Executive Director and General Legal Counsel of the Centre for Health Science and Law, made the following statement on the Court's December order.

“While Justice Duncan Grace’s [50-page pre-holiday ruling](#) certifying a national class action may have slipped under the radar of the shrinking national news media, it is a welcome development for Canadians claiming to be harmed by the glyphosate-containing pesticide Round-Up that the World Health Organization describes as a ‘probable carcinogen’ (cancer-causing agent). The Ontario court action alone [claims \\$1.2 billion plus several, as yet unquantified, additional amounts to compensate for damages](#). Although the main elements of proof (especially of causation) remain to be proved in the full trial, Justice Grace described the record before him as ‘mammoth’ and comprising 17,000 pages of legal and factual material. Acknowledging the Supreme Court of Canada’s reminder that “certification is a meaningful screening device” Justice Grace wrote:

I have concluded there is some basis in fact for the plaintiff’s theory of liability, despite the fact its proponents face significant challenges. The required threshold has been crossed.
[para. 124]

Citing a US Circuit Appeals Court ruling that ‘...there was clear and convincing evidence that Monsanto made efforts to impede, discourage, or distort scientific inquiry and the resulting science.’ [at para. 185], Justice Grace also concluded that:

The defendants’ submission that a punitive damages claim lacks any evidentiary foundation is wide of the mark. [at para 186].

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. [at para. 186]

Health Canada’s indifference to the voluminous damning US litigation outcomes and the WHO guidance, its stated preference for industry studies over peer-review research, and its foot-dragging on the Parliamentary Review may be coming home to roost in Canadian courts.”

For further information, contact: Bill Jeffery, Centre for Health Science and Law (CHSL) in Ottawa at billjeffery@healthscienceandlaw.ca; Skype: CHSLBillJeffery, or Mobile/Whatsapp: 613-565-2140.

BACKGROUND

About the Centre for Health Science and Law: CHSL is a non-profit health advocacy organization specializing in food and nutrition issues, especially concerning federal government law and policy. CHSL is accredited by the UN Economic and Social Council (ECOSOC) and a member of the International Association for Consumer Food Organizations and the Geneva Global Health Hub. Bill Jeffery and CHSL have intervened in food/health issues at the World Health Organization since 2005, Codex Alimentarius Commission since 1998, UN General Assembly since 2011, and several committees of the UN Human Rights Council since 2019. CHSL unsuccessfully sought leave to intervene in the first judicial review of Health Canada's approval of a glyphosate in a case initiated by the Toronto-based Safe Food Matters. CHSL seems to have been the sole, non-party observer in the March 2023 certification hearings presided over by Justice Grace in the Ontario Superior Court in of Justice in London, Ontario.

Background on the safety and widespread use of glyphosate in Canada: Glyphosate was re-approved by Health Canada despite being found by the World Health Organization and a slew of US appeal courts to be a "probable human carcinogen." The risk to Canada seems higher because, in 2017, more than 56 million KG of glyphosate was sold in Canada which is far more per capita than in the United States ([where 127 million KG were sold in 2021](#), 280 million pounds) and more than all of Europe combined (ref. [pages 349 and 360](#) of CHSL's submissions in different court challenge).

In 2021, [Bayer-Monsanto announced plans to stop selling glyphosate-containing Round-up to US consumers](#) by early 2023 (but not farmers and foresters who use the lion's share), though it is [still available in Canadian retail stores](#).

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, a Health Canada report to Parliament indicated (at page 11), that [Canadian annual sales of all pesticides increased by 20% between 2014 and 2018](#), alone.

Status of glyphosate litigation in the United States: Bayer indicated that, as of Feb 2023, it had settled the vast majority of [154,000 claims in US courts](#) and that 31 Canadian claims were before the Canadian courts. 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."](#)

Regulatory Status in the European Union: In 2021, the German federal government, where glyphosate's globe-leading manufacturer is headquartered, [proposed regulations to phase-out glyphosate](#) by 2024. In 2017, glyphosate's regulatory [approval in the EU was reduced from 15 to 10, to 5 years due to safety concerns](#). Although the European Commission decided in November 2023 to extend its approval for 10 more years, governments representing more than half of the population of the European Union abstained from the vote and seven countries opposed re-approval, prompting the non-profit [Pesticide Action Network to sue the Commission in the European Court of Justice](#). National governments may ban glyphosate if they do so on the basis of their own scientific reviews.

Scrutiny of pesticide regulation in Parliament and Health Canada: Health Canada’s Pest Management Regulatory Agency stands by its 2017 decision to re-approve glyphosate for sale—without cancer or risk mitigation warnings—in Canada until at least the year 2033. Health Canada and other national pesticide regulators persistently favour seller-sponsored safety studies over studies published in peer-reviewed scientific journals and turn a blind eye to the litigation outcomes in the United States.

In 2023, Parliament received [five petitions](#), accumulating nearly 25,000 endorsements from Canadians, raising alarm bells about glyphosate. [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 2-3½ years overdue*), but fails 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](#).

Ongoing Canadian litigation in federal court alleging regulatory capture of Health Canada: 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.

End

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* 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 two 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>