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Lawn-care firms seek charges against health officials

By MARTIN MITTELSTAEDT
From Friday's Globe and Mail (correction included)

ENVIRONMENT REPORTER

An individual representing Ontario lawn-care companies is trying to have Criminal Code charges levied against doctors, public health officials and environmentalists who publicly lobbied the province to institute a ban on the cosmetic use of pesticides around homes.

Among the 23 named are prominent employees or volunteers at the Canadian Cancer Society, Ontario College of Family Physicians, and Canadian Association of Physicians for the Environment.

The request for charges was made this week in Kingston, where a justice of the peace has set a mid-February date to hear allegations that the individuals broke the law in their arguments against pesticides, and to decide whether charges are warranted.

In a separate action earlier this month, the same individual also asked for charges against Ontario Environment Minister John Gerretsen and five senior officials involved in creating the pesticide ban, which came into force last spring on Earth Day.

Having charges instituted against government officials is considered to have little chance of proceeding.

"I cannot think of any case ever where an individual minister or civil servant has been held civilly liable because the legislature or the cabinet adopted a law," said Dianne Saxe, a Toronto environmental lawyer.

Environmentalists, meanwhile, say the case highlights the need for laws protecting them from frivolous legal disputes by companies or individuals opposed to regulatory actions.

Gideon Forman, executive director of Canadian Association of Physicians for the Environment, one of those named, says making the case for laws is a key part of the political process and shouldn't be subject to legal action.

"It's exactly what a democracy is about. You make comment to government when legislation is being considered," he said.

The pesticide case was launched by Kingston resident Jeffrey Lowes, a former insurance salesman who says his effort has the backing of about 400 residential lawn companies.

In documents at a Kingston court over the request for charges, Mr. Lowes alleges that Mr. Gerretsen and his staff committed fraud by using deceit to ban bug and weed killers, costing the industry more than \$300-million.

Kate Jordan, a ministry spokesperson, said it has not seen the claims.

Other court documents claimed the activists used false information to justify municipal pesticide bans that preceded Ontario's provincewide prohibition, which it claims was a criminal-code offence of trying to influence municipal councillors through deceit.

In an interview, Mr. Lowes said the basis for this allegation is an Ontario College of Family Physicians study on the health effects of pesticides issued in 2004 that concluded the chemicals were harmful.

Mr. Lowes alleges the study contained false information because one of its expert reviewers, a Health Canada scientist, when contacted by him through e-mail, said she wasn't aware her name was in the document until after it was published. "So the medical report they relied on was falsified," he contended.

The college defended the study, saying it stands behind its conclusions. "There are no grounds to declare that I personally or the Ontario College of Family Physicians presented false information to government," said Jan Kasperski, the college's chief executive officer, and one of those named in the court documents.

Pesticide bans have been fertile ground for legal actions. One of the first municipal bans in the country, in Hudson, Que., led to a Supreme Court case. Quebec's ban prompted weed killer-maker Dow Agrosciences to file a notice for an arbitration claim against the federal government under the investor protection provisions of the North American Free Trade Agreement.

Lawn pesticide bans are currently under consideration in both Nova Scotia and British Columbia.

Editor's note: An earlier online version of this story and the original newspaper version incorrectly stated incorrectly stated that Dow Agrosciences filed a notice for arbitration under the North American Free Trade Agreement over Ontario's cosmetic pesticide ban. The notice was over Quebec's ban. This online version has been corrected.

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