THE BATTLE AGAINST Bill C-6
How Proposed New Legal Principles are Undermining Your Health Freedom

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Introduction by Helke Ferrie

"The numbers on the Bills have changed, but whether the Prime Ministers are Liberal or Conservative, the message remains unchanged. Bills C-27 and C-28 of 2004 became C-51 and C-52 in 2008, and now we have C-6.

The first batch of bills, a "modernization" of the Food and Drugs and Hazardous Products Acts, would have "prevented Canadians from suing Health Canada for negligence, even for flagrant failures like … the tainted-blood scandal [and] greatly increased the likelihood that unsafe drugs and hazardous products make their way to market" (The Globe and Mail, November 10, 2004). The shift was from the international "precautionary principle" to the corporate "risk management" – meaning all industries regulate themselves without any independent oversight. Agricultural chemicals, drugs untested and of mysterious chemistry, pest control products, and food additives were completely exempted from being identified as "adulteration" at residues higher than internationally permitted. Ottawa's The Hill Times wrote on April 25, 2005: "Hocus-pocus, adulteration is not adulteration if the Minister of Health says so! The effect of bill C-28 is to eviscerate the Minister of Health's statutory duty to protect the public from health hazards and fraud…"

When the Liberals lost to the Conservatives, Stephen Harper continued where Paul Martin had left off by re-introducing the same Bills, only now far meaner, namely C-51 and C-52. In an open letter to the PM, I observed that if these bills were "passed into law, they would pose a threat to public health, the rule of law, and the freedom of scientific research. Both Bills, to my mind, display an equally unparalleled disregard for the spirit, and most probably also the letter, of Canada's Charter of Rights and Freedoms." An analysis of these four Bills is found in my book What Part of No! Don't They Understand? available for free downloading from kospublishing.com.

The public uproar was so immense, the government hesitated, and both of these Bills died with the last election. Now they are resurrected as C-6 – a new full-blown attack by government, in harmony with a liability-scared

industry, on basic rights and freedoms, the presumption of innocence, and on science. To update you on the seriousness of our government's incompetence as public servants and protectors of democratic values, lawyer Shawn Buckley describes below what C-6 really means. Unwilling to bring down the Government, the opposition allowed our minority government to get this Bill into the Senate. Only a public uproar – this time directed at our Senators – can now stop it from becoming law. Refresh your memory by reading my Vitality articles of September 2005, June 2008 and April 2009. Contact your Senator as well as your MP and voice your protest (on www.canada.gc.ca find your MP and Senator through your postal code).
The danger, as I see it, is that these irresponsible governments will wear us down. Life is too precious to be sacrificed to the interests of power and money at any human cost. We must wear them down, instead. The solution to the continual revival of these repressive bills by governments not responding to the people's true needs is the passage of the Charter of Health Freedom, initiated by Buckley to create an independent ministry of wellness. Visit www.nhppa.org."

NATURAL HEALTH PRODUCTS UNDER FIRE
Health care debate usually focuses on the allocation of resources. Our access to the health care system is dependent upon government resources, and most real debate concerns money and efficiency. The principle that there should be universal access to health care remains sacrosanct – at least as far as our mainstream medical system is concerned. When we turn our attention to non-government funded health services, such as the natural health community, our right to access is being taken away. This has nothing to do with money or efficiency, since we voluntarily pay for these services. Rather, our access to the natural health community is threatened by a fundamental change in legal philosophy, which is re-defining whether it is the citizen or the State that has the right to make fundamental health decisions.
As Canadians, we inherited the British common law system which presumes citizens are free. Unless Parliament or a Legislature passes a law restricting our freedom, the State cannot interfere with us. Because we are presumed to be free, courts restrict state interference to limits which we have agreed to through our elected representatives. Under our system we do not wait for Government to grant us permission to do things: we are presumed free unless we have passed laws restricting our freedom. By contrast, civil law jurisdictions, which prevail in Europe, do not start with the philosophical

premise that citizens are absolutely free. Rather than being free, citizens are granted rights by the State.

This is of course a simplification, as many civil law jurisdictions have guarantees of fundamental rights. That said, there are profound philosophical differences that dramatically impact freedom. As a practical example, in Germany only natural health products (NHPs) on a government approved list can be sold. Philosophically, this means that citizens are not free to access any other NHPs they want. They can only access those which the State grants them permission to purchase. Contrast this with the U.S., which is a common law jurisdiction like Canada. In the U.S., NHPs are presumed by law to be safe. The State can only restrict citizens' rights to access them if the State has evidence of harm. In real terms, the effect of this philosophical difference is that U.S. citizens are free to access a much wider range of NHPs than are German citizens.

Canada is in the process of moving towards the German model. Our new NHP regulations presume NHPs to be dangerous and illegal. Only those approved of by the government can remain on the market. The effect of adopting this philosophy is that Canadians will lose access to 80% of the NHPs they enjoyed a few years ago.

Already more than half of the products that have tried to get government approval have failed. They have not failed for safety concerns. Indeed, of roughly 26,000 products assessed by Health Canada, I would guess that less than 50 have failed for safety reasons. They are failing because the government is forcing NHPs to carry claims and then finding there is not enough evidence to support the claims. This is not about fraud or misrepresentation. The Food and Drugs Act, Competition Act and Criminal Code protect against fraud or misrepresentation. Rather, our eventual loss of 40 to 50,000 NHPs is a logical and foreseeable consequence of adopting a legal principle that is inconsistent with our common law heritage of absolute freedom.

Another fundamental shift underway is a move away from the rule of law and the division of executive and judicial powers. Most people do not understand what the rule of law is. In simple terms it is the guarantee that the State cannot imprison its citizens or take their property without court supervision to ensure it is done according to law. In barbaric parts of history, if the ruler wanted to imprison you or take your property, the soldiers came and just did it. Eventually the citizens demanded change, and our rulers became bound by the law. They could only imprison us or take our property under the supervision of impartial courts. Many of our ancestors have died fighting for the rule of law. It defines Canada as a free country. Although,

the single most dangerous thing citizens can do is to permit the rule of law to be undermined, it is currently being undermined by Parliament in the name of “safety.” George Orwell would be proud.

BILL C-6 OPENS THE DOOR TO SEARCH AND SEIZURE

One current move away from the rule of law involves Bill C-6, the Consumer Protection Act. Under Bill C-6, inspectors can seize property for perceived violations without any court supervision. There are no limits on the amount of property they can seize. There are no defined time limits for the seizure. In some cases, Health Canada inspectors can keep or destroy property – all without court supervision.

Bill C-6 even creates administrative offences where we are presumed to be guilty, as opposed to our current system where we are presumed to be innocent. If charged with an administrative offence, we do not even have the right to try to prove our innocence before an impartial court. Rather, we can only write to the Minister. It is not enough for us to raise a reasonable doubt with the Minister. Instead, we have to prove on a balance of probabilities that we are innocent. For good measure, Bill C-6 abolishes the two main defenses of due diligence and honest but mistaken belief.

Now for the “good part.” Guess who can keep your seized property if you do not prove to the Minister that you are innocent – the Minister. This creates a significant conflict of interest, the exact situation our separation of executive and judicial powers was designed to avoid.

Bill C-6 also abolishes the law of trespass. One of our fundamental common law rights has been the private enjoyment of our property. Currently, if a state official or private citizen is on your land without your permission, they are trespassing. They can be convicted criminally or sued civilly. Bill C-6 exempts Health Canada inspectors from the law of trespass. Literally, you could have inspectors peering through your windows as you try to enjoy a meal and there is nothing you can do.

This raises the question as to whether consumer products pose such a risk that we have to sacrifice our fundamental legal safeguards. Health Canada still needs a warrant to enter your home – but for the first time I am aware of in Canadian history, warrants can be issued without evidence of criminal wrongdoing. Currently, we so value our right to be free from State intrusion into our private homes, that the State can only obtain a warrant if they can convince a Justice that they are likely to find evidence of a crime. Under Bill C-6, warrants can be issued if a Justice is satisfied that there is likely to be something regulated by the Act in your home. The Act covers all consumer products, which includes the paint on your walls. I cannot conceive of a

home for which a warrant cannot be issued. Again we need to ask if consumer products pose such a risk that we need to allow State agents into our homes without evidence of criminal wrong doing.

THE BATTLE FOR FREEDOM OF CHOICE IN HEALTH CARE CONTINUES

Bill C-6 does not apply to natural health products. It is important to note, however, that Health Canada tried to get similar enforcement measures for NHPs passed prior to the last election in the form of Bill C-51. We can expect that it is only a matter of time until Bill C-51 is re-introduced. Similarly, it should be no secret to those who read Bills C-51 and C-6 that Health Canada is moving us towards a civil law model where rights are vested in the State, rather than the individual. What must be understood is that this is occurring to harmonize regulations for international trade. If North America adopts the European Union model, with their civil law presumptions, the two trade areas can trade freely. This might benefit the few large Canadian companies that can compete globally. But it is a disaster for Canadians who want freedom to access NHPs they rely on. It is also a risky business.

The vast majority of Canadians regularly use NHPs. We are not choosing to pay for natural health products because we have been fooled by clever marketing. We are doing it because many of us have found tremendous relief and benefit. Indeed it is no exaggeration to say that many Canadians rely on NHPs for their very survival. The natural health community has grown because many of us have failed to get relief within the government medical system. My purpose here is not to criticize the State funded system. Rather, it is to raise the question: do we really think that we can take away 40 to 50,000 products people rely upon for their health without there being any health consequences? If NHPs are taken away and we have to turn to chemical pharmaceutical drugs, can we pretend that this will not put Canadians at risk? Again, I am not trying to criticize chemical drugs. The fact remains, however, that chemical drugs as a group create significant and sometime fatal side-effects. On the other hand, in 142 years of Canadian history I am not aware of a single death caused by a NHP. This is not a situation where Canadians are being reckless by choosing NHPs over chemical drugs – quite the contrary.

The move to restrict our access to NHPs also raises a fundamental freedom question: should the State decide how to address a health crisis in your life? If the State takes away all realistic alternatives to the state funded system, the State will also have taken away your current freedom to choose how you

will address a health crisis when it occurs. Freedom without choice is only an illusion of freedom.

Not surprisingly there is a disconnect between the State's adoption of civil law legal principles and the Courts who still uphold our common law principles. Almost without exceptions, Courts jealously guard our right to make fundamental health decisions. Courts consistently make it clear that we should even have access to illegal products we rely on. Our access problems do not rest with the Courts. Our problems rest with our Government adopting legal principles inconsistent with our common law rights.

Our access to NHPs can only be protected by addressing the problem. The problem is the adoption of legal principles inconsistent with our current health freedoms. If we passively accept the adoption of legal principles, which are inconsistent with our current health freedoms, we will lose them. This is already happening.

Bill C-6 has already passed through the House of Commons and is now in the Senate. It is almost unheard of for the Senate to fail to pass Bills that have already been passed by the House. This means that currently the only hope of defeating Bill C-6 would be for the Senate to delay passing it until an election is called. This could happen if enough citizens demanded of their Senators that the Senate hold hearings into Bill C-6. The Senate is meant to give a sober second look at legislation. It is time we demand that they step up to the plate.

Shawn Buckley is a lawyer with expertise in the Food and Drugs Act and Regulations. Mr. Buckley is also President of the Natural Health Products Protection Association, an association dedicated to protecting access to NHPs. The NHPPA is also one of the founding groups supporting the Charter of Health Freedom. Visit www.nhppa.org

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For comprehensive overview of these issues down load for free from www.kospublishing.com Helke Ferrie's 2008 book, *What Part of No! Don't They Understand? Rescuing Food and Medicine from Government Abuse*