

Opinion: Bill C-51

by Ben Tucker

By now, many people in the Natural Health Product (NHP) community are pulling their hair out over Bill C-51, an act to amend the Food and Drugs Act. They worry about problematic definitions in the bill, increased powers of the Inspectorate, increased fines and lack of respect for constitutionally guaranteed rights. They worry how this Bill, if passed, will affect their access to the products and treatments they rely on for their health.

The government predictably brushes aside these concerns, assuring Canadians that the intention of C-51 is not to target the NHP community, but rather, in the words of Prime Minister Harper, to crack down on those who "wilfully expose Canadians to dangers." When questioned about implications of C-51 for NHPs, Minister of Health Tony Clement stated, "I would say for a purveyor or manufacturer of a natural health product, if what is on the label is accurate and if what is claimed about the natural health product is accurate, there is nothing to fear from the legislation." (1)

It all sounds so reasonable. It also completely neglects the long, sordid history of Health Canada actions towards NHPs.

Ten years ago, the House of Commons Standing Committee on Health recommended that the Food and Drugs Act be amended to include NHPs as a separate, distinct legal category. (2) Instead, Health Canada chose to keep NHPs as drugs under the law, because "an amendment at the level of the Act would have been necessary." (3) Now, we have Bill C-51, which amends the Food and Drugs Act, and instead of a legal third category, we have "therapeutic products" - drugs, devices, and cells. (4)

Consider the case of Truehope and their product EMPowerplus, used to treat bipolar disorder. Health Canada's own investigators concluded that the product should be classed as a category II health hazard (5) - meaning that the risk of harm is remote. (6) Nonetheless, Health Canada issued a public advisory about the product and blocked access at the border. (7) They then set up a 1-800 crisis line to deal with desperate Canadians in fear for their mental health, advising them to return to their doctors and go back on their psychiatric medications. (8) All this without evidence of harm.

In contrast, consider the case of Vioxx. Approved by Health Canada in 1999 as a treatment for arthritis, it was removed from the market in 2004 due to an increase in cardiac events associated with use. As stated by the Canadian Medical Association Journal, "[i]t has now become clear that

both the FDA and (by inference) Health Canada were aware of the increased risk of cardiovascular adverse events long before the drug was withdrawn from the market." (9)

Or take another example, Prepulsid, a drug to treat heartburn. At the inquest into the death of 15-year-old Vanessa Young (who died taking Prepulsid), it was revealed that Health Canada was aware that as many as 10 Canadians died while taking the drug, and that as many as 70 had died in the United States. Despite a strong warning going out in the US, Health Canada did not insist on one for Canada. (10) It was also learned that Health Canada was haggling with the wording of a warning letter to physicians with maker Janssen-Ortho when Vanessa died. (11)

To anyone who has been paying attention to Health Canada's actions over the last decade, there is much to fear about Bill C-51.

On January 1, 2004, the Natural Health Product Regulations took effect. They were being implemented by the Natural Health Products Directorate (NHPD), whose mission is to "ensure that Canadians have ready access to natural health products that are safe, effective and of high quality while respecting freedom of choice and philosophical and cultural diversity." (12) That sounds great, because Health Canada's own polling revealed that 71 percent of Canadians have used NHPs, 68 percent believe they can be used to treat illness, and 43 percent believe NHPs are better than conventional medications. (13)

One more statistic is worth noting from this survey; one which did not make it into the NHPD's handy summary. A full 72 percent of Canadians believe that they have the right to use any NHP they want to use. (14)

So, how is the NHPD's mission to deliver ready access to NHPs, respecting freedom of choice and philosophical and cultural diversity going so far? As of March 2008, the NHPD had received 4,569 compendial applications (those adhering to a pre-set product monograph) with 4,121 completed by the NHPD. They had also received 21,398 non-compendial applications, and completed 9,772. (15)

Of the 13,893 applications completed by the NHPD, 7,440 were refused product licences, representing a failure rate of about 54 percent. (16) Are these unsafe products from "those who would willfully expose Canadians to dangers"? This is highly unlikely; do you think that Health Canada would hesitate to point out that over half of NHPs submitted for licensing were unsafe?

What's more is that the vast majority of license applications left to complete are the more complex, non-compendial applications. Does anyone believe that the success rate for this group will improve?

It has been over four years since the NHP Regulations came into effect, and we have less than 6,500 legal products in the Canadian market. This is a far cry from Health Canada's estimate of 40,000 to 50,000 products in 2003. (17) To add insult to injury, Health Canada states that "the Regulations should in fact increase access to these products." (18) Hokey-dokey.

When the regulatory process is complete, it will be government and agents at Health Canada that decide which products we have access to. And if Bill C-51 passes, Health Canada Inspectors will be given the power to seize products without warrant, access your computer and order you to disclose any documents they want, transport products at your expense, and impose fines of up to \$5 million, for each offence under the Act and for every day you do not comply.

Of course, the Minister of Health assures us that the NHP community will be heard when Bill C-51 passes Second Reading and goes to Committee. Like so many times before, you will be consulted and we will all come to a reasonable compromise.

In her essay *The Anatomy of Compromise*, Ayn Rand stated that "in any collaboration between two men (or two groups) who hold different basic principles, it is the more evil or irrational one who wins! When opposite basic principles are clearly and openly defined, it works to the advantage of the rational side; when they are not clearly defined, but are hidden or evaded, it works to the advantage of the irrational side." (19)

Apply those insights to our present situation; ask yourself who is evil or irrational; ask yourself who is hiding their principles, and who has the advantage; ask what you will gain when you seek a compromise with Health Canada.

It is clear that almost three quarters of Canadians believe in the principle of freedom of choice, and believe we have the right to take any NHP we want to use. No to Bill C-51!