

# Federal Double Standard

If we cannot harm people without legal consequences, why are Health Canada employees allowed to?

by Shawn Buckley, LLB

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**M**any people have been asking why Health Canada employees are allowed to take products away that we depend on without any legal consequences. This is a question of fundamental importance.

## What's criminal, what's not?

You and I are not allowed to take treatments away from our fellow citizens regardless of their nature. It does not matter if they are natural, chemical, legal or illegal. If someone depends on a treatment for their health, or their very life, and you take it away causing harm or death, you are liable to face criminal charges.

Depending on the level of your knowledge and your intention, you could be convicted of murder, manslaughter or criminal negligence. If death is caused, the penalty can be life imprisonment, the highest penalty we have.

Health practitioners and companies manufacturing, distributing or selling treatments are not allowed to remove them from the market if doing so would cause harm. It is criminally negligent to put a treatment on the market, have people come to rely upon it and then to remove the treatment and allow them to suffer. Such behaviour is a criminal act, punishable with life imprisonment if death is caused.

Because of the seriousness of taking treatments away that people rely on for their health, when I am consulted as a lawyer by practitioners or companies who have been ordered by Health Canada to remove a treatment from the market, we always have to consider the

risk of removing the product. If removing the product will cause people to suffer, I have to advise them of the risk of a criminal negligence conviction if they listen to Health Canada.

We, the citizens, are criminally liable for taking essential treatments away. Persons in the health field are criminally liable for taking essential treatments away. Should Health Canada employees and managers be criminally liable for taking essential treatments away? In my opinion, the clear answer is yes.

I see nothing in the criminal negligence provisions of the Criminal Code that would exempt a Health Canada employee or manager from criminal responsibility if they take essential treatments away where they knew it would lead to harm or they ought to have known it would lead to harm. In this regard, when Health Canada is taking away a treatment you rely upon for your health, it is vital to communicate this to both the employees taking the action, and to their superiors.

This is what *should* happen, but unfortunately, past experience has shown that Health Canada seems above the law when they ignore personal pleas for mercy.

## The Truehope example

One of the more troubling examples of Health Canada ignoring pleas for mercy occurred in the Truehope case in 2006. Thousands of Canadians depended upon the multi-nutrient supplement EMPowerplus for their health. They suffered from severe mental illnesses such as bipolar disorder and had not succeeded with the "approved" chemical

pharmaceuticals. For many, access to EMPowerplus was a life and death issue. Both before and after Health Canada started turning shipments away at the border, there were multiple communications to Health Canada that restricting access would put people at risk. There were multiple warnings that restricting access could lead to deaths. These were largely ignored by Health Canada.

Many might find it shocking to learn that if their lives depend upon a treatment and Health Canada is taking it away, they may have no voice. Personal stories can be discounted as "testimonials" and "unscientific." Even concerns of deaths turned out to be "not relevant" in the Truehope case. While under oath to tell the truth an inspector by the name of Sandra Jarvis was cross-examined. She had listened to Tony Stephan tell Health Canada he was concerned there may have been suicides because of Health Canada restricting access to EMPowerplus. He also raised concerns people would be hospitalized. Finally, he spoke of what he described as a suicidal caller. When asked if she looked into these allegations Ms. Jarvis told the court she did not. She explained: "From my perspective, you know, my role was to gather evidence for the case and I didn't think there was any evidentiary value in pursuing that. At least I'm not sure that that was my thought at the time, quite frankly."

The other inspector who took the stand, Miles Brosseau, had equally concerning evidence. After being told about a *Medical Post* story describing Canadians as having severe angst over Health Canada's actions, he explained that he

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did not verify the story. He had no desire to read it. While being cross-examined about communications to Health Canada that their actions were leading to deaths and suicides, the following exchange took place:

**Q** Okay, were you even slightly alarmed that there were allegations that the enforcement actions that you were involved in may be resulting in deaths and hospitalizations?

**A** No.

**Q** It didn't alarm you at all?

**A** No.

**Q** Why not?

**A** I guess because I didn't have any firsthand knowledge of it.

**Q** And I think you've been clear with us, you were not going to take any steps to investigate allegations such as this.

**A** Correct.

(For a written transcript of the Truehope court trial, visit [http://www.truehope.com/\\_pdf/truehope\\_synergy\\_pd.pdf](http://www.truehope.com/_pdf/truehope_synergy_pd.pdf))

Did people commit suicide because they were not able to have EMPowerplus?

Yes, they did.

I expect that it would trouble the average citizen to learn that Health Canada seemed to ignore pleas for mercy and communications of harm. And yet, nothing has been done. No charges have been laid against anyone involved in removing EMPowerplus in the face of the pleas and warnings. A written appeal to the Minister of Health for an inquiry was ignored.

### **Holding Health Canada accountable**

I am not aware of any Health Canada employee ever being held accountable for taking natural health products away. Indeed, rather than holding anyone accountable, the government appears to be encouraging Health Canada. How else could additional funds for hiring more inspectors be explained? No one is expecting Health Canada to step up enforcement against chemical pharmaceutical companies.

To answer the question as to whether Health Canada employees are allowed to take vital treatments away, sadly the

reality is yes. When they know or should know they will cause harm, I believe that they should be held criminally liable if harm occurs. The political reality is, however, that we cannot expect the protection of the criminal law any time soon. Indeed, because of this the Natural Health Products Protection Association (NHPPA) is working on an accountability initiative so that average citizens can peacefully push back as they try to defend themselves from being endangered by the removal of vital health products. ☹

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## **Charter of Health Freedom Q & A**

## **Charter of Health Freedom**

It's a Natural Act. Help Make it Law.



**Q.** How will a Canadian Health Charter protect us?

**A.** The Charter of Health Freedom in effect creates a bill of rights for health that would take precedence over other legislation, unless the other legislation specifically exempted itself from the Charter of Health Freedom.

With the exception of actual constitutional documents that bind Parliament, there is a constitutional principle that Parliament cannot bind its own hands. So for example, they cannot pass a law that says the law cannot be changed or repealed.

The Charter of Health Freedom is written like our Canadian Bill of Rights in this way. It would take precedence over all other laws unless the other laws exempt themselves from the application of the Charter. Our hope is that, if passed, the optics of circumventing the Charter would act as a brake on any law that would undermine the rights in

it. Short of a constitutional document, however, that is the most protection we can get in any law.

**Q.** Will a Canadian Health Charter protect us from international harmonization?

**A.** Not necessarily. Let's say Parliament passes a law that simply said that the government of Canada cannot adopt any trade law that restricts access to natural health products. This law would not stop the adoption of trade agreements like CETA (Canada-European Comprehensive Economic and Trade Agreement) or Codex Alimentarius (guidelines to harmonize international food trade). All Parliament would have to do is pass a law adopting the trade agreements.

If CETA and Codex are adopted, it may be game over. It could well be that our natural health product regulations are simply designed to shrink the industry so that there is less opposition to the trade agreements when they come.

**Q.** Does a Canadian Health Charter guarantee our safe access to natural health products?

**A.** The Charter of Health Freedom is our best legal protection against all perils, including trade agreements like CETA and Codex. But even with the Charter we will never be "safe." Like any law short of a constitutional amendment, it cannot stop a determined Parliament from imposing trade deals on us.

Our only safety lies in waking people up and getting them to make sacrifices to regain their freedom. The Charter is proving to be a lightning rod for this. If we can get enough of a popular movement going to force the government to pass the Charter, then we will also have enough of a movement going to keep the government from exempting trade deals from the application of the Charter.

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