

THE CHARTER OF HEALTH FREEDOM GROWS IN IMPORTANCE

An Analysis Of The Charter's Relevance In 2018

Prepared by Shawn Buckley, LL.B., President of the
Natural Health Products Protection Association | May 2018

In 2008, when groups from across Canada came together to have input on the Charter of Health Freedom, the goal was to come up with legislation that would prevent any government from restricting our access to natural health products, low risk medical devices and treatment modalities (allopathic and non-allopathic).

The most pressing risk at the time appeared to be the implementation of the *Natural Health Product Regulations*. Little did anyone appreciate what was coming.

None could have predicted that the Charter would become more necessary as the years went by. There is no question that the NHP Regulations:

1. Caused many NHPs to disappear;
2. Caused many NHPs to become less effective by for example, causing manufacturers to reduce the amount of therapeutic ingredients;
3. Restricted choice by causing mainly US companies to stop selling into Canada;
4. Restricted access by driving up the price of NHPs, meaning that persons with low income cannot access them, and
5. Restricted treatment options available to health practitioners.

There is also no question that the NHP Regulations have had a significant negative impact on health. The most recent significant example is nattokinase which was widely used as a safe blood thinner. At exactly the same time as emergency room doctors were complaining about deaths caused by Pradaxa, a pharmaceutical blood thinner that cannot be reversed with vitamin K (like other blood thinners), Health Canada took nattokinase off of the market. We are very concerned that removing nattokinase will lead to deaths.

This was all predictable when the Charter was drafted. What was not predictable was how effective the government would be in taking away our right to exercise personal health choices in the Courts. Most NHPs are not illegal to possess, so most of us who manage to access ones no longer sold in stores are not charged if we possess them. However, when we can no longer access them, it has become almost impossible to get a Court to agree that you have the right to your choice of treatments.

Since the Charter there have been two significant Court cases restricting our access to justice in the Court system. The first involved Truehope nutritional support, the provider of EMPowerplus which is used to treat mental health conditions such as bi-polar disorder and major depressive disorder. EMPowerplus is now licenced by Health Canada, but back in 2003, Health Canada tried to restrict access by seizing some shipments at the border. Truehope went to Court over a seized shipment. The parties in the Court action were Truehope, the shipper, and one of the recipients of the shipment who needed the product for two of his children suffering from mental illness. Evidence was led in Court to show that Health Canada's actions in seizing the shipment and turning other shipments away at the border had led to deaths.

Indeed, the Court was invited to find as a fact that Health Canada's actions caused deaths. Rather than look at all of the evidence presented to support a finding that deaths were caused by the government's actions, the Court found that the parties did not have "standing" to put that evidence before the Court. The evidence was excluded and without the evidence, there could not be a finding that the Charter of Rights and Freedoms had been violated.

The interesting thing about this Court ruling, is that Truehope was not seeking any type of compensation or benefit. All that was being sought was a finding that when vital medication is seized, there is an obligation on the government to first tell persons that their medication was seized, and second, to provide some accessible way for them to argue that their health needs for the medication exceeds the state's interest in it.

If the manufacturer shipping a product, and a person buying the product do not have the right to show that the government's seizure of the product violates our rights, then who does? Another Court decision restricting access to the Courts involves NorthRegentRX which sold a natural product to treat erectile dysfunction. Health Canada forced the company to stop selling the product. Health Canada claimed that the product was spiked with sildenafil, an active ingredient in Viagra. NorthRegentRX had independent labs confirm that there was no sildenafil in their product. Health Canada was sued for damages, and the government applied to have the matter thrown out of Court. The Court threw the case out. The Court found that Health Canada did not owe a duty of care to the manufacturer of a NHP. This reminded us of a different manufacturer that went out of business when the Health Canada lab claimed to have found arsenic in their seaweed containing products. An independent lab could only find organic arsenic which is usually found in seaweed and which Health Canada agreed was safe. That company did not take Health Canada to Court because it went out of business once Health Canada attacked it. Now it seems that no company can take Health Canada to Court for being wrong. Neither it seems can individuals who depend on products.

These Court decisions are making it clear that we need the Charter of Health Freedom more than ever. The Charter guarantees our right to sovereignty over our own bodies. It guarantees our right to make personal health decisions. It prevents the government from removing products if removing them would cause more harm than leaving them on the market and managing any risks in different ways. It ensures that health practitioners have access to the products, and to the treatment modalities, that they are trained to use to help their patients. We could not have anticipated that the Charter of Health Freedom would become even more vital than when it was drafted. Because it sets out fundamental health rights that Courts have recently denied us, it is more necessary than ever. The government presumes that you are not capable of making your own health decisions. The Courts are siding with the government.

Unless, we can move forward with a solution like the Charter, the following generations will not even appreciate what we lost, control over our own bodies.

Health Canada has published a time-line for regulating natural products in the same way as chemical pharmaceutical drugs. This will lead to a further loss of natural products. It will lead to further censorship of truthful health claims. For an analysis of these proposed changes, read the NHPPA's latest Discussion Paper. <https://bit.ly/2wpr2KN>

The Charter would protect against these upcoming changes.

We are also facing other risks that would be prevented by the Charter. The Comprehensive Economic and Trade Agreement between the European Union and Canada has been finalized. The Agreement expands patent protection for chemical pharmaceuticals. It is safe to assume that pharmaceutical companies had significant influence in the drafting of the agreement. We also know that pharmaceutical companies have been applying for use patents concerning natural ingredients (see for example <https://patents.google.com/patent/US20140271923>).

It is not yet clear how this trade agreement will affect NHPs. It is likely that the current Health Canada plan on regulating NHPs with the same regulations as chemical drugs, is connected to this Agreement.

Another risk we see down the road is cost recovery. Health Canada is supposed to recover the cost of regulating NHPs from the NHP industry through fees for product and site licences. To date no fees are being imposed upon the NHP industry. The current Health Canada plan to regulate natural products in the same way as chemical drugs includes cost recovery.

When cost recovery is imposed, we expect that marginal NHP providers will be pushed out of business. We predict that the prices of NHPs will increase, making them unaffordable for more low income Canadians.

The Charter of Health Freedom was drafted to prevent the overregulation of NHPs while at the same time actually giving the government more powers to deal with those very few products that do pose a risk.

It is interesting that those groups that created the Charter happened to create a solution that is needed more than when it was drafted.

To read more about the Charter of Health Freedom, and to sign and distribute the petition, visit <http://www.charterofhealthfreedom.org/index.php?/national-petition>

To read more about NHPPA's 3 Part Plan to have the Charter of Health Freedom enacted to guarantee a reasonable legal environment for natural health products, visit http://nhppa.org/?page_id=2642