

Draft Discussion Paper on Bill C-52 the Canada Consumer Product Safety Act

Prepared by Shawn Buckley, president of the Natural Health Products Protection Association on May 14, 2008.

Purpose of the Paper

On April 8, 2008, Prime Minister Stephan Harper introduced Bill C-52 in the House of Commons. A copy of the Bill can be found at <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3397415&Language=e&Mode=1&File=29>. The stated purpose of the Bill is to protect consumers. The Federal Government has been aggressively advertising to convince Canadians that the new law will protect them.

The Government advertising is targeted at the strong emotion we share to protect children. The first half-page ad that I saw in my local paper began “Your Family’s Safety – Our Government’s Priority”. The ad featured pictures of vulnerable children, which was successful in evoking an emotional reaction for me to support the Bill to protect my children.

The NHPPA has asked me to prepare this Discussion Paper on Bill C-52 out of a concern that the Bill may represent an unprecedented encroachment on freedoms currently enjoyed by Canadians. The NHPPA is focussed on protecting Canadians’ access to Natural Health Products. Although Bill C-52 does not specifically target Natural Health Products, the NHPPA is concerned that Bill C-52 sets a precedent where Canadians will accept the removal of their rights in the name of safety. **Also, if Bill C-51 is defeated but Bill C-52 passes, Bill C-52 could be made applicable to Natural Health Products by way of a regulatory amendment to Schedule I of Bill C-52.**

Summary of Points Discussed In This Paper

- Bill C-52 is being advertised as necessary to protect our families.



- Under the existing law the State can already:
 - ban or restrict any consumer product under threat of million dollar fines and two year jail sentences under the *Hazardous Products Act*;
 - make immediate orders banning or restricting any consumer product if there is a significant risk to health or safety. In addition to fines and imprisonment for non-compliance, the State can apply to the Court for an injunction which brings police enforcement of the order, and
 - prosecute for criminal negligence or homicide under the *Criminal Code*. In some cases this can result in penalties of life imprisonment.
- The real change brought about by Bill C-52 is not that it protects consumers, as the current law already grants the State significant powers to protect safety. Rather the real change is the abolition of procedural safeguards citizens currently enjoy.
- Bill C-52 abolishes the law of trespass thus allowing the State access onto private property without any legal recourse.
- Bill C-52 allows the State to seize property without a Court order, without reporting the seizure to a Court, and for an indefinite period.
- Bill C-52 allows the State to assume control over the movement of private property without a Court order and without a safety concern.
- The search and seizure powers in Bill C-52 are probably unconstitutional for violating the right found in section 8 of the *Canadian Charter of Rights and Freedoms* to be free from unreasonable search and seizure.
- Persons can be fined and have property forfeited to the State for administrative violations. Persons so charged have no right to have a Court determine their guilt or innocence. Guilt is determined by the Minister. There is no defence of due diligence or of honest but mistaken belief. There does not have to be a safety risk to be charged with an administrative



offence. The Minister who determines your guilt or innocence can keep seized property if he/she finds you guilty.

Discussion Paper Only

This is a discussion paper only and does not reflect the position of the NHPPA or of the NHPPA Advisory Board. The thoughts and comments are those of the author, Mr. Shawn Buckley and are intended to encourage Canadians to read Bill C-52 and to foster discussion.

This is an initial discussion paper only. The author expects that as feedback is received and further study of the Bill is undertaken, that the opinion of the author will broaden.

The NHPPA is inviting comments on this discussion paper. Feedback and comments can be forwarded to the attention of Shawn Buckley or Peter Helgason at info@nhppa.org.

For media enquiries only, contact Peter Helgason at (250) 318-5005.

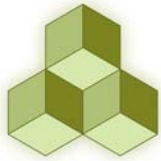
The Property and Privacy Rights Affected by the Bill are Broad in Scope

The Bill has a very wide application. Section 2 of the Act contains the following definitions:

“consumer product” means a product, including its components, parts or accessories, that can reasonably be expected to be obtained by an individual to be used for non-commercial purposes, including for domestic, recreational and sports purposes, and includes its packaging.

“article to which this Act or the regulations apply” means

- (a) a consumer product;



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- (b) anything used in the manufacturing, importation, packaging, storing, advertising, selling, labelling, testing or transportation of a consumer product; and
- (c) a document that is related to any of those activities or a consumer product.

“Consumer product” covers anything from start to finish that makes its way into the hands of consumers, even if it is just a part of a consumer product. **A product remains a “consumer product” after it is purchased by the consumer.** The definition is not limited to apply only to consumer products prior to sale to consumers.

“Article to which this Act or regulations apply” covers all consumer products and all property including equipment, buildings, vehicles, media outlets, and labs that are used in the manufacturing, importation, packaging, storing, advertising, selling, labelling, testing or transportation of a consumer product.

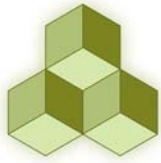
In discussing the broad powers the new law gives the State to seize and destroy property without any compensation, it is important for Canadians to realize that the new law applies to:

- **most items purchased by consumers regardless of cost to the consumer, and**
- **a very wide range of commercial property including buildings, media outlets and vehicles that are not themselves “consumer products” and which pose no risk to the consumer.**

Consumers are not being told that as the new law is currently written, products they purchased may be subject to seizure without compensation.

Business owners are not being told that the new law gives the State sweeping powers to control and seize their property without a warrant and without having to report to a Court.

Context for the New Law – is it necessary to take away freedoms to protect us?



New laws are supposed to serve a public purpose. In this case the State is advertising that the new law is necessary to protect our families from dangerous consumer products.

This raises the question: **are we so unsafe without the new law that we legitimately need the new law to protect us?**

For citizens to form a realistic opinion on this, it is necessary to understand the powers the State currently has to protect consumers from dangerous products. As outlined below the State currently can:

- ban or restrict any consumer product under threat of million dollar fines and two year jail sentences under the *Hazardous Products Act*;
- make immediate orders banning or restricting any consumer product if there is a significant risk to health or safety. In addition to fines and imprisonment for non-compliance, the State can apply to the Court for an injunction which brings police enforcement of the order, and
- prosecute for criminal negligence or homicide under the *Criminal Code*. In some cases this can result in penalties of life imprisonment.

With these tools already in place, the question arises as to what “other” powers are necessary to protect us?

Bill C-52 adds new powers. However, the real significance is that it allows the State to control and destroy private property without the review and supervision of the Courts or of other independent review boards. This raises another question: considering the sweeping powers the State already has to “protect” us, is it necessary to take away the independent supervision of the Courts that citizens have traditionally relied upon to “protect” citizens from the State?

Put another way: if the State already has all the powers necessary to ensure that consumer products are safe, how are we protected by allowing the State to control, seize and destroy private property without the independent supervision of the Courts that citizens currently enjoy?



These are questions of fundamental importance that need to be addressed as people read and consider the need for the sweeping State powers found in Bill C-52. We look forward to input on these questions as we try to formulate answers.

The Hazardous Products Act.

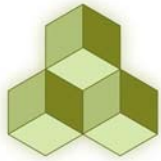
This Act can be found at http://laws.justice.gc.ca/en/ShowFullDoc/cs/H-3//20080514/en?command=HOME&caller=SI&search_type=all&shorttitle=%22hazardous%20products%20act%22&day=14&month=5&year=2008&search_domain=cs&showall=L&statuteyear=all&lengthannual=50&length=50.

The *Hazardous Products Act* (the “HPA”) currently gives the State significant powers to protect consumers. Under this Act the State can:

- prohibit the advertising, sale or importation of any consumer product;
- put restrictions on the advertising, sale or importation of any consumer product;
- if there is a significant risk to health or safety, **make an order prohibiting or restricting the advertising, sale or importation of any consumer product**, and
- demand any information from a manufacturer to determine the safety of a product.

Although the State has broad powers to make immediate orders to stop the sale of any hazardous product, the HPA also protects the property owner by having procedural safeguards that comply with the rule of law. These include provisions that:

- orders made for safety reasons expire after 14 days unless they are approved by the Governor in Council (i.e. the Federal Cabinet). This gives the State 14 days to determine if there really is a health risk in the situation where an order was made as a precaution;
- the order must be tabled in Parliament for review, and



- if the order is confirmed the property owner can apply to an independent Review Board to contest the order. In this way the rule of law is respected. The State cannot affect property rights without an independent review.

It is an offence under the HPA to ignore an interim order. Penalties include fines of up to a million dollars and/or imprisonment of up to two years for each violation.

Although there are significant penalties under the HPA to ensure compliance with orders made to protect consumer safety, it needs to also be kept in mind that the State can apply to the Federal Court for an injunction if an order is ignored. This can be done quickly. It enables police intervention to enforce the Court's order. The property owner is protected as the Court will consider all of the evidence concerning safety and can compensate the property owner if it is eventually determined that there was not a safety risk.

For the purposes of this Discussion Paper I should add that I am not certain that the Board of Review provisions would apply to an interim order under the HPA. There is some ambiguity in the wording of that Act. I have only done cursory research and have not found a case to resolve that ambiguity. It is my current opinion based on the wording of the HPA that the Board of Review provisions apply to interim orders. I look forward to feedback on this issue.

The Criminal Code Criminal Negligence Provisions

Under section 219 of the *Criminal Code*, a person or company commits criminal negligence if they do anything or fail to do anything it is their duty to do which “shows wanton or reckless disregard for the lives or safety of other persons.” This means that if a person or company sold a consumer product which they knew was not safe or which they should have known was unsafe, they are committing a criminal offence and are subject to the penalties for criminal negligence found in the *Criminal Code*.

The penalties for criminal negligence vary depending upon the harm caused. If bodily harm is caused the maximum penalty is imprisonment for 10 years. If death is caused the maximum penalty is imprisonment for life. Persons who cause death by criminal negligence can also be charged with homicide under section 222(5)(b) of the *Criminal Code*. The penalties for homicide vary depending upon whether the homicide is characterized as murder, manslaughter or infanticide. If



the criminal negligence is characterized as murder, the minimum penalty is life imprisonment.

The *Criminal Code* penalty of life imprisonment for criminal negligence and murder is the most severe penalty permitted in our Justice System.

Civil Penalties

Anyone harmed by a consumer product can sue for damages. Arguably it is the threat of bankruptcy posed by law suits that have historically ensured that consumer products are safe. Any person or company that sells a dangerous product faces bankruptcy regardless of whether they knew the product was unsafe.

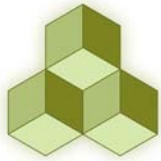
The Abolition of the Law of Trespass

As a British Colony we inherited the British Common Law on trespass. Indeed, it has been one of the foundations of our right to own and enjoy property that no one, including the police, can come onto our property or interfere with our property. We consider this to be such a fundamental freedom that when suing for trespass upon our land, we do not even have to prove we suffered any damage or loss. The law has traditionally held the right to private enjoyment of our land to be so significant, that the mere trespass upon it is enough to get a civil judgment.

Our right to enjoy property free of trespass is not limited to land. We have the right to enjoy our personal property without interference. Anyone who interferes with our personal property commits trespass.

We hold the right to the private enjoyment of property as so important, that we have placed specific provisions in the *Criminal Code* to protect it. These include:

- section 177 which makes it a criminal offence to trespass near a private home at night;
- section 38 which makes it an offence to take away our personal property. It also allows us to prevent a trespasser from taking our personal property without worrying about being charged with assault;



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- section 39 which protects us from criminal prosecution for defending our personal property;
- section 40 which enables us to use as much force as is necessary to prevent trespassers from entering our homes, and
- section 41 which deem trespassers to commit assault if they resist attempts to remove them from a house or land. This section also allows persons to use force to remove persons from their homes or land.

Bill C-52 abolishes the law of trespass. Subsection 21(3) provides:

An inspector who is carrying out their functions may enter on or pass through or over private property **without being liable for doing so and without the owner of the property having the right to object to that use of the property.**

Note that under subsection 21(3), an inspector is not limited to investigating the property owner. An inspector can trespass on your property if investigating another person's property and you have no recourse.

Currently consumer safety is protected under the *Hazardous Products Act*, the *Criminal Code* and Civil Law while respecting the law of trespass. **This raises the question as to whether it is necessary to abolish fundamental property rights under the justification of “consumer protection”.** I look forward to comments on this question.

The Right to Seize Property Without a Court Order, Without Reporting the Seizure to a Court, and for an Indefinite Period

Section 21 provides in part:

21(1) Subject to subsection 22(1), an inspector may, **for the purpose of verifying compliance or preventing non-compliance with this Act or the regulations**, at any reasonable time enter a place, including a conveyance, in which the inspector believes on reasonable grounds that a



consumer product is manufactured, imported, packaged, stored, advertised, sold, labelled, tested or transported, or a document relating to the administration of this Act or the regulations is located.

21(2) The inspector may

- (a) examine or test anything – and take samples free of charge of an article to which this Act or the regulations apply – that is found in the place;
- (d) seize and detain for any time that may be necessary
 - (i) an article to which this Act or the regulations apply that is found in that place, or
 - (ii) a conveyance;

Please note that these sections do not allow an inspector to enter into your home. To enter a private home an inspector has to apply for a warrant (see section 22).

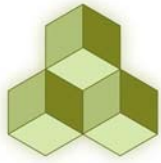
These sections provide that, with the exception of a private home, inspectors can enter on any property in which the inspector believes a consumer product is manufactured, imported, packaged, stored, advertised, sold, labelled, tested or transported. This would include:

- all media outlets that accept advertising of consumer products;
- private property (excluding homes) in which a consumer product is stored;
- all commercial property which is in any way connected with consumer products or parts of consumer products, and
- conveyances such as trains and trucks.

Subparagraph 21(2)(a) permits the seizure of samples for testing. This means that subparagraph 21(2)(d) is not referring to the taking of samples for testing.

Under subparagraph 21(2)(d) there is no limit to:

- **how much property can be seized, and**



- **how long the property can be seized.**

There is also:

- **no requirement for a warrant prior to seizure;**
- **no requirement to report the seizure to a Court;**
- **no mechanism to have the seizure and on-going detention reviewed by a Court or independent review board (as in the *Hazardous Products Act*), and most importantly**
- **THERE DOES NOT HAVE TO BE A HEALTH RISK BEFORE THERE IS A SEIZURE AND DETENTION.** All that is required is that the seizure be for the purpose of verifying compliance or preventing non-compliance.

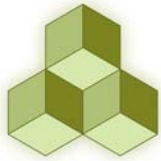
Considering that the stated purpose of the Act is to protect our safety, it is curious that there does not have to be a health risk for there to be a seizure. If we are being asked to surrender our property rights in the name of safety, we should consider when analysing this Bill whether there should be a safety requirement for there to be a seizure and unlimited detention.

The State can Assume Control over the Movement of Private Property Without a Court Order and Without a Safety Concern

Section 23 of the Bill reads:

23. An inspector may order the owner or person having possession, care or control of an article to which this Act or the regulations apply to not move it – or to restrict its movement – for as long as, in the opinion of the inspector, is necessary for the purposes referred to in subsection 21(1).

Section 26 of the Act Reads:



26 An inspector who seizes a thing under this Act shall release it if they are satisfied that the provisions of this Act and the regulations with respect to it have been complied with.

The purpose set out in subsection 21(1) is “the purpose of verifying compliance or preventing non-compliance with this Act or the regulations”.

As outlined above an “article to which this Act or the regulations apply” includes all consumer products and all property including equipment, buildings, vehicles, media outlets, and labs that are used in the manufacturing, importation, packaging, storing, advertising, selling, labelling, testing or transportation of a consumer product.

This means that an inspector can tell property owners to not move private property to check compliance or to prevent non-compliance regardless of how trivial the compliance issue is and regardless of whether or not there is a health risk. I would expect that property owners would be surprised that the movement of their property can be restricted without the presence of even an imagined health risk.

The State can Assume Control of Private Property, Including Land, Without a Court Order and Without a Safety Concern

Bill C-52 enables the State to shut down businesses and to control public property for non-health reasons such as over a testing disagreement with the State or if the State believes there is a contravention of the Act or Regulations. The “contravention” does not have to be one that creates a health risk.

For greater clarity, these new powers permit the State to take control of business and of private property for trivial violations of the Act or Regulations even if those violations do not in any way pose a safety problem. Currently the State has to apply to a Court for a warrant to gain control of private property for alleged offences. The property owner is currently protected as the Court will only issue a warrant on evidence under oath that meets a legal test. Property seized under a warrant has to be promptly reported to the Court. The Court then supervises the holding of the property



to ensure it is returned if proper to do so. Bill C-52 removes these fundamental safeguards. In effect, Bill C-52 moves us away from the rule of law. The sections to review are:

32. (1) If an inspector believes on reasonable grounds that a consumer product is a danger to human health or safety, they may order a person who manufactures, imports or sells the product for commercial purposes to recall it.

(2) The order shall be provided in the form of a written notice and must include

(a) a statement of the reasons for the recall; and

(b) the time and manner in which the recall is to be carried out.

33. (1) An inspector may order a person who manufactures, imports, advertises or sells a consumer product to take any measure referred to in subsection (2) if

(a) that person does not comply with an order made under **section 12** [section 12 concerns orders by the Minister for testing and/or the production of documents] with respect to the product;

(b) the inspector has made an order under section 32 with respect to the product;

(c) the inspector believes on reasonable grounds that the product is the subject of a measure or recall undertaken voluntarily by the manufacturer or importer; or

(d) the inspector believes on reasonable grounds that there is a contravention of this Act or the regulations in relation to the product.

(2) **The measures include**

(b) **stopping the manufacturing, importation, packaging, storing, advertising, selling, labelling, testing or transportation** of the consumer product or causing any of those activities to be stopped; and



(c) **any measure** that the inspector considers necessary **to remedy a non-compliance with this Act or the regulations, including any measure that relates to the product that the inspector considers necessary in order for the product to meet the requirements of the regulations** or to address or prevent a danger to human health or safety that the product poses.

(3) The order shall be provided in the form of a written notice and must include

(a) a statement of the reasons for the measure; and

(b) the time and manner in which the measure is to be carried out.

34. If a person does not comply with an order made under section 32 or 33 in the time specified, **the inspector may**, on their own initiative and at that person's expense, carry out the recall or measure required.

The Move Away from the “Significant Risk” Test

As outlined immediately above, sections 32 to 34 appear to permit the State to take control over businesses and private property. This can be to address a “danger to human health or safety” or “to prevent a danger to human health or safety”.

At first this sounds reasonable as the entire purpose is to protect safety. One concern may be, however, that “danger” is not qualified. Many consumer products inherently pose a danger, firearms and some sporting equipment being obvious examples. As written the State can take control of businesses and private property for **any danger, however trivial**. This raises the question as to whether or not the State should be able to override private property rights for trivial safety concerns.

Under the *Hazardous Products Act*, the State cannot make orders unless there is a “significant risk, direct or indirect, to health or safety”. By requiring the risk to be “significant”, the *Hazardous Products Act* protects property owners by ensuring



that the State can only override their property rights when there is a “significant” danger. In analysing Bill C-52 the question needs to be addressed as to: whether the State should be allowed to take control of private property without there being a significant risk, as is currently the case.

In considering whether Inspectors should have the power to control private property without a “significant” risk, it should be kept in mind that Bill C-52 permits the Minister to make the same interim orders that can be made under the *Hazardous Products Act* if there is a “significant” risk.

The Abolition of the Independent Review Board

Under the *Hazardous Products Act*, State actions and orders affecting private property can be appealed to a Board of Review (see section 8 and 9).

An appeal to the Board of Review under the *Hazardous Products Act* is like an appeal to a Court. The Board of Review has the power to:

- compel witnesses to attend before the Board of Review;
- compel persons to produce documents;
- compel witnesses to testify under oath;
- hire experts to assist it to make a fair determination, and
- employ clerks and court reporters as necessary to ensure a proper hearing.

It is clear that under the *Hazardous Products Act* property owners are protected by having an independent Board of Review which acts like an independent Court to adjudicate between the State and the property owner. In this way the current system upholds the rule of law.

Bill C-52 does not have the Board of Review procedural safeguard. There are two types of orders under Bill C-52: inspector orders and Minister orders (see ss. 32, 33, and 39). The Ministerial orders are a repetition of the power to make



orders found in the *Hazardous Products Act*. However, unlike *the Hazardous Products Act*, there is no Board of Review.

Under Bill C-52 property owners can ask for a review of inspector's orders. However, that review is not conducted by an independent Board of Review with Court powers to ensure a fair hearing. Rather, reviews are to be done by "review officers". Subsection 36(5) suggests that "review officers" will be inspectors other than the inspector who made the original order. This is like asking one police officer to review the order of another police officer in the same department.

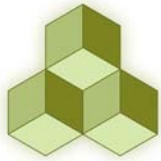
The review officer does not have any of the powers the Board of Review has under the *Hazardous Products Act*. They cannot compel witnesses to testify. They cannot compel the production of documents. They cannot take evidence under oath. They are not given the authority to hire experts.

There is also a very short time limitation in Bill C-52 which may prevent property owners from fairly stating their case. Under the current *Hazardous Products Act* a person has 60 days to ask for a review. They can ask for a review sooner. However, if they need 60 days to get the necessary evidence together, they can take that time. Under Bill C-52, property owners now only have a **maximum of 7 days to put their case together or "any shorter period that may be specified in the order"** (see s. 36(2)). Seven days or less is a very short period of time for which to gather and submit evidence for review of decisions that can destroy a business and which can involve the seizure of private property.

In assessing the removal of the Board of Review safeguard that we currently enjoy, the question needs to be asked as to: whether it is necessary to restrict property owners to 7 days or less to present a case as to why their property should not be seized or their businesses impacted?

Are the Powers to Take Control of Businesses and to Seize Private Property for Alleged Contraventions Legal?

Section 8 of the *Canadian Charter of Rights and Freedoms* gives us the right to be free from unreasonable searches and seizures. These rights apply to both individuals and to businesses.



In determining whether State rights to seize property are “reasonable”, Courts have drawn a distinction between administrative and criminal seizures. Administrative seizures are seizures that are necessary for the State to check to see if the rules are being followed. So for example, the taking of samples for testing is generally considered to be a legitimate administrative seizure.

For administrative seizures the State is not taking control of business premises or stock. Rather, small samples are taken to check for compliance. Courts generally do not require search warrants for administrative seizures.

Criminal seizures are seizures made by the State when the State believes that an offence has or is occurring. Criminal seizures usually involve the taking control of private property for evidence and/or to prevent the continuation of an offence. Criminal seizures are by nature intrusive.

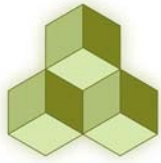
Because criminal seizures encroach upon the property owner’s rights, Court have found that to be “reasonable” criminal seizures can only occur if:

- there is a search warrant or other prior authorization for the search and seizure;
- the warrant or other prior authorization must be given by an independent person who is capable of acting judicially, and
- the issuance of the warrant or other authorization is based on an objective standard. Search warrants cannot be issued because an individual subjectively feels one should be issued.

The leading case on this point is *Hunter v. Southam*, [1984] 2 S.C.R. 145.

Because Bill C-52 allows the State to take control of businesses and to seize property when “the inspector believes on reasonable grounds that there is a contravention of this Act or the regulations in relation to the product”, it probably violates the *Charter of Rights and Freedoms*.

I suggest that Bill C-52 probably violates the *Charter of Rights and Freedoms* because it authorizes a criminal seizure without a warrant issued by an independent person based on an objective standard.



It is important to note that an almost identical seizure power was declared unconstitutional in the case of *C.E. Jamieson & Co. (Dominion) v. Canada (Attorney General)*, [1987] F.C.J. No. 826 (T.D.). This means that the Government is currently trying to pass a law giving the State authority to seize private property in a way that has been found to be unconstitutional. When reviewing Bill C-52 the question should be asked as to: **why we would support a law which probably violates our right to be free from unreasonable search and seizure?**

An ancillary question would be: is it necessary to give up the current protection we have whereby the State has to apply for a warrant prior to seizing our property. In considering this question, it is important to note that it is not difficult for the State to apply for warrants. Indeed, an inspector does not even have to go to Court. They can fax or phone in under what is called the telewarrant process. This process is designed to enable inspectors to act quickly, while at the same time maintaining the rule of law.

The Creation of Administrative Offences

Bill C-52 creates two types of offences: criminal and administrative.

The new administrative offences create some interesting ramifications for property owners.

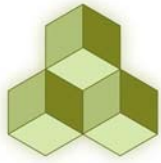
Section 59 sets out that for administrative offences **you cannot** defend yourself by saying you exercised due diligence or were honestly and reasonably mistaken.

Due diligence is defined in Black's Law Dictionary as:

“such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particularly circumstances”.

All of this means that you can be convicted of an administrative offence even if:

- you were doing everything that a responsible business person would be expected to do, and
- you honestly believed there was no violation of the Acts or Regulations.



Further, to convict you the State does not have to prove guilt on the usual standard of guilt beyond a reasonable doubt. Rather the standard is the lower civil standard of the balance of probabilities (see s. 60).

Aside from being convicted and penalized:

- when acting responsibly;
- without knowledge of any wrongdoing, and
- on the lower civil standard of a balance of probabilities,

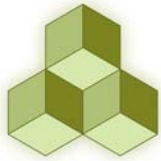
where the administrative penalties get interesting is that they allow the State to keep private property upon an administrative conviction. This is found at section 64 which provides:

64. Anything seized under this Act in relation to a violation is, at the election of Her Majesty in right of Canada, immediately forfeited to Her Majesty in right of Canada and may be disposed of, at the expense of its owner or the person entitled to possess it at the time of its seizure, if

- (a) the person is deemed by this Act to have committed the violation; or
- (b) the Minister, on the basis of a review under this Act, has determined that the person has committed a violation.

Finally, it is the Minister who determines if you are guilty of an administrative offence. Once you are served with a notice of violation you have to request a review by the Minister to contest the charges (see s. 52). **You do not get to go to Court to have an impartial Judge determine whether or not you are guilty or innocent.** Rather, the Minister makes the decision. Remember it is the Minister who gets to keep your property if he/she finds you guilty.

Under the administrative provisions you can be fined and have your property permanently taken by the State without a Court finding you guilty. Indeed, you have no right to a Court hearing.



This is in stark contrast to the current *Hazardous Products Act* under which Courts determine guilt or innocence and property issues.

Administrative violations relate to any violation of the Act or Regulations. There does not have to be a safety risk.

In assessing these administrative provisions there should be dialogue concerning whether the State should be allowed to fine property owners and keep property without determinations of guilt by a Court as is currently required.

We are Responsible for the Costs of Seizures and Detentions Regardless of Whether the Seizures and Detentions were Justified

There is a long-standing principle in Canadian law that the State cannot take a citizen's property without compensation. It is also unprecedented for the State to invoice citizens for the State's cost in seizing our property. Bill C-52 moves away from this tradition with the following provisions:

- s. 21(2)(a) allows the State to take samples for testing "free of charge";
- s. 25 makes the property owner responsible for the State's cost in seizing, removing and storing the property owner's property. Alternately, the State can direct the property owner to move and store the owner's property at a place directed by an inspector at the owner's expense;
- s. 27 makes the property owner responsible for the cost of destroying property that is forfeited to the State under that section;
- s. 29 makes the property owner responsible for the cost of destroying seized property under s. 29;
- s. 34 makes the property owner responsible for the State's cost in forcing a recall or taking other measures such as taking control of



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business premises. This is the case even if it turns out that the State was wrong in forcing a recall or taking other measures, and

- s. 64 makes the property owner responsible for the cost of destroying property that is forfeited to the State under that section.

When one considers that there is no limit to the amount or value of property seized, or for the length of time the State can hold the property, it is clear that the costs to the property owner could be significant. By placing the cost on the property owner, there is no incentive for the State to move quickly concerning stored property, as there is no expense to the State.

Aside from the significant financial damage that consumers or businesses face if their property is seized and detained, these changes raise some interesting philosophical issues. Under the *Hazardous Products Act* the State does not currently have the power to charge citizens for the costs of seizing, storing and destroying private property. Are we currently facing such serious safety issues that it is necessary for us to give up the fundamental right we have to compensation if the State takes our property? I look forward to comments on this issue. I also look forward to comments on all of the other issues raised in this Discussion Paper.