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NATURAL HEALTH PRODUCTS
PROTECTION ASSOCIATION

A LEGAL CHALLENGE TO DECLARE THE NATURAL HEALTH PRODUCT (NHP) REGULATIONS UNCONSTITUTIONAL

The NHPPA sees a legal challenge to the current 2004 NHP regulations as one of the most powerful ways to demonstrate to our courts, our government and to *Health Canada* that Canadians will not accept losing access to natural health products, or the removal of their rights and freedoms to manage their own health by government policy and misguided bureaucrats. What is perhaps most troubling is that Canadians who rely on NHPs that will be lost, as Health Canada renders the majority of NHPs illegal, are



going to suffer health consequences. Most of us are standing by and watching as this happens. We know that the natural health community is more than a marketplace or a business environment: it is a place where many find healing and relief. Where we are self-determined and proactive in living a natural and sustainable life. The over-regulation of the NHP industry is not an accident. It is not a mistake. It is not due to any misunderstanding of the meaning of the NHP Regulations. The death of the NHP industry as we knew it is the inevitable result of the Regulations as they are currently written.

Doing nothing, or trying to achieve minor concessions can only lead to the result we are all witnessing happen. The NHPPA is not willing to celebrate intermittent concessions by Health Canada to temporarily appease the industry while NHPs are relentlessly driven from the shelves.

CURRENTLY, WE ARE FACING A CRISIS WHERE:

- * **the majority** of natural health products people rely on for health conditions are being taken away;
- * **many of the most** innovative herbalists and quality producers will be put out of business;
- * **innovation** into new multi-ingredient NHPs may stop;
- * **the “types”** of products will change; eventually we will face cost recovery; and
- * **many are being terrorized** by Health Canada enforcement action today.

In short the natural health product community is being destroyed by drug-style regulations designed to restrict access to natural health products. This is a dangerous development which must be stopped if Canadians want to continue to use natural health products. As Health Canada ramps up full enforcement of the NHP Regulations, the time has come to confront them at law.

WHY MIGHT THESE REGULATIONS BE UNCONSTITUTIONAL?

For regulations passed under the Food and Drugs Act to be valid, they must be within the Federal Government's jurisdiction. Traditionally the Act has been considered to be the exercise of Parliament's “criminal law” power. Case histories have shown that the government can only legally exert this power in situations which constitute actual danger to citizens.

WHY CHALLENGE THE NHP REGULATIONS IN COURT?

We believe the 2004 Regulations contravene the Charter of Rights and Freedoms in *at least* two ways: Canadians have the Legal Right: “*Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.*” Removing a product that a citizen relies on for health is in direct contravention of this section of the Charter. Additionally the Charter guarantees as a Fundamental Freedom: “*Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.*” The Regulations ban all expression about natural health products except those approved of by Health Canada, truth being no defence, thus undermining freedom of expression.

The Federal Government does not have specific jurisdiction over most health matters, the provinces do. That is why the provinces licence health practitioners such as doctors and nurses. It is why the provinces run hospitals. Health Canada is a federal agency. Their intervention can be justified only under criminal law, and *only if* the risks they are addressing may be criminal in nature. The risks associated with NHPs are proven to be minimal, so we consider that Health Canada has no legal jurisdiction over the manufacture and sale of NHPs.

Additionally, Health Canada has undertaken no risk assessments of the dangers associated with removing NHPs from sale. They have been made aware, by hundreds of letters, calls and emails from citizens, that removing NHPs poses a danger not just to health but on occasion to life itself. To knowingly risk another's wellbeing in this way constitutes criminal negligence and should render the individuals responsible liable to criminal charges.

WHAT DOES A COMPLEX CASE LIKE THIS INVOLVE?

The journey began with **identifying an expert legal team** with expertise in the several areas of law we expect Health Canada to use in their defence. Since we anticipate an aggressive defence, we expect Court action will continue through one or two appeals, possibly ending in the Supreme Court of Canada. In the past companies that have stood alone in Court challenges have found the process challenging and expensive. We have a team with the ability and commitment to see this through for as long as it takes.

The team has **conducted extensive legal research** into the areas we expect Health Canada to address. These are wide ranging since, in a constitutional challenge to the Natural Health Products Regulations (the "NHP Regulations") we can anticipate the Federal Government would try to justify the Regulations under three separate areas of federal jurisdiction: **1.** criminal law **2.** trade and commerce, and **3.** peace order and good governance. We consider their defences in all three areas to be weak, but exhaustive research will be the key.

Individuals and businesses who are willing to be parties to this challenge will have to be identified, the NHPPA can coordinate and fund this challenge but we can only act on behalf of plaintiffs who can show that they have been damaged by the Regulations. The necessary types of evidence must be identified and collated. Expert witnesses will need to be retained and procedural motions anticipated.

At this stage we will be ready to start the action by **filing pleadings** in Court.

We will then proceed through **pre-trial processes** such as discovery of documents and cross-examinations.

Finally, we will be at the point where the first **courtroom trial begins** where we will be encouraged to see supporters fill the seats during proceedings each day.

HOW MUCH WILL TAKING HEALTH CANADA TO COURT COST?

We estimate that we will require an *approximate* budget of \$1,200,000 to see this challenge through three levels of court—if we are starting in federal court—or four levels if we are starting in provincial superior court. If just 5,000 citizens contribute \$20 per month for two years, we will be

equipped to take Health Canada to the Supreme Court of Canada, and have the dollars to support us in the event the courts side with the bureaucrats.

HOW CAN I HELP SUPPORT THIS LEGAL CHALLENGE?

- 1. Call head office** and make a one time donation, or start monthly donations by credit card or as a withdrawal from your bank account at 1.519.648.2050
- 2. Download the contribution form** on www.nhppa.org and fax to 1.519.648.2050
- 3. Log onto www.nhppa.org** and find the legal challenge account to donate via our secure on-line banking form
- 4. Join the 308 Freedom Network** at nhppa.org for news of actions and campaigns in your area
- 5. Follow the NHPPA** on Facebook and Twitter and get immediate news of new national campaigns.

A SHORT HISTORY OF THE NHP REGULATIONS ISSUES

Until 1990 nobody worried about the safety of NHPs. Not even Health Canada. In fact, Health Canada closed down one of the finest NHP testing labs in the world, headed by a recognized leader in the field. NHPs just didn't pose enough of a risk to justify the cost of keeping the lab open. In the mid 1990s Health Canada decided that NHPs should comply with regulations designed for chemical pharmaceutical drugs. Products were taken away from Canadians and they rebelled. This was perhaps the largest citizen movement in Canadian history. The Minister of Health at the time asked Parliament's Standing Committee on Health to re-consider NHP regulation.

The committee consulted widely and made 53 recommendations based on the wishes of Canadians. There was no misunderstanding. Canadians wanted their free access to NHPs protected by their government. In response to the nation's demands for access to NHPs, Health Canada introduced the NHP Directorate and the 2004 NHP Regulations. The NHP Regulations treat natural products as though they are chemical pharmaceuticals, again, in direct contravention of the will of both parliament and the people.

THE FUTURE WE WANT TO SEE

Do we want our children to live in a world where their freedom to choose how to nourish and care for their bodies and their families is controlled? We are working for the day when citizens are once again deemed to be adults, exercising their choices through informed consent. We believe the best person to decide whether something works for and enhances your life **is you. We see a future where the individual is empowered and government protects us and our independence.** The path to that future lays with confronting the regulators, who use the manta of 'safety' to control us. **We are on that path, we are walking it together, and we will change the future.**