

# Why Can't We Claim Natural Health Products?

By Shawn Buckley and Genevieve Eliany | 2014



Pam was in a financial crisis. While her son was taking prescription drugs, her medical plan covered the cost. When her son reacted to the drugs and the doctor began using natural health products (NHPs), the cost was not covered. Nor could she claim a tax credit.

## Prescription drugs versus natural remedies

Pam's problem is a reality for many. Our tax laws favour prescription drugs and make it difficult for low-income Canadians to access natural remedies. With the significant changes that we have witnessed in the regulation of NHPs, it may be time to rethink our tax policy.

## Regulation changes

In 2004, new regulations for NHPs came into effect. Under these new regulations, manufacturers of natural products have had to prove to Health Canada that the products are effective for the purpose for which they are sold. If they cannot prove the products are effective, they have to stop selling them.

The evidence that Health Canada requires for a product varies depending on issues such as the health claim being made. Many manufacturers have been surprised by how difficult it has been to meet Health Canada's standards.

Health Canada's statistics are not clear in showing how many products have failed to meet its standards. This makes it difficult to say how many products have failed to prove they work. Conservative estimates suggest that around 24,000 products have likely failed Health Canada's

efficacy test. The exact amount may be higher, emphasizing how strict Health Canada has been in requiring efficacy to be proven.

The positive side of this for consumers is that the products that do pass Health Canada's test have been proven to be effective. When the test is met, Health Canada grants a licence for the product, which is in effect a seal of approval that the product has been proven to work.

### **Taxation troubles**

More and more Canadians are using natural products, often under the direction of their doctors or other health care practitioners. Yet the cost of natural products is not allowed as a tax credit, as are prescription drugs. Nor are natural remedies included in most medical plans, which mirror the tax credit coverage in the Income Tax Act to ensure the benefits are not taxable. To add insult to injury, there is also GST or HST on natural remedies but not on prescription drugs. Before natural products had to satisfy Health Canada's standards of efficacy, this difference in tax treatment may have made sense. Most of us believe that eating healthy food has positive health benefits, but we do not complain that our food is not covered by medical plans or is not tax deductible.

For products such as vitamins, which are akin to food in that we are supplementing our diet with them, we can also see this reasoning applying. However, when our health care practitioner puts us on a natural product to manage a health condition instead of prescription drugs, the difference in tax treatment is hard to comprehend.

One rationale for giving prescription drugs favourable tax treatment is that we do not want to tax people for treatments that are medically necessary. From a policy perspective, it is simple for the government to consider drugs that are only available by prescription or in a health care facility as medically necessary. When this policy was formulated, however, natural remedies were not as widely used and not as generally accepted as effective.

### The importance of accessible NHPs

By drawing the line where it has, the government is creating hardship for many whose natural products are medically necessary.

For example, lawyers at Buckley & Company in Kamloops, BC are often approached by people with the same story. They have a serious health condition. They have tried various prescription drugs, but either the medications were not effective for them or they could not tolerate the side effects. Their doctor or health care practitioner put them on a natural remedy, and they are doing well.

It is because of such stories that many Canadians are so passionate about wanting to protect our access to natural treatments. In such cases, the natural products are more medically necessary than the prescription drugs the patient had tried. There is no sound policy reason for taxing people who have no choice but to use natural remedies to manage serious health conditions.

### Shifting attitudes

The current tax policy also conflicts with our changing attitudes toward health care. A growing number of Canadians prefer to try natural remedies before using prescription drugs.

This is simply a philosophical choice. If a person develops a serious health condition and finds a natural remedy that effectively treats the condition, how can it be said that the natural remedy is

not medically necessary? Why should our tax policy be designed to encourage people to use prescription drugs rather than natural health products? A more balanced approach would be to treat any effective remedy as medically necessary.

The current policy also discriminates against those with low incomes. According to a December 2010 Ipsos Reid poll conducted on behalf of *alive* magazine, 68 percent of Canadians used NHPs in the preceding 12 months. For the 32 percent who did not purchase natural products in that period, expense was the most common problem. Eighty-one percent of this group reported that the products were simply too expensive.

The inability of low-income Canadians to afford natural remedies creates two ethical dilemmas. The first involves those who cannot manage serious health conditions with prescription drugs because they do not work well for them or they cannot tolerate the side effects. When there is an effective natural remedy, the current policy forces these individuals to suffer.

This policy also forces our government's philosophical decision to privilege prescription drugs for low-income individuals. Whereas the affluent can choose to use natural remedies instead of prescription drugs, the poor cannot.

### **Finding balance**

Fortunately, this unequal treatment between prescription drugs and natural remedies can be easily cured. The favourable tax treatment could be extended to any remedy that is medically necessary. Medical necessity could be shown by a simple form signed by a doctor or licensed health care practitioner, stating the condition and signifying that the treatment is medically necessary.

This would strengthen the public policy goal of exempting medically necessary treatments from taxation. It would also ensure that those who cannot take prescription drugs or prefer natural remedies are not discriminated against. Finally, it would ensure that low-income individuals are not disadvantaged.

### **What can we do?**

Our government is usually concerned about correcting unfair policies. If you are concerned about the unequal taxation between prescription drugs and NHPs, write to Minister of Finance Jim Flaherty, Minister of Health Rona Ambrose, and your local member of parliament about your concerns.

Handwritten letters have a greater impact than telephone calls and emails, but calling and emailing are also helpful. Our elected officials cannot know that we want equal treatment for NHPs unless we tell them.

### **About the Authors**

Shawn Buckley and Genevieve Eliany are lawyers at Buckley & Company who are concerned with the regulation of NHPs. Shawn is also president of the Natural Health Products Protection Association.