

These are the submissions of the Natural Health Product Protection Association (the “NHPPA”) to the Standing Committee on Health in support of Bill C-368.

My name is Shawn Buckley. As a lawyer I have practiced in the area of the regulation of natural health products (“NHPs”) for 30 years. I have defended more companies facing Health Canada charges than all other lawyers still practicing combined. The thought that Health Canada does not have adequate power to protect Canadians from a NHP that actually poses a health risk conflicts with my experience and reason.

Parliament’s regulation of NHPs is an exercise of the criminal law power. Health Canada has extensive powers to protect Canadians from dangerous products under both the *Food and Drugs Act*, and the *Criminal Code*. I challenge anyone to point out a single occasion where Health Canada lacked power to protect Canadians.

I also challenge the idea that more power is always safer. It is unsafe, especially in the area of health, for a regulatory body to have too much power outside of Court. When Health Canada gets it wrong there must be room to resist. Experience, and deaths caused by Health Canada, have taught us this. We cannot afford to unlearn these costly lessons.

If there is a concern about vaping products, delete section 2(b) from SOR/2018-133 to have the penalties in the *Tobacco and Vaping Products Act* apply.

## Summary

The issue before the Committee is whether NHPs should be classed as *therapeutic products*. There has been a struggle on this issue between Health Canada and Canadians since 2008

Health Canada’s current efforts to class NHPs as *therapeutic products* is part of Health Canada’s Self-Care-Framework (the “SCF”). A proper consideration of Bill C-368 must take into account that this is about the SCF.

What is at issue here, at its core, is human sovereignty. Do Canadians have sovereignty over their own bodies? Do Canadians have the right to have access to NHPs? The SCF will remove access to most NHPs from Canadians.

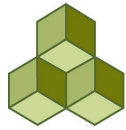
The questions for this Committee is, who do you represent? Health Canada or the Canadian public? Will Canadians have the right to choose for themselves or will that right be taken away?

This Committee spent a year looking into how to treat NHPs. This resulted in the report *Natural Health Products: A New Vision* (November 1998). At that time this Committee understood:

- it was not proper to regulate NHPs in the same way as chemical drugs, and
- Canadians wanted increased access to NHPs.

*The SCF is directly undermining the findings of this Committee.*

The penalties and powers being imposed on the natural health community are excessive.



## **The 16 year public resistance to classifying NHPs as *therapeutic products***

Bill C-368 removes NHPs from the *therapeutic product* class of drugs in the *Food and Drugs Act*, R.S.C., 1985 c. F-27 (the “Act”). A meaningful consideration of Bill C-368 cannot occur without knowing the history leading to the very recent inclusion of NHPs as *therapeutic products*.

In April 8, 2008, Bill C-51 was tabled (Document 1 at <https://nhppa.org/Bill-C368/HESA-2024>). Bill C-51 was the first attempt to create a *therapeutic products* class. The original definition of *therapeutic product* in Bill-C51 included all drugs as *therapeutic products* (both chemical drugs and NHPs).

Bill C-51 also introduced most of the increased fines and Health Canada powers that apply to *therapeutic products* that were later included in *Vanessa’s law*.

Canadians strongly opposed Bill C-51. They saw the inclusion of NHPs as *therapeutic products* as a threat to NHPs. A Citizen movement caused the government to completely back down.

To understand Citizen concern about Bill C-51 read the Discussion Paper which formed the framework for Citizen opposition (Document 2 at <https://nhppa.org/Bill-C368/HESA-2024>).

## **Vanessa’s Law in 2014 - the *therapeutic product* class resurfaces but now does not apply to NHPs**

On December 6, 2013, Bill C-17, called *Vanessa’s Law* was introduced (Document 4 at <https://nhppa.org/Bill-C368/HESA-2024>).

The major difference between Bill C-17 and the former Bill C-51 is that Bill C-17 excluded NHPs from the new *therapeutic product* class. Bill C-17 did not affect NHPs because *therapeutic product* was worded to exclude NHPs. The definition of *therapeutic product* read:

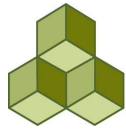
“*therapeutic product*” means a drug or device or any combination of drugs and devices, **but does not include** a natural health product within the meaning of the *Natural Health Products Regulations*;

**This is *the exact wording* Bill C-368 seeks to re-introduce into the Act.**

There was not a Citizen rebellion to *Vanessa’s Law* because it did not apply to NHPs. The NHPPA prepared a Discussion Paper on Bill C-17 which warned that it would only require a definition change to make NHPs subject to the *therapeutic product* definition. A copy of the Discussion Paper can be found as Document 5 at <https://nhppa.org/Bill-C368/HESA-2024>.

## **16 years after first trying NHPs are classed as *therapeutic products* without Citizens having time to react**

As predicted, NHPs became *therapeutic products* with a definition change. This occurred by sneaking the definition change into the *Budget Implementation Act 2023, No. 1*, S.C. 2023, c. 26.



Citizens did not have time to react to the budget bill. But now, over a year later, all MPs understand that Canadians oppose the SCF and support Bill C-368.

Supporters of the Natural Health Products Protection Association *alone* have:

- sent over 493,000 e-letters in support of Bill C-368 to various MPs. They have also sent regular letters;
- given 5,170 signatures to the registered e-petition in support of Bill C-368;
- distributed over 1.2 million postcards to stores and clinics opposing the SCF.

***There can be no doubt that Canadians strongly support Bill C-368 and oppose the SCF.***

### **The addition of NHPs to the *therapeutic product* class is one part of the implementation of the broader Self-Care-Framework**

This Committee cannot realistically consider the issue of whether NHPs should be classed as *therapeutic products* without understanding that this change is just one part of a broader move to completely change how NHPs are regulated.

With NHPs becoming popular in the 1980s and 1990s Health Canada began applying the chemical drug regulations. This drove many NHPs off of the market. Canadians rebelled to protect their access to NHPs. Their core messages were:

- do not treat NHPs as drugs, and
- Canadians wanted increased access to NHPs. Any regulations were to increase access.

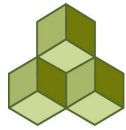
The public rebellion was so great that in November of 1997 this Committee was asked to advise the government on how to regulate NHPs. This Committee held the broadest consultations of any standing committee. The inquiry lasted a year and resulted in the report *Natural Health Products: A New Vision*. It was clear to this Committee that:

- it was inappropriate to regulate NHPs in the same way as chemical drugs (the exact thing the SCF is implementing), and
- that Canadians wanted increased access to NHPs and so any regulatory environment was not to restrict access.

A copy of this report can be found as Document 6 at <https://nhppa.org/Bill-C368/HESA-2024>.

### **It took 13 years for NHPs to come into compliance with the NHP Regulations.**

The NHP Regulations came into force in 2004. Their implementation was a disaster. Health Canada could not process licence applications. The need for compliance was delayed. Both Health Canada and the industry had to learn how to comply with the regulatory scheme.



It took roughly 13 years, to 2017 for the natural health community to be largely compliant. We are guessing that it cost billions of dollars to the government and to industry to reach compliance.

### **Just as compliance is reached, Health Canada announces the SCF to undo the compliance**

In 2017, just as the industry had reached compliance with the NHP Regulations, Health Canada announces that a new regulatory framework will be imposed, the SCF. The Framework was adopted by the Minister of Health on May 12, 2016.

The purpose of the SCF is to regulate NHPs exactly like over-the-counter chemical drugs. This includes the harmonization of powers and penalties. This has been accomplished by moving NHPs into the *therapeutic product* category. Bill C-368 seeks to undo this.

The SCF completely undermines the work of this Committee and the 20 years of Health Canada and the natural health community learning how to apply the NHP Regulations.

For a full discussion on the SCF, review the Discussion Paper on 2023 Health Canada Initiatives found as Document 7 at <https://nhppa.org/Bill-C368/HESA-2024>.

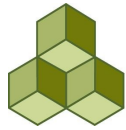
### **The penalties are too strict and will lead to administrative tyranny**

There is never perfect compliance with a law. Nor do we want perfect compliance. It is the outliers, the resisters, that cause positive change. The outliers must be able to survive a struggle with the bureaucracy. In a healthy democracy we impose penalties meant to get most people to comply with a law. Penalties are meant to be like bee stings. They hurt so you will comply much in the same way you won't go near the bee hive again. Penalties are not meant to destroy.

The penalties being imposed on the natural health community are meant to destroy. A \$5,000,000 a day fine may be pocket change for a large pharmaceutical company. No natural health practitioner or company can withstand even a fraction of such a fine.

When penalties are too large there can be no reasonable resistance to Health Canada. In the past companies have resisted Health Canada to save lives. The Court in the Truehope case acquitted Truehope because it was legally necessary to resist Health Canada or more Canadians would have died by Health Canada's actions (oral decision 2006 ABPC 196).

Unless Bill C-368 passes, the penalties are too large for there to be reasonable resistance to Health Canada. No company or practitioner can survive the penalties so resistance to protect access to a product is meaningless. The product will disappear because the company or practitioner will be destroyed, so why resist. There is no danger to the public by resistance. Indeed, history has taught us that resistance is necessary to save lives. Health Canada can always apply to Court for an injunction. If there is a product danger the Court will intervene. If there is danger by intervening a Court will not intervene.



## **This is about human sovereignty**

What is at issue here, at its core, is human sovereignty. Do Canadians have sovereignty over their own bodies? Do Canadians have the right to have access to NHPs? The SCF will remove access to most NHPs from Canadians.

Our drug laws and Health Canada are not consistent with good health outcomes. It is truly concerning that

- the only legal treatments for serious health conditions are novel chemicals;
- Health Canada is attempting to make novel chemicals the only legal treatments for moderate health conditions (the goal of the SCF);
- Health Canada has the sole power to determine what we use to prevent illness or to treat illness. This is a dramatic legal-philosophical failure by Parliament;
- NHPs which are dramatically safer than common foods such as nuts or shellfish are regulated as dangerous drugs. They were unregulated before without concern. They are unregulated in the United States and Canadians are free to import and use them from the United States without concern;
- there is no account of the danger of removing NHPs Canadians are successfully using to manage serious health conditions. ***This makes any discussion of safety a fraudulent discussion.***

## **Parliament is losing the trust of Canadians**

The overwhelming majority of Canadians regularly use NHPs. Canadians are not stupid. They are using NHPs because they work to provide relief from suffering and to stay healthy. The messages from Parliament that stricter regulations are needed to protect Canadians from NHPs that are unregulated in the U.S. are understood by Canadians at a fundamental gut level as untrue.

Parliament is losing the trust of Canadians.