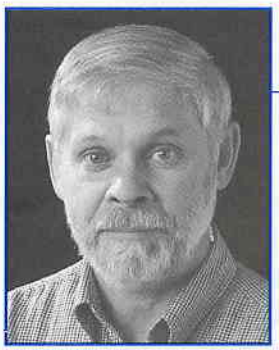

BILL C6 – A CRITIQUE

By Richard DeSylva, R.H., D.NM

In Canada, Bill C6 has recently been introduced in Parliament.[1] If enacted into law, it would place enormous regulatory power into the hands of minor food-and-drug bureaucrats, such that the existing Canadian Natural Health Products (NHP) industry and, possibly, some of its associated practitioners would be at risk of eventual extinction while those who survived would be nothing more than willing participants in the collapse of the industry. As a former member of this industry, and now as a practitioner, I am offering my practitioner's take on this Bill's dangers and implications.

Second Verse, Same as the First

This Bill is simply a rehashed version of C52, originally introduced in Ottawa last May 2008. As with its companion Bill C51, both Bills would have resulted in serious and profound damage to the natural health industry and perhaps the same profession. Because of this, numerous groups were formed across Canada that worked together to defeat these two Bills.

Both the federal Conservative party and specifically the (then) Minister of Health Tony Clement were under a full-scale assault by the groups; although Clement did offer to amend C51, there remained substantial and widespread dissatisfaction. Legal challenges were formulated, Members of Parliament (MPs) were put on notice, and a Charter of Health Freedom was launched. Finally, in October 2008, Prime Minister Harper prorogued (disbanded) Parliament, calling it dysfunctional. With the election call, all Bills before Parliament died on the order table, and both of these horrible Bills quietly passed into oblivion.

While Clement was on the hustings in his own riding, he was heard to say that if the Conservatives were re-elected, they would bring back C52. True to their word, they have now done so; C52 has been re-born as Bill C6: the so-called Canada Consumer Product Safety Act.

This Act proposes to protect Canadians from the possibility of harm from any consumer product imported into Canada, as well as those produced domestically. While perhaps able to legitimately address some safety issues with imported products such as the ethylene glycol in toothpaste, or the melamine in milk powders noted last year (although existing law already does this), the main thrust of this Bill contains detailed regulations geared more towards domestic products than those from outside the country.

The scope and intended "capture" of these regulations is astounding. This, along with the heavy fines, suggests intent once again to annihilate, not regulate. It is a steam-roller approach that, in its second phase, would then allow for international regulations to be adopted into Canadian law. How would that work?

Destroying Canadian Sovereignty

In its Subsection 36.(2), this Bill states that "[a] regulation made under this Act may incorporate by reference documents produced by a person or body other than the Minister including by *(a)* an organization established for the purpose of writing standards, including an organization accredited by the Standards Council of Canada, *(b)* ***an industrial or trade organization, or (c) a government***." (emphasis added)

Yet, it is not just the Canadian government to which they refer. In the Bill's opening few pages, under Section 2 ("Interpretation"), "government" is defined as, among other things: "*(e)* a government of a foreign state or a subdivision of a foreign state, or *(f)* an international organization of states." So, if the Bill were to be passed, then the Canadian Minister of Health would be able to issue regulations based upon, or actually using, foreign government laws or regulations!

This is further supported by Subsection 36.(4), which states, "[a] regulation made under this Act may incorporate by reference documents that the Minister produces jointly with another government for the purpose of ***harmonizing*** the regulation with other laws." (emphasis added)

Looking generally, then, at Subsections 36.(2)-(7), inclusive, on Regulations, it is all laid out there in specific detail. Canadian health law would no longer be independent but instead incorporate other, foreign legislation, rules, and regulations.

In Subsection 36.(2)(b) mention is made of "industrial or trade organizations." Given the earlier definition of "government" in the definition's subpart *(f)*, this is a specific reference to a "trade" organization, known as the World Trade Organization (WTO), which is nothing less than the enforcement arm of the Codex Alimentarius Commission.

Perhaps you might think that this is simply conjecture on my part; that it only would refer to domestic laws. Why then the following statement on the website of the WTO?

> *"The WTO Agreement is a treaty – the international equivalent of a contract. It is self-evident that in an exercise of their sovereignty, and in pursuit of their own respective national interests, the Members of the WTO have made a bargain. In exchange for the benefits they expect to derive as Members of the WTO, they have agreed to exercise their sovereignty according to the commitments they have made in the WTO Agreement."*

Canada is a signatory to this international treaty and is preparing for the adoption – by stealth – of WTO & Codex Alimentarius guidelines and standards into Canadian law without the benefit of any Parliamentary review, debate, or exercise of democratic due process. Bill C6 makes this abundantly clear.

Exempt So As to Avoid the Law

To facilitate this whole process, and aid and abet its passage into law, Bill C6 and its regulations are exempted from the requirements of the Statutory Instruments Act (Section 64, General Provisions, and Section 37, Interim Orders).

Basically, this Statutory Instruments Act is somewhat akin to the final stamp of approval. It is designed to ensure that any new Act and its regulations conform to existing laws such as the Charter of Rights and the like. One might also add that it is a measure of any Act of Parliament, which, having worked its way through the democratic process, then becomes law. That is, it has been given First and Second Readings, sent to Committee for hearings, returned to the House for a third and final vote, passed, heard by the Senate, finally sent for sanctioning by the Statutory Instruments Act., and onto the Queen's Printers for eventual distribution.

By removing this last requirement, this government demonstrates that it is aware of the implications of the Act, and how it could prove fatal to the new Bill C6. Equally, it would allow more decisions to be made simply through "Orders-in-Council" via the Minister and the Cabinet.

Mere Suspicion Triggers Enforcement Powers

As important as the above-noted issues are, it is necessary to understand the reach and scope of the regulations as they apply domestically. Under Bill C6, an inspector – upon the basis of his or her mere ***suspicion*** of alleged safety concerns – could institute a series of formal actions that would immediately stop any and all business activity of the health-food or health-service business, without even the slightest oversight of independent adjudication, such as a court hearing, to determine culpability. The result of this bureaucratic action is obvious – a small or medium-sized business owner would be unable to earn the income necessary to fight the decision made by one bureaucrat. The power of intimidation that could be wielded by such a bureaucrat as a result would be enormous. The servants would indeed become the masters.

This type of arbitrary bureaucratic power would represent yet another additional encroachment upon our liberties. These encroachments have been inexorably slow and insidious and, more often than not, couched in the usual bland slogans of "protecting the public." Were the State truly interested in protection of the public from harm, there would be a wholesale revocation of the license to sell a number of products, including tobacco, various pharmaceuticals, and GMO foods.

Then "Offenders" Punitively Penalized

A thorough examination of Sections 38-41 (Offences), Section 47 (Administrative penalties), Subsections 50.(2) (a) & (3) (Penalties), Subsection 51.(4a) (Compliance agreements), and Subsections 56.(1) & (2) (Rule(s) of Law Violations), will reveal a scenario of extremely-punitive, expensive, and perhaps even illegal measures for dealing with any perceived offenses. The very structure of compliance agreements and first-time penalties are designed to exert tremendous coercion, ensure total and complete cessation of one's livelihood, and could, in the instance of the natural health-food sector, even eliminate the small-to-medium portion of this industry.

There are a number of sections of this Bill that deny due process, override Civil and Charter rights, and make a mockery of Common Law, such as, among others, Sections and Subsections 4, 20.(2)(a-i), and 56.(1) & (2). Essentially, these Sections force a business owner to comply with any and all requests by a health inspector, including (1) giving – free of charge – any samples requested, (2) allowing the health inspector to seize and detain, or to transfer to a secure location for an undetermined time (at the owner's expense) any equipment used in the manufacture of any product(s), and (3) allowing unchallenged examination of any computer or other file material, including privileged confidential information, which, under this Act, could then be sent to foreign governments, agencies, etc. where the business owner is doing business.

Section 56 removes the right of an individual to claim that he or she was exercising due diligence or was acting on the basis of facts that could exonerate them. Thus, in these and other Sections, the individual is deemed to be guilty even before an open examination of the facts in a court of law. This presumption runs counter to the Canadian Charter of Rights, which presumes innocence until guilt has been proven. It also specifically flies in the face of the 1984 Supreme Court of Canada decision regarding *reverse onus*, in that the person is treated as if they were in fact guilty, and must then prove to Health Canada that he or she is innocent.

It is for this reason that Bill C52 and its "spirit in arms" successor Bill C6 make a forceful argument that a legal challenge would be needed to these and other egregious assaults upon basic human and civil rights should C6 pass. The crux of the matter is the issue of the rights of the individual versus the rights of the State. At what point does the individual yield and give up rights that are core principles of individual liberty? As an example, under this Bill there would be a loss of core private-property rights with property owners being completely unable to prevent the police and government agents from entering and trespassing upon their private property, perhaps causing damage in the process, for which the property owners could not then hold them accountable.

Are NHPs Exempted?

Finally, and of equal note, are Subsections 36.(1)(a) & (b). These Subsections address the matter of exemption, specifically that of a "class" of products, or even a "class" of persons, from the regulations. Given that in Subsection 4.(1) the Act would not apply to products listed in Schedule 1 (such as foods and drugs under the Food & Drug Act), and, further, that NHPs were originally listed as a subset of drugs, it does beg the question, do these products gain an exemption by reason of being that subset, or are they viewed as a distinct and autonomous nonexempt product? And exactly what classes of product or what class of persons will be exempted? For whom or what are these Subsections intended to apply?

These Subsections require further review to establish more certainty in their intent. As written, they could be both beneficial for one class of product or person; or precipitate a collapse of another particular market. At the very least, it should be noted that the wording of this Bill sets the stage for any further amendments to be made through executory Orders in Council. It is this odious proviso to the Bill that portends the dismissal of democratic debate. In doing so, it gives undue powers to a small coterie of individuals whose only allegiance is to their party and their multinational taskmasters.

No Time to Lose

On the certainty that this Bill will be going to Committee and other hearings, it is of the utmost importance that both the public and the industry make substantive and concerted efforts to stop this Bill. All of the activities engaged in last year are a basic starting point for what we must now do. Quite frankly, we have no time to lose. HFN

Richard DeSylva is a well-respected consultant herbalist, specializing in botanic medicine and treating chronic ailments. Based in Ontario, Canada, Rick has been working across both Canada and the United States for 25 years. Rick is also a researcher, writer, lecturer, and teacher, with intimate knowledge of the health and herbal business both as a hands-on businessman and consultant. Founder of the Botanic Institute in 1993, he has also been a professional lobbyist to represent practicing herbalists in Ontario; but he still currently practices those skills in lobbying for herbal medicine. A current board member of the Ontario Herbalist Association, the Canadian Council of Herbal Associations, and the Ontario Doctors of Natural Medicine Association, he also finds time to work on his book Botanic Medicine & The Nature of Disease *as well as write articles for numerous magazines in Canada and the U.S.*

Endnote

1. The text of this Bill may be read at *http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Parl=40&Ses=2&Mode=1&Pub=Bill&Doc=C-6_1.*

From left to right, Scott Tips, Frankie Ma, and Ian Crane on the set of Sky 200 TV after Frankie Ma's talkshow interview of them on various health-freedom subjects including Codex. 26 January 2009