# Charter of Health Freedom

Whereas section 7 of the *Canadian Charter of Rights and Freedoms* guarantees every person's right to life, liberty, and the security of the person. This includes the right to make fundamental health decisions;

Whereas the Common Law recognizes that every person has sovereignty over their own bodies;

Whereas it is a fundamental right for individuals to be able to choose how to prevent illness or how to address illness or injury in their own bodies;

Whereas there can be no health freedom if the State makes treatment options illegal;

Whereas the Government of Canada through Health Canada has been restricting access to treatment options through over-regulation;

Whereas there is a danger to removing treatments Canadians rely upon for their health;

Whereas under the Constitution of Canada the provinces are given exclusive jurisdiction over health. The Government of Canada's regulation over health is based on its criminal law power which is limited to regulating fraud, adulteration, and substances carrying such a significant health risk as to be considered "criminal";

Whereas Canadians are competent and able to make their own health decisions without State interference;

Whereas Canadians want the freedom to decide how they will prevent illness or how they will address illness or injury in their own bodies;

Whereas the First Nations People have the sovereign right to practice their traditional medicine;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

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*Drafted by Shawn Buckley, Esq. For the NHPPA on September 4, 2008.*

## SHORT TITLE

1. This Act may be cited as the *Canadian Charter of Health Freedom*.

## RECOGNITION AND DECLARATION OF HEALTH RIGHTS AND FREEDOMS

2. It is hereby recognized and declared that in Canada there have existed and shall continue to exist the following rights and fundamental freedoms, namely:

(a) the right to life, liberty, and the security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice;

(b) the right to sovereignty over one's body;

(c) the right to make personal health decisions without the interference of the State. This right includes, but is not limited to, the right to make decisions concerning:

(i) maintaining health and wellness;

(ii) preventing illness;

(iii) treating illness or injury, and

(iv) diagnosing illness or injury;

(d) the right to have access to any treatment unless there is substantial and compelling evidence:

(i) the treatment poses a significant health risk, and

(ii) that interfering with access to the treatment will not create a more significant health risk than is posed by the treatment itself, and

(e) the right to refuse any treatment.

## RECOGNITION AND DECLARATION OF PRINCIPLES

3. The following principles apply to this Act:

(a) everyone is deemed to be competent to be able to make personal health decisions unless there is substantial and compelling evidence to the contrary;

(b) the best source of information concerning the effect of a treatment on a person is the person himself or herself, and

(c) traditional and historic methods for gathering, manufacturing, preparing, preserving, performing, packaging, or storing a treatment are to be protected and privileged.

**PURPOSES**

4. The purposes of this Act are to protect and to promote health freedom by protecting and promoting access to treatment options such as natural health products, treatment devices, traditional medicine, and other health practices.

**CONSTRUCTION OF LAW**

5. (1) Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Charter of Health Freedom*, be so construed and applied as not to abrogate, abridge, or infringe or to authorize the abrogation, abridgment, or infringement of any of the rights, freedoms, or principles herein recognized and declared.

(2) This Act shall be liberally construed so as to protect and promote the rights, freedoms, and principles herein recognized and declared.

(3) Every provision of this Act applies, unless a contrary intention appears, to every enactment, whether enacted before or after the commencement of this Act.

(4) Every treaty, agreement, or memorandum of understanding entered into by the Government of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Charter of Health Freedom*, be so construed and applied as not to abrogate, abridge, or infringe or to authorize the abrogation, abridgment, or infringement of any of the rights, freedoms, or principles herein recognized and declared.

## REGULATION OF NATURAL HEALTH PRODUCTS, TREATMENT DEVICES, TRADITIONAL MEDICINE, AND OTHER HEALTH PRACTICES

6. (1) Natural health products, treatment devices, traditional medicine, and other health practices shall be regulated exclusively by this Act and regulations made pursuant to this Act.

## INTERPRETATION

7. The following definitions apply in this Act:

"action" means any:
(a) decision or recommendation made;
(b) act done or omitted, or
(c) procedure used;

"department" includes:
(a) any ministry of the Government of Canada;
(b) a person, corporation, commission, board, bureau, or authority who is or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are:
    (i) appointed by an Act, minister, or the Governor General in Council;
    (ii) in the discharge of their duties, public officers or servants of the Government of Canada, or
    (iii) responsible to the Government of Canada;

"court" means the Federal Court of Canada or the Superior Court of a province;

"Minister" means the Minister of Wellness;

"natural health product" means any of the following that is manufactured, sold, or represented as a treatment:
(a) a plant or plant material, an alga, a bacterium, a fungus, or a non-human animal material;
(b) an extract or isolate of a substance described in paragraph (a), the primary molecular structure of which is identical to that which it had prior to its extraction or isolation;
(c) a vitamin;
(d) an amino acid;

(e) an essential fatty acid;
(f) a synthetic duplicate of a substance described in paragraphs (a) to (e);
(g) a mineral;
(h) a probiotic;
(i) a homeopathic medicine;
(j) a naturopathic medicine, or
(k) any product whose medicinal ingredients consist entirely of things referred to in any of the paragraphs (a) to (h);

"other health practices" means any treatment except:
(a) any article, instrument, apparatus, or contrivance including any component, part, or accessory, that is not a treatment device, or
(b) any substance that is not a natural health product or a traditional medicine;

"traditional medicine" means health practices, approaches, knowledge, and beliefs incorporating plant, animal, and mineral based medicines, spiritual therapies, manual techniques, and exercises, applied singularly or in combination to treat, diagnose, and prevent illnesses or maintain well-being, and without restricting the generality of the foregoing, includes traditional:
(a) First Nations medicine;
(b) Inuit medicine;
(c) Metis medicine;
(d) Chinese medicine;
(e) Ayurvedic medicine;
(f) herbal medicine;
(g) Unani medicine;
(h) Shiddha medicine, and
(i) Tibetan medicine;

"treatment" means any remedy, procedure, or technique for:
(a) the maintenance of health and wellness;
(b) preventing illness;
(c) curing or alleviating illness or injury, or
(d) diagnosing illness or injury;

"treatment device" means any article, instrument, apparatus, contrivance, or medical device including any component, part, or accessory, manufactured, sold, or represented as a treatment, that:
(a) does not come into contact with the surface of the eye;
(b) does not penetrate the body, either through a body orifice or through the body surface with the following exceptions:
    (i) temporary penetration of the oral or nasal cavities as far as the

pharynx;
(ii) temporary penetration of the ear canal up to the eardrum;
(iii) temporary penetration of the sphincter, or
(iv) acupuncture needles;

(c) does not come into contact with injured skin;
(d) is not implanted into the body, and
(e) does not emit ionizing radiation.

**PRESUMPTION OF SAFETY**

8. (1) All natural health products, treatment devices, traditional medicines, and other health practices are presumed to be safe.

(2) The presumption of safety in subsection (1) can only be rebutted by substantial and compelling evidence that a natural health product, treatment device, traditional medicine, or other health practice poses a significant health risk.

**MINISTRY OF WELLNESS**

9. (1) The Ministry of Wellness is established to protect and to promote health freedom by protecting and promoting access to treatment options such as natural health products, treatment devices, traditional medicine, and other health practices.

(2) The Ministry of Wellness has exclusive jurisdiction to administer this Act and regulations.

(3) The Ministry of Wellness is to be separate and apart from the Department of Health.

(4) The Minister is not to be the same person as the Minister of Health.

(5) The Ministry of Wellness is prohibited from regulating:

(a) any article, instrument, apparatus, contrivance, or medical device including any component, part, or accessory, that is not a treatment device, and
(b) any substance that is not a natural health product or a traditional medicine.

## PROTECTION AGAINST FRAUD

10. No person shall label, package, treat, process, sell, or advertise a natural health product, treatment device, traditional medicine, or other health practice in a manner that is false, misleading, or deceptive regarding its character, value, quantity, composition, merit, safety, or origin.

## PROTECTION AGAINST ADULTERATION

11. No person shall manufacture, prepare, preserve, perform, package, or store for sale a natural health product, treatment device, traditional medicine, or other health practice under unsanitary conditions.

12. No person shall sell any natural health product, treatment device, traditional medicine, or other health practice that:

(a) was manufactured, prepared, preserved, packaged, or stored under unsanitary conditions; or
(b) is adulterated.

## PROTECTION AGAINST SIGNIFICANT HEALTH RISKS

13. (1) Subject to subsection (2), when the Minister has substantial and compelling evidence:

(a) a treatment poses a significant health risk, and
(b) that interfering with access to the treatment will not create a more significant health risk than is posed by the treatment itself,

the Minister may apply to a court for an order under this section.

(2) When applying for an order, the Minister shall seek the least restrictive order necessary to address any significant health risk.

(3) Subject to subsections (4) and (5) and section 14, if on the application of the Minister, a court is satisfied there is substantial and compelling evidence:

(a) a treatment poses a significant health risk, and
(b) that interfering with access to the treatment will not create a more significant health risk than is posed by the treatment itself,

the court may, to address any significant health risk:

(c) order any person to comply with this Act or regulations;
(d) order any person to provide any information necessary to address the health risk;
(e) order any person to take reasonable measures to address the health risk;
(f) issue an injunction ordering any person from refraining to do anything as may be necessary to address the health risk.

(4) A court may not make an *ex parte* order under subsection (3) unless:

(a) it was impractical for the Minister to give notice of the application, and
(b) there are compelling reasons to grant an *ex parte* order.

(5) Any *ex parte* order made under subsection (3) expires on the earliest of:

(a) twelve days;
(b) the earliest day on which the Minister's application under subsection (1) could be heard after satisfying the notice requirements prescribed by the court's rules, or
(c) when all parties attend in court to speak to the application.

(6) If on the application of the Minister a court is not satisfied there is substantial and compelling evidence:

(a) a treatment poses a significant health risk, and
(b) that interfering with access to the treatment will not create a more significant health risk than is posed by the treatment itself,

the court:

(c) shall order the Minister to pay to all opposing parties the actual costs incurred by the opposing parties in the court proceeding;
(d) may order the Minister to pay punitive costs to a party, and
(e) may order the Minister to pay damages to a party.

**LEAST RESTRICTIVE INTERFERENCE**

14. (1) A court shall not make an order which would result in the removal of a natural health product, treatment device, traditional medicine, or other health practice from the public or from any person unless there is substantial and compelling evidence:

(a) the treatment poses a significant health risk, and
(b) that interfering with access to the treatment will not create a more significant health risk than is posed by the treatment itself.

(2) A court shall not make an order which would result in the removal of a natural health product, treatment device, traditional medicine, or other health practice from the public or from any person if there are less restrictive means to address any significant health risk.

(3) A court shall not make an order which would result in the removal of a natural health product, treatment device, traditional medicine, or other health practice from the public or from any person due to the treatment's non-compliance with this Act or the regulations unless there is substantial and compelling evidence:

(a) the treatment poses a significant health risk, and
(b) that interfering with access to the treatment will not create a more significant health risk than is posed by the treatment itself.

**EXAMINATION AND SAMPLING**

15. (1) The Minister may designate any person knowledgeable concerning natural health products, treatment devices, traditional medicine, or other health practices as an examiner for the purpose of the enforcement of this Act.

(2) An examiner shall be given a certificate in a form established by the Minister attesting to the examiner's designation and, on entering any place pursuant to subsection 16(1), an examiner shall produce the certificate to the person in charge of that place.

(3) Examiners may only examine treatments that they are competent to evaluate the safety of.

16. (1) Subject to subsections (2), (5), (6) and (7), an examiner may at any reasonable time enter any place where the examiner believes on reasonable grounds any article to which this Act or the regulations apply is manufactured, prepared, preserved, packaged, or stored, and may:

(a) examine any such article and take samples thereof, and examine anything that the examiner believes on reasonable grounds is used or capable of being used for that manufacture, preparation, preservation, packaging, or storing;

(b) open and examine any receptacle or package that the examiner believes on reasonable grounds contains any article to which this Act or the regulations apply, and

(c) examine and make copies of, or extracts from, any books, documents, or other records found in any place referred to in this subsection that the examiner believes on reasonable grounds contains any information relevant to the enforcement of this Act with respect to any article to which this Act or the regulations apply.

(2) Where any place mentioned in subsection (1) is a dwelling-house or an outbuilding of a dwelling-house, an examiner may not enter that dwelling-house or outbuilding without the consent of the occupant except under the authority of a warrant issued under subsection (3).

(3) Where on *ex parte* application a justice of the peace is satisfied by information on oath:

(a) that the conditions for entry described in subsection (1) exist in relation to a dwelling-house or outbuilding;

(b) that entry to the dwelling-house or outbuilding is necessary for any purpose relating to the administration or enforcement of this Act, and

(c) that entry to the dwelling-house or outbuilding has been refused,

the justice of the peace may issue a warrant authorizing the examiner named therein to enter the dwelling-house or outbuilding subject to such conditions as may be specified in the warrant.

(4) In executing a warrant issued under subsection (3), the examiner named therein shall not use force unless the examiner is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

(5) Examiners may only take such samples as are reasonably necessary for testing to determine compliance with this Act and regulations.

(6) Examiners must pay the person possessing the samples the fair market value of all samples taken by the examiner.

(7) When taking a sample an examiner shall inform the person possessing the sample of the examiner's intention to submit the sample or a part thereof to an analyst for analysis or examination, and in the presence of the person possessing the sample:

(a) where division of the sample would not interfere with analysis or examination:

(i) divide the quantity into three parts;
(ii) identify the three parts as the owner's portion, the examiner's portion, and the duplicate sample;
(iii) seal each part in such a manner that it cannot be opened without breaking the seal, and
(iv) deliver the part identified as the owner's portion to the person from whom the sample was obtained and forward the sample and the duplicate sample to an analyst for analysis or examination, or

(b) where division of the sample would interfere with analysis or examination:

(i) identify the entire quantity as the sample;
(ii) seal the sample in such a manner that it cannot be opened without breaking the seal, and
(iii) forward the sample to an analyst for analysis or examination.

(8) The Minister cannot rely upon the analysis or examination of a sample which was not taken in compliance with subsection (7).

(9) A court cannot rely upon the analysis or examination of a sample which was not taken in compliance with subsection (7).

(10) With the exception of the part identified as the owner's portion in subsection (7), samples taken and paid for in accordance with this section become the property of her Majesty.

**ASSISTANCE FOR ADMINISTRATIVE EXAMINATIONS**

17. (1) Subject to subsections (3) and (4), the owner or person in charge of a place entered by an examiner pursuant to section 16 and every employee found therein shall give the examiner all reasonable assistance and furnish any information the examiner may reasonably require.

(2) No person shall obstruct or hinder, or knowingly make any false or misleading statement either orally or in writing to, an examiner while the examiner is engaged in duties or functions under this Act or the regulations.

(3) Subsection (1) does not apply if the examiner believes an offence has occurred and is attempting to get evidence concerning the commission of an offence.

(4) Subsection (1) does not override:

(a) privacy laws in force in the province where the administrative examination is occuring, or
(b) professional obligations concerning patient or client privacy.

**REGULATIONS**

18. (1) Subject to subsections (2), (3) and (4), the Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect, and without restricting the generality of the foregoing, may make regulations:

(a) to protect and to promote health freedom by protecting and promoting access to various treatment options;
(b) to protect against fraud;
(c) to protect against adulteration, and
(d) to protect against significant health risks.

(2) All regulations made under subsection (1) must be consistent with the rights, freedoms, principles, and purposes of this Act.

(3) No regulation made under subsection (1) can require the irradiation of natural health products or traditional medicines.

(4) Subject to subsection (5), all regulations made under subsection (1) must be reasonable and practical for small and medium size manufacturers, distributors, retailers, and practitioners.

(5) Notwithstanding subsection (4) regulations which may not be reasonable and practical for small and medium size manufacturers, distributors, retailers, or practitioners may be imposed on large manufacturers, distributors, retailers, and practitioners.

(6) In this section small size manufacturers, distributors, retailers, or practitioners means ones with five or fewer employees.

(7) In this section medium size manufacturers, distributors, retailers, or practitioners means ones with thirty or fewer employees.

## REGULATIONS CANNOT RESTRICT HEALTH FREEDOM

19. (1) If the purpose or the effect of a regulation is to remove a natural health product, treatment device, traditional medicine, or other health practice from the public or from any person, the treatment is exempted from the regulation unless there is substantial and compelling evidence:

(a) the treatment poses a significant health risk if the regulation is not complied with, and
(b) that interfering with access to the treatment will not create a more significant health risk than is posed by the treatment itself.

(2) If the purpose or the effect of a regulation is to place an unreasonable burden on a practitioner, manufacturer, distributor, or retailer of a treatment, the practitioner, manufacturer, distributor, or retailer is exempted from the regulation unless there is substantial and compelling evidence the treatment poses a significant health risk if the regulation is not complied with.

## OFFENSES AND PUNISHMENT

20. Every person who contravenes any of the provisions of this Act or of the regulations is guilty of an offence and liable:

(a) on summary conviction for a first offence to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding three months or to both and, for a subsequent offence, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both; and
(b) on conviction on indictment to a fine not exceeding fifteen thousand dollars or to imprisonment for a term not exceeding three years or to both.

21. A judge imposing a sentence for a contravention of this Act or regulations shall ensure that the sentence does not result in the removal of a natural health product, treatment device, traditional medicine, or other health practice from the public or from any person unless there is substantial and compelling evidence:

(a) the treatment poses a significant health risk, and
(b) that interfering with access to the treatment will not create a more significant health risk than is posed by the treatment itself.

22. (1) Subject to subsection (2), in a prosecution for the sale of any article in contravention of this Act or regulations, if the accused proves to the satisfaction of

the court or judge that:

(a) the accused purchased the article from another person in packaged form and sold it in the same package and in the same condition the article was in at the time it was so purchased, and
(b) that the accused could not with reasonable diligence have ascertained that the sale of the article would be in contravention of this Act or the regulations,

the accused shall be acquitted.

(2) Subsection (1) does not apply in any prosecution unless the accused, at least ten days before the day fixed for the trial, has given to the prosecutor notice in writing that the accused intends to avail himself of the provisions of subsection (1) and has disclosed to the prosecutor the name and address of the person from whom the accused purchased the article and the date of purchase.

## LIABILITY OF THE CROWN AND SERVANTS OF THE CROWN

23. Nothing in this Act is to be construed as shielding the Minister or the servants and agents of the Minister from criminal or civil liability for any action taken by them which results in the removal of a natural health product, treatment device, traditional medicine, or other health practice from the public or from any person in the absence of substantial and compelling evidence:

(a) the treatment poses a significant health risk, and
(b) that interfering with access to the treatment will not create a more significant health risk than is posed by the treatment itself.

## HEALTH FREEDOM OMBUDSMAN

24. (1) The Governor in Council shall, by commission under the Great Seal, appoint a Health Freedom Ombudsman after consultation with the leader of every recognized party in the Senate and the House of Commons and approval of the appointment by resolution of the Senate and the House of Commons.

(2) The Health Freedom Ombudsman holds office during good behaviour for a term of 7 years but may be removed for cause by the Governor in Council on address of the Senate and the House of Commons.

(3) Once having served as the Health Freedom Ombudsman, a person is not eligible for re-appointment to that office.

(4) The Health Freedom Ombudsman shall be paid a salary equal to the salary of a Judge of the Federal Court of Canada.

(5) The provisions of the *Public Service Superannuation Act*, other than those relating to tenure of office, apply to the Health Freedom Ombudsman except that a person appointed as Health Freedom Ombudsman from outside the public service may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment as Health Freedom Ombudsman, elect to participate in the pension plan provided for in the *Diplomatic Service (Special) Superannuation Act* in which case the provisions of that Act, other than those relating to tenure of office, apply and the provisions of the *Public Service Superannuation Act* do not apply.

**POWERS AND DUTIES OF THE HEALTH FREEDOM OMBUDSMAN**

25. (1) The Health Freedom Ombudsman on a complaint, or on the Ombudsman's own initiative, may investigate any action by a department or by any person acting under the authority of any law of Canada to determine whether the action violates any of the rights, freedoms, or principles herein recognized and declared.

(2) The powers and duties conferred on the Health Freedom Ombudsman may be exercised and performed despite a provision in an Act to the effect that:

(a) a decision, recommendation, or act is final;
(b) no appeal lies in respect of it, or
(c) a proceeding or decision of the department whose decision, recommendation, or act it is must not be challenged, reviewed, quashed, or called into question.

(3) Parliament or any of its committees may at any time refer a matter to the Health Freedom Ombudsman for investigation and report.

(4) The Health Freedom Ombudsman must:

(a) investigate the matter referred under subsection (3), so far as it is within the Ombudsman's jurisdiction and subject to any special directions, and
(b) report back as the Ombudsman thinks fit.

(5) Sections 37 to 40 do not apply in respect of an investigation or report made under subsection (4).

26. The Health Freedom Ombudsman may investigate actions occurring before the commencement of this Act.

27. If a question arises about the Health Freedom Ombudsman's jurisdiction to investigate a case or class of cases, the Ombudsman may apply to the Federal Court for a declaratory order determining the question.

**REFUSAL TO INVESTIGATE**

28. The Health Freedom Ombudsman may refuse to investigate or cease investigating a complaint if, in the opinion of the Ombudsman, any of the following apply:

(a) the complainant or person aggrieved knew or ought to have known of the action to which the complaint refers more than one year before the complaint was received by the Ombudsman;
(b) the subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;
(c) the complaint is frivolous, vexatious, not made in good faith, or concerns a trivial matter;
(d) having regard to all of the circumstances, further investigation is not necessary in order to consider the complaint;
(e) in the circumstances, investigation would not benefit the complainant or person aggrieved;
(f) the Ombudsman cannot contact the complainant or the complainant fails to respond after a reasonable number of attempts by the Ombudsman to contact the complainant;
(g) the complaint is withdrawn by the complainant, or
(h) the complaint is settled.

**NOTICE BY OMBUDSMAN**

29. (1) If the Health Freedom Ombudsman investigates an action, the Ombudsman must notify the department, persons affected, and any other person the Ombudsman considers appropriate to notify in the circumstances.

(2) At any time during or after an investigation the Health Freedom Ombudsman may consult with a department to attempt to settle the complaint, or for any other purpose.

(3) If before making a decision respecting an action being investigated the Health Freedom Ombudsman receives a request for consultation from the department or persons affected, the Ombudsman must consult with the parties making the request.

**POWER TO OBTAIN INFORMATION**

30. (1) The Health Freedom Ombudsman may receive and obtain information from persons in the manner the Ombudsman considers appropriate, and in the Ombudsman's discretion may conduct hearings.

(2) Without restricting subsection (1), the Health Freedom Ombudsman may do one or more of the following:

(a) at any reasonable time enter, remain on, and inspect all of the premises occupied by a department, talk in private with any person there, and otherwise investigate matters within the Ombudsman's jurisdiction;
(b) require a person to furnish information or produce, at a time and place the Ombudsman specifies, a document or thing in the person's possession or control that relates to an investigation, whether or not that person is a past or present member or employee of a department and whether or not the document or thing is in the control or under the control of a department;
(c) make copies of information furnished or a document or thing produced under this section;
(d) summon before the Ombudsman and examine on oath any person who the Ombudsman believes is able to give information relevant to an investigation, whether or not that person is a complainant or a member or employee of a department, and for that purpose may administer an oath;
(e) receive and accept, on oath or otherwise, evidence the Ombudsman considers appropriate, whether or not it would be admissible in a court.

(3) If the department requests the return of a document or thing obtained under subsection (2), the Health Freedom Ombudsman must return it to the department within 48 hours after receiving the request, but the Ombudsman may again require its production in accordance with this section.

**PROTECTION**

31. A person must not discharge, suspend, expel, intimidate, coerce, evict, impose any pecuniary or other penalty on, or otherwise discriminate against a person because that person complains, gives evidence, or otherwise assists in a complaint, investigation, inquiry, or reporting to or of the Health Freedom Ombudsman.

**OPPORTUNITY TO MAKE REPRESENTATIONS**

32. If it appears to the Health Freedom Ombudsman that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect a department or person, the Ombudsman must, before deciding the matter:

(a) inform the department or person of the grounds, and
(b) give the department or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsman.

**ATTORNEY GENERAL MAY RESTRICT INVESTIGATIVE POWERS**

33. (1) The Health Freedom Ombudsman must not enter any premises and must not require any information or answer to be given or any document or thing to be produced if the Attorney General certifies that entering the premises, giving the information, answering the question, or producing the document or thing might:

(a) interfere with or impede the investigation or detection of an offence;
(b) result in or involve the disclosure of deliberations of the Privy Council, or
(c) result in or involve the disclosure of proceedings of the Privy Council or a committee of it, relating to matters of a secret or confidential nature, and that the disclosure would be contrary or prejudicial to the public interest.

(2) The Ombudsman must report each certificate of the Attorney General to Parliament not later than in the Ombudsman's next annual report.

## APPLICATION OF OTHER LAWS RESPECTING DISCLOSURE

34. (1) Subject to section 33, a rule of law that authorizes or requires the withholding of a document or thing, or the refusal to disclose a matter in answer to a question, on the ground that the production or disclosure would be injurious to the public interest does not apply to production of the document or thing or the disclosure of the matter to the Health Freedom Ombudsman.

(2) Subject to section 33 and to subsection (4), a person who is bound by an enactment to maintain confidentiality in relation to or not to disclose any matter must not be required to supply any information to or answer any question put by the Health Freedom Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of confidentiality or nondisclosure.

(3) Subject to section 33 but despite subsection (2), if a person is bound to maintain confidentiality in respect of a matter only because of an oath under an Act of Parliament or a rule of law referred to in subsection (1), the person must disclose the information, answer questions, and produce documents or things on the request of the Health Freedom Ombudsman.

(4) Subject to section 33, after receiving a complainant's consent in writing, the Health Freedom Ombudsman may require a person described in subsection (2) to, and that person must, supply information, answer any question, or produce any document or thing required by the Ombudsman that relates only to the complainant.

## PRIVILEGED INFORMATION

35. (1) Subject to section 34, a person has the same privileges in relation to giving information, answering questions or producing documents or things to the Health Freedom Ombudsman as the person would have with respect to a proceeding in a court.

(2) Except on the trial of a person for perjury or for an offence under section 46, evidence given by a person in proceedings before the Health Freedom Ombudsman and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceeding of a judicial nature.

**IF INVESTIGATION IS REFUSED OR DISCONTINUED OR COMPLAINT IS NOT SUBSTANTIATED**

36. (1) If the Health Freedom Ombudsman decides:

(a) not to investigate or further investigate a complaint, or
(b) at the conclusion of an investigation, that the complaint has not been substantiated,

the Ombudsman must:

(c) record the decision in writing, and
(d) as soon as is reasonable, notify both the complainant and the department of the decision and the reasons for it.

(2) The reasons provided under subsection (1)(d) with respect to a decision referred to in subsection (1)(b) must be in writing.

(3) The Health Freedom Ombudsman may indicate with the notification under subsection (1)(d) any other recourse that may be available to the complainant.

**PROCEDURE AFTER INVESTIGATION**

37. (1) If, after completing an investigation, the Health Freedom Ombudsman is of the opinion that the action that was the subject matter of the investigation was in violation of any of the rights, freedoms, or principles herein recognized and declared, the Ombudsman must report that opinion and the reasons for it to the department and may make the recommendation the Ombudsman considers appropriate.

(2) Without restricting subsection (1), the Health Freedom Ombudsman may recommend that:

(a) an action be referred to the appropriate department for further consideration;
(b) an action be remedied, rectified, cancelled, or changed;
(c) reasons be given;
(d) a practice, procedure, or course of conduct be altered;
(e) an enactment or other rule of law be reconsidered, or
(f) any other steps be taken.

**AUTHORITY TO NOTIFY HEALTH FREEDOM OMBUDSMAN OF STEPS TAKEN**

38. (1) If a recommendation is made under section 37, the Health Freedom Ombudsman may request the department:

(a) to notify the Ombudsman within a specified time of the steps that have been or are proposed to be taken to give effect to the recommendation, or
(b) if no steps have been or are proposed to be taken, the reasons for not following the recommendation.

(2) If, after considering a response made by a department under subsection (1), the Health Freedom Ombudsman believes it advisable to modify or further modify the recommendation, the Ombudsman must notify the department of the recommendation as modified and may request that the department notify the Ombudsman:

(a) of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or
(b) if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.

**REPORT OF OMBUDSMAN IF NO SUITABLE ACTION TAKEN**

39. (1) If within a reasonable time after a request has been made under section 38 no steps are taken that the Health Freedom Ombudsman believes adequate or appropriate, the Ombudsman, after considering any reasons given by the department, shall submit a report of the matter to the Governor General in Council and, after that, shall make a report to Parliament respecting the matter as the Ombudsman considers appropriate.

(2) The Health Freedom Ombudsman must attach to a report under subsection (1) a copy of the Ombudsman's recommendation and any response made to it under section 38, but the Ombudsman must delete from the recommendation and from the response any material that would unreasonably invade any person's privacy, and may delete material revealing the identity of a member, officer, or employee of a department.

**COMPLAINANT TO BE INFORMED**

40. (1) If the Health Freedom Ombudsman makes a recommendation under

section 37 or 38 and no steps that the Ombudsman believes adequate or appropriate are taken within a reasonable time, the Ombudsman:

(a) must inform the complainant of the recommendation, and
(b) may make additional comments the Ombudsman considers appropriate.

(2) The Health Freedom Ombudsman must in every case inform the complainant within a reasonable time of the result of the investigation.

**NO HEARING AS OF RIGHT**

41. A person is not entitled as of right to a hearing before the Health Freedom Ombudsman except as provided in this Act.

**HEALTH FREEDOM OMBUDSMAN NOT SUBJECT TO REVIEW**

42. Proceedings of the Health Freedom Ombudsman must not be challenged, reviewed, or called into question by a court, except on the ground of lack or excess of jurisdiction.

**PROCEEDINGS PRIVILEGED**

43. (1) Proceedings do not lie against the Health Freedom Ombudsman or against a person acting under the authority of the Ombudsman for anything done in good faith, reported, or said in the course of the exercise or purported exercise of duties under this Act.

(2) For the purposes of any Act or law respecting libel or slander:

(a) anything said, all information supplied and all documents and things produced in the course of an inquiry or proceeding before the Health Freedom Ombudsman under this Act are privileged to the same extent as if the inquiry or proceeding were a proceeding in a court, and
(b) a report made by the Health Freedom Ombudsman and a fair and accurate account of the report in a newspaper, periodical publication, or broadcast is privileged to the same extent as if the report of the Ombudsman were the order of a court.

## ANNUAL AND SPECIAL REPORTS

44. (1) The Health Freedom Ombudsman must report annually on the affairs of the Ombudsman's office to the Speaker of Parliament.

(2) The Speaker must lay the report before Parliament as soon as possible.

(3) If the Health Freedom Ombudsman considers it to be in the public interest or in the interest of a person or department, the Ombudsman may make a special report to Parliament or comment publicly about a matter relating generally to the exercise of the Ombudsman's duties under this Act or to a particular case investigated by the Ombudsman.

## CONFIDENTIALITY

45. (1) Before beginning to perform the duties of the office, the Health Freedom Ombudsman must take an oath:

(a) to faithfully and impartially exercise the powers and perform the duties of the office, and
(b) not to divulge any information received under this Act, except if permitted by this Act.

(2) A person on the staff of the Health Freedom Ombudsman must, before beginning to perform duties, take an oath before the Ombudsman not to divulge any information received under this Act except if permitted by this Act.

(3) For the purposes of subsection (2) the Health Freedom Ombudsman is a commissioner for taking oaths.

(4) The Health Freedom Ombudsman and every person on the staff of the Ombudsman must, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in performing their duties under this Act.

(5) The Health Freedom Ombudsman or a person holding an office or appointment under the Ombudsman must not give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of anything coming to his or her knowledge in the exercise of duties under this Act, except:

(a) to enforce the Ombudsman's powers of investigation;
(b) to enforce compliance with sections 24 to 46, or
(c) with respect to a trial of a person for perjury.

(6) An investigation under this Act must be conducted in private unless the Health Freedom Ombudsman considers that there are special circumstances in which public knowledge is essential in order to further the investigation.

(7) Despite this section, the Health Freedom Ombudsman may disclose or authorize a member of his or her staff to disclose a matter that, in the opinion of the Ombudsman, is necessary to:

(a) further an investigation;
(b) prosecute an offence under this Act, or
(c) establish grounds for conclusions and recommendations made in a report under this Act.

**OFFENSES CONCERNING THE HEALTH FREEDOM OMBUDSMAN**

46. A person commits an offence who does any of the following:

(a) without lawful justification or excuse, intentionally obstructs, hinders, or resists the Health Freedom Ombudsman in the exercise of a power conferred or a duty imposed under this Act;
(b) without lawful justification or excuse, refuses or intentionally fails to comply with a lawful requirement of the Health Freedom Ombudsman under this Act;
(c) intentionally makes a false statement to or misleads or attempts to mislead the Health Freedom Ombudsman in the exercise of a power conferred or a duty imposed under this Act;
(d) violates an oath taken under this Act, or
(e) contravenes section 31.

**OTHER REMEDIES**

47. The provisions of this Act concerning the Health Freedom Ombudsman are in addition to the provisions of any other enactment or rule of law under which:

(a) a remedy, right of appeal, or objection is provided, or
(b) a procedure is provided for inquiry into or investigation of an action,

and nothing in this Act limits or affects that remedy, right of appeal, objection, or procedure.

## CONSEQUENTIAL AMENDMENTS

48. Subparagraph 3(2)(c) of the *Statutory Instruments Act* is repealed and replaced by:

"(c) it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the *Charter of Rights and Freedoms*, the *Canadian Bill of Rights*, and the *Charter of Health Freedom*, and".