



PUBLIC HEALTH ACT PROPOSAL

Renewing BC Public Health Legislation



Backgrounder

December, 2004

INTRODUCTION

The *Health Act* provides authority for public health officials to take action to protect and promote the health of British Columbians, but it is deficient in many respects. The current Act has been amended numerous times such that it is now a patchwork of outdated clauses. In addition, important aspects of modern public health action are not covered. There is a need to develop a new public health act in British Columbia that is modern, coherent and connected, comprehensive, and flexible to be able to meet emerging needs. This paper provides background to the project to renew public health legislation in BC.

Public health legislation is a cornerstone of effective public health service delivery. It provides the authority and tools for the government, health authorities, and public health officials to do their jobs, and assures the public that government is working to protect and improve their health. The recent experiences with SARS and the Walkerton tainted water crisis have highlighted the importance of public health, and underscored the need to have up to date public health legislation.

To ensure that the Ministry of Health Services and regional health authorities have the capacity and resources to plan and deliver their public health mandates, a process is underway to identify core public health functions. This will be incorporated into a new Act to support public health work.

Public Health is the organized effort of society to protect and improve the health and well-being of the population through

- health monitoring, assessment and surveillance
- health promotion
- reducing inequalities in health status
- prevention of disease, injury, disability and premature death, and
- protection from environmental hazards to health.

This is done through an appropriate balancing of the rights and responsibilities of individuals and organizations and the responsibility of government to protect and promote health.

Research and reviews will include the existing *Health Act* and related public health legislation, other provincial public health legislation, the US Model State Public Health Act and Model State Emergency Health Powers Act, recent New Zealand and Australian initiatives and reviews, and other relevant information.

Consultation processes will help determine the principles, purpose, objectives and content of the legislation.

BACKGROUND

The existing *Health Act* has been incrementally developed since 1869 and is now a fragmented patchwork of clauses. Much of the act is outdated and has archaic language. Important aspects of modern public health action are not covered. It contains many references to organizations that no longer exist, places a number of obligations on public health providers that no longer make sense, and is poorly connected to other more recent public health statutes. In short, public health legislation that is modern, coherent and connected, comprehensive, and flexible is needed to be able to meet emerging needs.

Failure to update the act may have the following consequences:

- Public health practitioners are denied tools available in other jurisdictions e.g. emergency public health legislation, legislated mandates for programs.
- Government is weakened in its ability to protect and improve health, and respond adequately to public health issues and emergencies, with potential serious consequences for the government and the public.

The Canadian Institutes of Health Research (ref. 1) has identified a number of key elements of a national public health system. Elements which modern public health legislation in BC will assist in achieving are:

1. Clearly defined essential functions of public health.
2. Defined roles and responsibilities at each level of the system (national, provincial/territorial, regional/local).
3. Consistent, modern legislation within each jurisdiction across the country to support those functions, roles and responsibilities.
4. Appropriate delivery structures to accomplish functions, roles, and responsibilities within each jurisdiction.
5. Accountability mechanisms at each level of the system.

The Naylor committee report (ref. 2), which studied the Canadian experience with the SARS virus, recommended that governments “embark on a time-limited intergovernmental initiative

with a view to renewing the legislative framework for disease surveillance and outbreak management in Canada, as well as harmonizing emergency legislation as it bears on public health emergencies”.

The Naylor report discussed in detail concerns about public health service capacity and resources to plan for and respond to emerging infectious diseases, bio-terrorism, and public health emergencies. It highlighted the challenges for public health to deliver on the prevention of chronic diseases and injuries, and improve health through early childhood development. Legislative frameworks need to be explored and designed to assist in addressing the expanding responsibilities of public health.

Ontario, Quebec and Saskatchewan have developed modern public health legislation. Prince Edward Island, Nova Scotia, and the Northwest Territories are in the process of review. British Columbia’s legislation is missing some key components that have or will be included in these other jurisdictions, such as emergency provisions, planning and program mandates, and modern quarantine and isolation provisions.

A process to identify core public health functions, programs, services, and strategies is underway. This will provide a valuable articulation of the work of public health. Incorporation of this work into a public health act will support and strengthen the work of public health agencies and practitioners.

Public health legislation will be streamlined through a greater focus on the outcomes, and the deregulation of redundant and outdated clauses. Such a focus will ensure that only necessary legislation will be developed. Issues that can be dealt with through policies and procedures will remain outside the legislation.

Finally, the act will be written with the intent of being adaptable to the ongoing changes in organizational arrangements of the health system.

This paper first outlines a possible framework for public health legislation, describes the process for public health legislation renewal, and provides contact information regarding the project. Readers are encouraged to provide their feedback and ideas on this project through the contacts identified at the end.

The overall benefit of updating public health legislation is that it provides government, health officials, and the public with modern, flexible tools to protect and improve health. It provides assurance that government is committed to protecting and improving health. Ultimately, there will be a more effective and efficient public health service with greater prevention of premature death, disease, injury and disability.

A FRAMEWORK FOR PUBLIC HEALTH LEGISLATION

The public expects and trusts government to protect and enhance their health. Due to historical and incremental development, today's public health legislation in BC is fragmented and outdated. It is a mix of general and specific provisions, with inconsistency between what is in statute and what is in regulation.

At the same time much of the existing public health legislation has served the province well. Recent legislation such as the *Drinking Water Protection Act* and *Food Safety Act* are progressive. Any changes must be carefully made so as not to lose valuable portions of the current legislation.

Public Health services in BC have developed to meet the obligations of the legislation as well as to respond to many public health issues not specifically covered by legislation.

A new public health act provides the opportunity to establish a rational approach for the development and revision of future public health legislation. This will support and facilitate world-class public health services that promote the best possible health outcomes for British Columbians and visitors to the province.

With this in mind, it is proposed that a public health legislation framework include:

1. A public health act,
2. Acts that relate to specific public health issues (i.e. food, water, tobacco),
3. Public health sections in other acts.

The **public health act** would be the source legislation for establishing responsibilities and authorities (powers); core functions; statutory public health positions; safeguard and appeal mechanisms; and the regulation of individuals and organizations regarding public health matters. Existing acts that relate to specific public health issues would remain.

For public health legislation to be useful, it has to be relevant to those who implement and are regulated by the legislation, and it must allow for protection of the health of the public. Ideally, public health legislation provides the following:

- Clear provision of authority for the statutory responsibilities, functions, structures, and processes of public health;
- Clear requirements of individuals and organisations regarding public health matters;
- Clear regulation of specific public health issues.

Specific public health issues could be regulated by this act directly, such as those that are:

- a. central to the practice of public health,
- b. led by public health officials in the implementation of a particular activity,
i.e. community communicable disease control, core public health functions, and
- c. of limited scope and do not warrant the establishment of a separate statute
e.g. recreational beaches

Public health issues that warrant the establishment of **issue specific public health** acts are those matters for which others have primary responsibility and whose actions impact the public's health. Examples include the *Food Safety Act* and the *Drinking Water Protection Act*.

Not all issue specific public health legislation will be under the jurisdiction of the Minister of Health Services. For example, the *Environmental Management Act* regulates waste disposal, which may have a major public health impact. Other acts regulate ground water and fish sales. Public health officials may be named within these other acts, and public health protection is often a key component of an act designed to fulfill other purposes.

Public health sections in other acts may be included where the primary regulator is another ministry, but a public health component is warranted to deal with specific issues. An example of this is the authority provided by the *School Act* to medical health officers to deal with public health issues in schools.

ACTS AND REGULATIONS

Careful consideration must be given in regard to what should be in the body of the act and what should be contained within the regulations (ref. 3). Regulations are classified as subordinate legislation: the statute under which they are made sets the general policy and grants the authority for their making, while the regulations themselves fill out the details.

Matters that should be in the act include:

- provisions establishing the substantive authorities and powers; core statutory functions and responsibilities, and public positions or bodies or providing for senior appointments
- provisions that substantially affect personal rights (e.g. quarantine, isolation, privacy, information access)
- transitional provisions required for implementing the new legislation
- consequential amendments to other Acts
- authority to make regulations and establish penalties

Matters that should be in regulations include:

- procedural matters
- matters that may require frequent adjustment or involve measures that may be subject to change as knowledge evolves
- technical matters that involve scientific or other expertise
- matters that cannot be finalized until there is some experience in working with the new legislation

DEVELOPING A NEW PUBLIC HEALTH ACT

The development of a new act is anticipated to take the next 12-18 months and will include research, linkages to other processes, targeted consultation, feedback on proposals, and legislation drafting.

The intent of the project is that the changes to the *Health Act* will be cost neutral to the health system. If policies that increase costs are proposed, it will be determined whether the costs justify the anticipated outcome.

This project is managed by Dr. Brian Emerson, Medical Consultant, Prevention and Wellness Division; and assisted by Mr. Tom Gregory, Executive Director, Business Planning, Surveillance, and Epidemiology Division; Population Health and Wellness, Ministry of Health Planning. A Working Committee to coordinate and do some of the detailed work has been established.

A Steering Committee to oversee the project is chaired by Dr. Perry Kendall, Provincial Health Officer. Task groups will be identified as part of the consultation process from which specialized expertise can be drawn, or to which consultation requests will be sent for input from stakeholders.

Consultation will include questionnaires, discussion papers, website interaction, presentations, and availability to meet with specific groups.

As decisions need to be made about policy issues, targeted consultation will be held.



*From left to right:
Dr. Perry Kendall, Dr. Brian Emerson, Mr. Tom Gregory*

MORE INFORMATION AND COMMENTS?

A website dedicated to this review process is <http://healthservices.gov.bc.ca/phact/index.html>. This site provides a repository for documents, will be used as one source of feedback, and will contain the various proposals for the act contents as it develops. The website also contains background documents, relevant links, and contact information for those involved in the project.

Please contact us by email at HLTH.Phactrenewal@gems8.gov.bc.ca or by writing, faxing or phoning:

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REFERENCES

1. Canadian Institutes of Health Research – Institute of Population and Public Health
“The Future of Public Health in Canada: Developing a Public Health System for the 21st Century” CIHR, June, 2003, pg 32
2. Naylor, David (Chair), National Advisory Committee on SARS and Public Health.
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3. Adapted from Ryan W. Morasiewicz, Legislative Analyst, Law Co-op, Legislation and Professional Regulation, Ministry of Health Planning “ *Acts and Regulations- Essential Differences*”, from *Legislation Made Easy*, Beverley Gail Nash, Registrar of Regulations, Province of British Columbia, and “*Guide to Preparing Drafting Instructions for Legislation*”, Office of Legislative Counsel, Ministry of Attorney General Province of British Columbia. June 17, 2003