HEALTH PROTECTION LEGISLATIVE REVIEW

DISCUSSION PAPER

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Nova Scotia Department of Health

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INTRODUCTION

Nova Scotia has had legislation guiding the practice of public health since 1888. The objective of any health protection legislation is to identify and eliminate or reduce risks to the health of individuals and the population. The current legislation, the *Health Act*,[1] has been amended at various points to deal with specific issues as they arose. The result is legislation that is inconsistent and fragmented[2] and therefore not adequate to deal with health protection in the 21st Century. The current *Health Act* requires major revisions. Thus the current *Health Act* will be repealed and replacing legislation, *Health Protection Act,* will be implemented.

The new legislation, the *Health Protection Act,* will provide the legislative authority required by the Department of Health and other appropriate government departments to protect the health of Nova Scotians from a broad range of health risks. These risks include both infectious and non-infectious agents to which individuals or groups have been exposed to or will be exposed to in the future. It also includes investigation of and direction to individuals who are already ill or at risk of becoming ill from exposure to a health hazard or communicable disease.

The *Health Protection Act* will aid public health protection by mandating that certain diseases are reportable to public health authorities and that individuals with these diseases may be required to take certain actions in order to protect others from getting the same disease. These actions may include isolation or quarantine where the disease constitutes a serious health threat to the population.

The modernization of the current *Health Act* will provide the framework for the various health

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[1] *Health Act,* R.S.N. S. 1989, c. C-195 [hereinafter current *Health Act*].

[2] The current *Health Act* does not contain provisions for dealing with emerging diseases such as Ebola and West Nile Virus - diseases that impact on health protection. An example of inconsistency is the reference in one section of the *Health Act* to the abolition of Boards of Health with another section referring to the responsibilities of the Boards of Health. Also, the current *Health Act* is not consistent with fundamental *Charter* rights.

protection functions, namely, ongoing public health surveillance, prevention of disease, and public health protection with respect to a threat from any biological, chemical or physical agent, in a manner that is consistent with the health needs of the population, both today and in the future. The *Health Protection Act*, in providing a framework for the ongoing protection of the public's health, will aim to balance the rights of individuals with the need for measures for protection of the public's health.

This discussion paper is divided in two parts. "Part A" deals with general topics and "Part B" deals with specific topics. Each section outlines the rationale for its inclusion and the proposed parameters of the new *Health Protection Act*.

At the end of each section, the following four questions have been presented to the reader for consideration:

QUESTIONS

1. Do you agree with the components/contents that are included in this section?
2. Are there any components/issues that should be added to this section/considered for this section? Is anything missing?
3. Should any issue/s in this section be expanded in more detail? If yes, What and Why?
4. What other suggestions do you have?

PART A: GENERAL TOPICS

I. PRINCIPLES

It is important to outline the issues and principles that underlie public health practice in the area of health protection. The focus of public health is directed at populations, communities and the broader social and environmental influences on health, i.e. the determinants of health. As well, there is a greater focus on prevention than on treatment and cure, as in the case of the individual who has specific clinical needs. Public health programs and interventions are justified by their net benefit to the population as a whole, rather than a benefit to any particular individual. Public health may intervene with an individual in a manner that is not perceived by the individual as being in his or her personal best interests. This action is legitimized by the powers invested in public health officials, subject to the protections of our legal system. The public health practitioner usually seeks out the patient because the practitioner believes that the patient has a problem. The patient has not asked for the service and may not be in a position to reject the treatment offered.[3]

Simply put, in order to protect health we need to have the right tools, including qualified staff, and clear lines of authority and responsibility, to gather the information required to assess risks to health. Based on the risk assessment, appropriate action can then be taken to manage a broad range of hazards in different settings. At the same time, we need to maintain a balance between individual rights and the common good. The following principles guide us: [4]

Harm Principle

> This principle tries to set out the initial justification for a government, or government agency, to take action to restrict the liberty of an individual or group.

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[3]R. Schabas, "Is Public Health Ethical" (editorial) (2002) 93(2) Canadian Journal of Public Health 98-99.

[4]R. Upshur, "Principles for the Justification of Public Health Intervention" (2002) 93(2) Canadian Journal of Public Health 101-103.

> The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.

Least restrictive or coercive means

A variety of means exist to achieve public health ends, but the full force of state authority and power should be reserved for exceptional circumstances and more coercive methods should be employed only when less coercive methods have failed.

Restrictions of liberty must be legal, legitimate and necessary and use the least restrictive means that are reasonably available. There should be no discrimination in their application.

Reciprocity Principle

Once public health action is warranted, there is an obligation on a social entity such as a public health department to assist the individual (or community) in the discharge of their ethical duties. Complying with public health requests may impose burdens on individuals. These may involve sacrifice of income or time. Society must be prepared to facilitate individuals and communities in their efforts to discharge their duties.

QUESTIONS

1. Do you agree with the components/contents that are included in this section?

2. Are there any components/issues that should be added to this section/considered for this section? Is anything missing?

3. Should any issue/s in this section be expanded in more detail? If yes, What and Why?

4. What other suggestions do you have?

II. REGULATION MAKING POWER

Rationale

Statutes or Acts (such as the *Health Act*) and regulations provide the overall legal framework for government's policy direction and for government's responsibilities.

Statutes are usually general in nature and outline the broad structure of the authority. The creation or revision of an Act usually is a long and involved process requiring approval by the Legislature.

In contrast, regulations flow from the statute (i.e., the power to make the regulations is stated in the Act) and they allow government to describe specific details of the Act. As they require approval by Cabinet and the Lieutenant Governor rather than the Legislature, regulations provide a more flexible means to implement details.

The advantages of using regulations are the abilities to:

1. include components of practice that need to be defined in more detail (e.g., particulars respecting standards of practice for tattoos);

2. address emerging issues that require legal power for implementation (e.g., emerging or re-emerging communicable diseases);

3. have a faster and less involved process to address issues of concern; and

4. make amendments when revisions are required (e.g., old standards of practice become outdated and need to be replaced).

The matters on which the Minister may need to may make regulations for the prevention, treatment, mitigation and suppression of disease are varied. For example, as the diseases that

may present a health threat can vary and change over time and may require an immediate response to ensure the safety of the public, government needs to be able to make regulations designating diseases as "notifiable", "communicable" and "dangerous".

Schedule "A" sets out areas where it is anticipated that regulations will be required.

QUESTIONS

1. Do you agree with the components/contents that are included in Schedule A?

2. Are there any components/issues that should be added to this section/considered for Schedule A? Is anything missing?

3. Should any issue/s in Schedule A be expanded in more detail? If yes, What and Why?

4. What other suggestions do you have?

III. DEFINITIONS

Rationale

In health protection legislation, the definitions of terms are fundamentally important to the scope and effectiveness of the entire legislation, particularly over the longer term. The definitions determine the matters which will be within the scope of the authority that is given to the Minister of Health, to the Medical Officers of Health, including the Chief Medical Officer of Health, and to public health inspectors and public health nurses. It is therefore important that the definitions are broad enough to encompass not only the threats to public health that are currently known, but also, threats that are yet to emerge. Otherwise, the effectiveness of the Act will be compromised.

At the same time, it is recognized that the powers given by the legislation are

significant and it is therefore important that definitions not be unnecessarily broad. Clarity in the definitions is also important to the courts if they are asked to rule on challenges to an exercise of statutory powers in particular circumstances. Finally, clarity in the definitions is an important part of ensuring that Nova Scotians know what is comprised within health protection legislation and which officials are responsible for the different aspects of public health.

Notifiable Diseases and Conditions

A notifiable disease is simply a disease that must be reported. The *Health Act* defines "notifiable disease" as a disease that must be reported,[5] with the actual diseases contained in the Communicable Diseases Regulations. The practice of having a generic definition with the actual diseases required to be reported contained in regulations is common in Canadian jurisdictions.[6]

Notifiable diseases and conditions consist of two categories - those that are communicable and those that are non-communicable. Within the communicable disease category there are diseases that are virulent/ dangerous based on the ease of transmission to others and on the degree of morbidity and mortality. Examples of virulent diseases include smallpox and Ebola. Diseases such as mumps and influenza would be considered more common and less virulent. The non-communicable disease category would include diseases or conditions of public health importance such as vaccine associated adverse reactions.

[5]Section 2(r).

[6]Ontario's *Health Protection and Promotion Act*, R.S.O. 1990. C. H-7, s. 1, [hereinafter Ontario's *Health Protection and Promotion Act*] uses the term "reportable disease" which is defined as a disease specified as a reportable disease by regulation made by the Minister; New Brunswick's *Public Health Act*, S.N.B. 1998, c. P-22.4, s. 1 [hereinafter New Brunswick's *Public Health Act*] uses the term "notifiable disease" which is defined as a disease prescribed by regulation as a notifiable disease; Prince Edward Island's *Public Health Act*, S.P.E.I., c. P-30, s. 1(f) [hereinafter P.E.I.'s *Public Health Act*], uses both terms "notifiable disease" and "notifiable condition of ill health" which are defined as those diseases, injuries or other conditions of ill health designated by regulation, any incident of which must be reported to the Chief Medical Officer of Health.

Criteria may need to be established to determine which diseases and syndromes ought to be notifiable, with such criteria outlined in guidelines. Such criteria could include:

the number of deaths (mortality)
ratio of death to cases (case fatality rate)
illness (morbidity)
incidence and prevalence
outbreak potential
route of transmission
communicability (infectivity)
socioeconomic impact (local, district, provincial)
the effective response time for public health action
availability of effective prevention strategies (e.g. immunization) or interventions

The *Health Protection Act* needs to provide for the reporting of diseases that are considered communicable and non-communicable. This can be accomplished by using a definition similar to the definition found in Prince Edward Island's *Public Health Act*.[7] The following is an example of a definition for notifiable disease and condition:

> A notifiable disease and condition means a communicable disease, a sexually transmitted disease, or other medical condition of public health significance, notification of which is required by statute and the outbreak of which may be prevented, controlled or treated using the authority and powers available under legislation.

The *Health Protection Act* defines notifiable disease or condition as: a disease or condition designated as a notifiable disease or condition in the regulations.

[7] P.E.I.'s *Public Health Act*, s. 1.

Communicable diseases

Currently the *Health Act* defines "communicable disease" by listing the most serious communicable diseases.[8] Such a definition is limiting in that emerging or re-emerging diseases are not captured in the definition. Other jurisdictions in Canada use a more broadly worded definition. British Columbia uses the following definition:

> Communicable disease "means an illness, due to a specific infectious agent or its toxic products, which arises through the transmission of that agent or its product
>
> (a) directly from an infected person or animal, or
>
> (b) indirectly through the agency of an intermediate host vector or the inanimate environment"[9]

Alberta's *Public Health Act* defines "communicable disease" in the following manner:

> Communicable disease means an illness in humans that is caused by an organism or micro-organism or its toxic products and is transmitted directly or indirectly from an infected person or animal or the environment.[10]

The new *Health Protection Act* will define "communicable disease" using the definition found in British Columbia's *Health Act*. This new definition will capture diseases currently known as well as emerging and re-emerging diseases.

Dangerous (Virulent) Diseases

There are some types of diseases that require immediate action, such as ebola, and smallpox. The legislation must be able to deal with these diseases. As such, provisions for dealing with

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[8]Section 2(b).

[9]British Columbia's *Health Act*, R.S.B.C. 1996, c. H-179, s. 1,[hereinafter B.C.'s *Health Act*] defines communicable disease as "the meaning prescribed by the Lieutenant Governor in Council", with the working definition in the Regulations.

[10]*Public Health Act*, R.S.A. 2000. c. P-37, s.1 [hereinafter Alberta's *Public Health Act*].

these dangerous diseases will be set out in the new *Health Protection Act* under the Communicable Disease provisions - see Section V. In addition, there will be additional powers set out in the Public Health Emergency Provision - Section VII. The Public Health Emergency provisions deal with incidents of dangerous diseases and health hazards, where there is such an immediate and high degree of threat to the public's health that immediate action is required. It is important that the provisions for responding to virulent/dangerous diseases not be used to respond to less critical instances.

As with communicable diseases, it is not possible to capture all diseases that may become dangerous in the future in a single strict definition. Any definition must be flexible enough to respond to the ever changing environment. One method of allowing for the emergence of a virulent disease is to use a definition that allows for the addition of diseases as they become known. An example of such a definition is:

> A dangerous disease means Ebola, Lassa fever, plague, smallpox or a disease designated by the Minister.[11]

The province of Ontario uses the term "virulent disease", the definition of which contains a list of diseases as well as allowing for a disease to be specified by regulation.

The new *Health Protection Act* will define dangerous disease with the Manitoba definition being adopted. A disease will be designated as a dangerous disease where it is determined that the disease, due to its highly communicable and virulent nature, poses a threat to public health.

> Dangerous disease means Ebola, Lassa fever, plague, smallpox, severe acute respiratory syndrome (SARS) or other disease designated in the regulations.

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[11] Bill 2, *Security Management (Various Acts amended) Act,* 3d. Sess., 37th Leg., Manitoba, 2001, s. 40 (First Reading on November 14, 2001) [hereinafter Bill 2], amending *Public Health Act*, R.S.M 1987, c. P-210, s. 1. [hereinafter Manitoba's *Public Health Act*]. Bill 2 was introduced in the aftermath of September 11, 2001, and has not yet been passed.

Disease Vector

Communicable diseases can be transmitted by plants or animals. The new *Health Protection Act* will allow for public health officials to deal with these circumstances. The new *Health Protection Act* will define "disease vector" as:

> "a plant or animal that is a carrier of a communicable disease or a notifiable disease or condition."

Health Hazard

In addition to diseases, there are other things that can cause a threat to public health, such as plants, liquid, gas, etc. The Nova Scotia *Health Act* does not define "health hazard", and although historically "health hazard" was not defined in public health protection legislation, in recent years provinces have included the definition.

A review of the legislation across Canada illustrates that the inclusion of a definition of "health hazard" is found in provinces such as Ontario, British Columbia, New Brunswick and Saskatchewan, with Manitoba having proposed amendments which include a definition of "serious health hazard". However, the inclusion of a definition of "health hazard" is not consistent across Canada, with provinces such as Alberta and Newfoundland not defining "health hazard".

Saskatchewan repealed its definition section in 1994, and introduced new definitions which included a definition of "health hazard".[12] These amendments were effective January 1, 1997.

The Ontario Act defines "health hazard" as:

> (a) a condition of a premises,

[12] *The Public Health Act, 1994*, S.S. 1994, c. P-37.1, s. 2 [hereinafter Saskatchewan's *Public Health Act*].

(b) a substance, thing, plant or animal other than man,

(c) a solid, liquid, gas or combination of any of them,

that is likely to have an adverse effect on the health of any person.[13]

New Brunswick's definition of "health hazard" is similar to Ontario's. The New Brunswick definition contains items (a),(b), and (c) from the Ontario definition, but has the addition of "a noise or vibration".[14]

British Columbia's *Health Act* defines "health hazard" as:

a condition or thing that does or is likely to

(a) endanger the public health; or

(b) prevent or hinder the prevention or suppression of disease, and includes a prescribed condition or thing or a prescribed condition or thing that fails to meet a prescribed standard.[15]

The addition of authority to deal with "health hazards", as defined in the various jurisdictions, adds a broader scope to the authority of the office of the Chief Medical Officer of Health, which allows for better protection of the public's health. The new *Health Protection Act* will include a definition of "health hazard" adopting the wording of the Ontario definition[16] with the addition of "an activity". Thus, health hazard will be defined as follows:

(a) a condition of a premises,

(b) an activity,

(c) a substance, thing, plant or animal other than man,

(d) a solid, liquid, gas or combination of any of them,

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[13]Ontario's *Health Protection and Promotion Act*, s. 1.

[14]New Brunswick's *Health Act*, s. 1.

[15]B.C.'s *Health Act*, s. 1.

[16]Ontario's *Health Protection and Promotion Act*, s. 1. It should be noted that "gas" in the definition refers to the physical state of the hazard, not to a specific entity such as gasoline.

that is likely to have an adverse effect on the health of any person.

Institution

The current *Health Act* does not define "institutions". Ontario's *Health Protection and Promotion Act* defines "institution" in Part IV of the Act - the section on Communicable Diseases.[17] That definition of institution includes various places that have specific definitions under other pieces of legislation, such as "charitable institutions" as defined in the *Charitable Institutions Act*[18] and "day nursery" within the meaning of the *Day Nurseries Act*.[19]

The definition of institutions in the new *Health Protection Act* will include hospitals, child care facilities, and detention centres (this list is not necessarily exhaustive). Such a definition of institution does not broaden the scope of authority of Medical Officers of Health in dealing with communicable diseases and health hazards; however, it does ensure clarity as to the places that are covered by the provisions of the Act.

Isolation and Quarantine

The new Health Protection Act will allow for the isolation and quarantine of individuals that have or may have a communicable disease. These terms will be defined as follows:

Isolation means the requirement of any person who has a communicable disease or is infected with an agent of a communicable disease to separate himself or herself from others in such

[17] *Health Promotion and Protection Act*, R.S.O. 1990. c. H-7, s. 21.

[18] *Charitable Institutions Act*, R.S.O. 1990, c. C-9, s.1.

[19] *Day Nurseries Act*, R.S.O. 1990, c. D. 2, s. 1.

places and under such conditions so as to prevent or limit the direct or indirect transmission of the infectious agent to those who are susceptible or who may spread the agent to others;

Quarantine means the requirement of any person who has been exposed to a case of a communicable disease during its communicability to restrict their activities in order to prevent disease transmission during the incubation period if infection should occur.

Premises & Dwellings

In dealing with health hazards and communicable disease, it will be necessary for public health officials to enter various places. The Act will define premises as follows:

> "lands and structures, or either of them, and any adjacent yards and associated buildings and structures, whether of a portable, temporary or permanent nature, and includes:
>
> (i) a body of water,
>
> (ii) a motor vehicle or trailer,
>
> (iii) a train or railway car,
>
> (iv) a boat, ship or similar vessel, and
>
> (v) an aircraft." [20]

Dwelling will be defined as follows:

> A building or a portion of a building that is occupied and used exclusively as a residence and includes a house, condominium, cottage, mobile home, trailer or boat.

[20] def'n from Manitoba's Bill 2, *Security Management (Various Acts Amended) Act*, 3d. Sess., 37th Leg., Manitoba, 2001, s. 40.

QUESTIONS

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PART B: SPECIFIC TOPICS

I. ADMINISTRATION

Rationale

The Department of Health has experienced major changes in its functions and structure. Environmental health programs were transferred to the Department of Environment in 1994, with Food Safety programs subsequently transferred to the Department of Agriculture and Fisheries. Many health services are now provided by District Health Authorities (DHA) while overall direction, policy, planning, standard setting and evaluation are provided by Department of Health.

The Minister of Health is ultimately responsible for the health and safety of Nova Scotia's population. With restructuring, transfer of programs, and devolution of staff and responsibility for service delivery to DHAs, the power and authority of public health staff needs to be clearly articulated in the new *Health Protection Act* to enable staff to act appropriately to protect the public's health on behalf of the Minister of Health.

a. Power and Authority of Public Health Officials/Staff

Minister of Health

Under the *Health Act*, the Minister has the authority to organize the Department of Health as he/she considers appropriate.[21] The *Health Act* provides for the appointment by the Minister

[21] Section 3.

of Health of an associate director or director of a health unit,[22] with the Minister appointing the director or an associate director as the medical officer of health for the health unit,[23] and the duties of the medical officer of health are specifically set out.[24] The Minister of Health has the authority to appoint public health nurses, prescribe the duties and define the territorial limits in which public health nurses carry out their duties.[25]

Under the new *Health Protection Act*, the Minister will continue to have the authority to appoint and set out the required qualifications for the Chief and Deputy Chief Medical Officer of Health and Medical Officers of Health. The Minister will be able to give directions to the Chief Medical Officer of Health. The Minister will have the authority to appoint public health inspectors and public health nurses, as well as set out the qualifications, specific skills and standards required for a public health inspector and public health nurse to carry out their duties and functions under the Act.

The Minister will have the authority to direct a district health authority to take action in relation to the prevention, elimination or decreasing of risk of a notifiable disease, communicable disease or health hazard.

Health hazards and communicable diseases do not recognize borders. In order to facilitate the protection of the health of the public, under the new *Health Protection Act* the Minister will be able to enter into agreements with the Government of Canada, the government of a province or territory, or an agency or body under the jurisdiction of that province or territory, the government of a state of the United States of America, or an agency or body under the

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[22]Section 6(3).

[23]Section 6(6). Section 6(5) provides that where there is no associate director, the director of a health unit shall be the Medical Officer of Health for every municipality in the health unit.

[24]Section 32.

[25]Section 9.

jurisdiction of that government, a municipality, a band council as defined in the *Indian Act* (Canada), and any person, organization or government department in the province.[26]

Under the current *Health Act*, the Minister is able to provide and maintain laboratories and other such services necessary or advisable for properly carrying on public health work in the province.[27] This ability will be maintained under the new *Health Protection Act*. The Minister will be able to establish and maintain or designate an existing laboratory as a public health laboratory at appropriate locations with appropriate appliances, equipment and staff.

The Minister will also be able to require an occupier of any premises to allow such premises to be used as a temporary isolation or quarantine facility where there is an immediate risk of an outbreak of a communicable disease in the area and the premises are required for use as a temporary facility

b. Medical Officers of Health

As noted, the Minister of Health is ultimately responsible for the health and safety of Nova Scotians. In exercising this responsibility, the Minister may appoint the Chief Medical Officer of Health (CMOH), the Deputy Chief Medical Officer of Health (DCMOH) and the Medical Officers of Health (MOHs). The Chief Medical Officer of Health is the senior medical officer of health for Nova Scotia and must advise the minister, and senior members of the department, in an independent manner on health issues in Nova Scotia and on the need for legislation, policies and practices respecting those issues. The Medical Officers of Health will have the ability to perform their functions in an independent manner.

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[26]This provision was contained in a policy paper for a proposed new *Community Health Act* produced by the province of New Brunswick. The New Brunswick provision also included the Minister of Indian Affairs and Northern Development in its list. A similar provision is found Saskatchewan's *Public Health Act*, *1994*, section 4, which reads "For the purposes of carrying out this Act according to its intent, the minister may enter into agreements with a local authority, the Government of Canada or its agencies, the government of another province or territory or its agencies, an Indian band or any other person."

[27]Section 10.

On behalf of the Minster of Health, the Chief and Deputy Chief Medical Officers of Health and the Medical Officers of Health will perform all duties and functions under the new *Health Protection Act* and its regulations. To facilitate the efficient management of public health services, the Act will provide for the delegation of power by the Chief Medical Officer of Health to the Deputy Chief Medical Officer of Health, the Medical Officers of Health, a public health nurse or public health inspector. The new *Health Protection Act* will also provide that the Deputy Chief Medical Officer of Health has all the powers and authority of the Chief Medical Officer of Health in his/her absence, or when the Chief Medical Officer of Health is unable to act.

The authority of a Medical Officer of Health can be exercised anywhere in the province on the direction of the Chief Medical Officer of Health. The new *Health Protection Act* will allow the Chief Medical Officer of Health to order The Deputy Chief Medical Officer of Health or a Medical Officer of Health to take action when the Chief Medical Officer of Health considers the health of the public is or may be in danger.

Under the new *Health Protection Act,* the Chief Medical Officer of Health will be responsible for the establishment and monitoring of professional standards for the Medical Officers of Health.

The new *Health Protection Act* will allow the Chief Medical Officer of Health/Medical Officers of Health to delegate functions under the *Health Protection Act* to public health nurses in a district. In carrying out these delegated responsibilities, the PHS will have the same authority as if the direction had been given by the Chief Medical Officer of Health. The staff of PHS will be required to have the professional knowledge and expertise required to perform their duties under this Act.

The new *Health Protection Act* will provide the Chief Medical Officer of Health, Deputy

Chief Medical Officer of Health and Medical Officers of Health with immunity for performance of any duty or any power exercised in good faith under this Act. Furthermore, where the new *Health Protection Act* provides for an order for a physical examination, vaccination, or medical treatment, to be administered by a duly qualified medical practitioner, the failure of the person subject to such an order to consent would not constitute an assault against that person by the medical practitioner should the order be carried out.

A Medical Officer of Health will be able to access or order data from all possible sources of information, including municipalities and other government departments that is considered necessary by the Medical Officer of Health for public health protection, notwithstanding the *Freedom of Information and Protection of Privacy Act.*

The Chief Medical Officer of Health will be able to develop plans for on going surveillance of notifiable diseases and conditions. In developing such plans, the data elements required, methods for data collection, interpretation, analysis and reporting will be set out in the plan. The Chief Medical Officer of Health will be able to carry out special epidemiological studies to investigate existing or potential communicable and non-communicable diseases or health hazards.

c. Power of Public Health Nurses

Under the new *Health Protection Act*, the Medical Officers of Health will be able to direct Public Health Nurses to assist the Medical Officer of Health in enforcing this Act and its regulations.

Under the current *Health Act*, Public Health Nurses are able to enter a school and carry out an inspection or physical examination of children as required by the Department.[28] The new *Health Protection Act* will continue to allow for a Public Health Nurse to enter schools and

[28]Section 73.

institutions for the purpose of investigating a suspected case of communicable disease. The new *Act* would also provide for Public Health Nurses to enter other places and premises to investigate a suspected case of communicable disease on the express authority of the Medical Officer of Health A Public Health Nurse would also be able to carry out an assessment of a person suspected of having a communicable disease or having been exposed to a health hazard. In carrying out such an assessment, the Public Health Nurse may require a person to provide information, including personal information and personal health information. A Public Health Nurse will also be able to require a person to produce documents or records. The provisions of the *Freedom of Information and Privacy Act* will not apply to such a request by a Public Health Nurse.

d. Power of Health Inspectors

Currently, Public Health Inspectors fall under the jurisdictions of the Departments of Environment and Labour, and Agriculture and Fisheries, and as a result act under different pieces of legislation. There needs to be clarity with respect to which piece of legislation an inspector is operating under when carrying out his or her duties and functions. The new *Health Protection Act* will give these inspectors the power and authority to carry out their functions under the new Act. Under the new *Health Protection Act*, the Chief Medical Officer of Health and Medical Officers of Health will be able to direct Public Health Inspectors from other Departments to assist the Chief Medical Officer of Health or Medical Officers of Health in enforcing the Act and regulations or any other Acts and regulations relating to health and safety of the population.

Under the current *Health Act* an inspector appointed by either the Minister of Health or Minister of Environment and Labour can enter a premises and examine it without a warrant.[29] The new *Health Protection Act* will also allow for Public Health Inspectors to enter a place or

[29]Section 29(1).

premise in the same manner as a Medical Officer of Health. See Section VI - Right of Entry - for further discussion on this topic.

The Public Health Inspectors will be able to take samples of any food, beverage, clothing, or bedding for the purpose of conducting tests or analysis to determine whether it constitutes, is creating, or is contributing to a health hazard. This may be done without the consent of the owner. With respect to a dwelling, where the owner/occupier does not consent, an application can be made to the court for a warrant authorizing entry to the dwellings.

e. Authority for Investigation of Diseases and Mortality

Under the *Health Act*, the Minister is able to make regulations with respect to the prevention or mitigation of communicable diseases, for relief of persons suffering from communicable diseases and for the burial of persons who have died from a communicable diseases.[30] The *Communicable Diseases Regulations*[31] set out specific provisions for the reporting of notifiable diseases and conditions; the isolation or quarantine of individuals; and the placarding of premises where there is a person suffering from a disease requiring isolation or quarantine. The current *Health Act* also contains provisions for dealing with the body of a deceased person who has died from a specified communicable disease.[32]

Although the Deputy Minister of Health can visit any part of Nova Scotia to investigate any matter that is considered relevant to the public health under the existing *Health Act*,[33] the Act does not contain specific provisions providing for the investigation into the causes of communicable diseases, mortality or the existence of a health hazard. The new *Health*

[30]Section 12(i).

[31]N.S. Reg. 64/99.

[32]Sections 55, 56, 58.

[33]Section 4.

Protection Act will grant to the Minister the power to conduct investigations respecting the causes of disease (morbidity) and mortality. The Minister will also have the authority to direct a Medical Officer of Health, Public Health Inspector, Public Health Nurse or any other person to investigate the cause of any communicable disease, health hazard or illness related to a health hazard or death, or any accident or injury (that is not specifically dealt with under another Act of the Legislature) in any part of the province. Such provisions are consistent with other jurisdictions.[34] This authority to investigate will include the authority to audit and monitor situations relating to potential or existing communicable diseases and health hazards.

Where there is a situation that poses or may pose a risk to the public's health, the Minister will be able to direct the various district authorities, for example the DHAs, to take action to prevent, eliminate, or decrease the health risk. Additionally, the Minister will be able to take such action as is appropriate.

f. Shared Responsibility

The change in administrative responsibility between government departments is another issue to be addressed in the new *Health Protection Act*. In recent years, responsibility for certain aspects of public health protection have been moved from the Department of Health to the Departments of Agriculture and Fisheries and Environment and Labour. Health protection legislation needs to clearly reflect this division of responsibility, either by supporting the authority of the Ministers of Agriculture and Fisheries and Environment and Labour to discharge their responsibilities or by achieving consistency with other legislation that addresses the responsibility and authority of these departments.

[34]See Ontario's *Health Protection and Promotion Act*, section 78(1).

QUESTIONS

1. Do you agree with the components/contents that are included in this section?

2. Is there any component/issue that should be added to this section/considered for this section? Is anything missing?

3. Should any issue/s in this section be expanded in more detail? If yes, What and Why?

4. What other suggestions do you have?

II. PRIVACY/CONFIDENTIALITY

Privacy and confidentiality issues are of particular importance in the development of systems of public health surveillance. The goal in the new *Health Protection Act* will be to protect the privacy of personal health information while at the same time ensuring that information is available for the monitoring, evaluating and protection of the public's health.

All personal health information will be considered private and will be dealt with in a manner that respects the individual. However, consent of the individual will not be required with respect to reporting of notifiable diseases. With respect to monitoring and surveillance programs, most use aggregated data. Where possible, the information provided by health professionals that contribute to epidemiology databases should be anonymised and encrypted, thus ensuring the privacy of individuals. All personal health information will only be collected for legitimate health protection reasons.

In cases of notifiable diseases and conditions, the protection of the public's health would need to outweigh considerations of individual privacy before private information is disclosed.[35] As

[35]For example, with respect to notification of communicable diseases where contact tracing is necessary, personal information is generally required.

discussed in the following sections, the new *Health Protection Act* will contain provisions for the mandatory duty to report by medical laboratories, physicians and health professionals to provide such information in cases of notifiable diseases and conditions and syndromes. When complying with provisions for the reporting of notifiable diseases and conditions, the name of the individual must be reported.[36] In exercising the functions of the new *Health Protection Act*, the Chief Medical Officer of Health or Medical Officers of Health and staff will become privy to confidential information. This information will be used only for carrying out the requirements of the Act and regulations and not for any other purpose. There will be occasions where a Medical Officer of Health is following up on a complaint relating to a health hazard, and will need to send a report to the complainant; any such report will not include medical information of any person without the express consent of the person.[37]

As set out in the previous sections, the Medical Officer of Health will be able to access or order data from various sources where such data is required for the purposes of public health protection. This power will supercede the *Freedom of Information and Protection of Privacy Act*.

The new *Health Protection Act* will ensure that, in so far as the law of Nova Scotia applies, the Chief Medical Officer of Health and public health staff will not give nor be compelled to give evidence in court or in proceedings of judicial nature concerning knowledge gained in the exercise of a power or duty under the new *Health Protection Act*.

QUESTIONS

1. Do you agree with the components/contents that are included in this section?

2. Is there any component/issue that should be added to this section/considered for this

[36]There is an exception for the reporting of HIV where there is an option to test non-nominally.

[37]See Ontario's *Health Protection and Promotion Act*, section 11(2).

section? Is anything missing?

3. Should any issue/s in this section be expanded in more detail? If yes, What and Why?

4. What other suggestions do you have?

III. HEALTH PROTECTION PROGRAMS AND SERVICES

The *Health Authorities Act* delineates the role of District Health Authorities (DHAs) who are to provide or ensure the provision of public health services and programs in their respective areas. The programs and services may include:

1. vaccinations for preventable diseases;
2. prevention and control of infectious/notifiable diseases and conditions;
3. outbreak management;
4. collection, analysis and reporting of surveillance and epidemiological data of health protection programs and services.
5. elimination of health hazards.

As new initiatives are brought into place, DHAs may be required to perform functions other than those authorized by the *Health Authorities Act* and/or other Acts to deal with problems that impact public health. In order to meet the objectives of the public health mandate, the Minister will be able to publish guidelines, standards and targets for the provision of health protection programs and services under the new *Health Protection Act*. The DHAs will be expected to ensure compliance with these guidelines.

IV. HEALTH HAZARDS

Rationale

> Health protection is the process of identifying and eliminating or reducing hazards to human health. As the proposed definition for "health hazard" suggests, a health hazard may occur in a broad range of settings, including schools, swimming pools, arenas, camps, restaurants, and public buildings. Therefore, the new *Health Protection Act* will need to provide for the surveillance and monitoring of specific activities and premises which may affect the public's health. The Act will also need to set out appropriate risk-based interventions to minimize health and safety hazards. It is important to note that in public health terms, action may have to be taken to prevent harm even when the evidence may be uncertain. In balancing competing interests, private versus public health, a greater degree of potential harm requires a lower standard of evidential certainty.

The authority of Medical Officers of Health to carry out risk assessments or demand action to be taken to alleviate or eliminate a health hazard will be consistent with other jurisdictions in Canada. As noted in the discussion on the inclusion of a definition of health hazard, more recent public health protection legislation has included or is in the processing of including a definition of health hazard and provisions setting out the authority of Medical Officers of Health for dealing with health hazards.[38]

In order to determine if there is a risk to health, public health officials will need to be able to conduct a risk assessment in relation to health hazards. Detailed information is often required

[38] Manitoba's Bill 2, s. 50, amending *Public Health Act*, ss. 22.2(1) to 22.6(2) to include various provisions under the heading "Serious Health Hazard"; Ontario's *Health Protection and Promotion Act*, Part III, Community Health Protection, sections 10 to 20, which deal with health hazards.

for a proper risk assessment. The new *Health Protection Act* will provide the Medical Officer of Health with the authority necessary to seek out new or existing information that is required to conduct such a risk assessment. Such information will also be required for the monitoring or auditing of a potential or existing risk. A facility or organization will be required to produce records relevant to a health hazard upon request. Other government departments will also be required to provide information that they have pertaining to a health hazard to the Medical Officer of Health when requested to do so.

The new *Health Protection Act* needs to provide the Chief Medical Officer of Health, when he/she is of the opinion that a situation exists anywhere in Nova Scotia that constitutes or may constitute a risk to the health of any person, the ability to investigate the situation and take such actions as he/she considers appropriate to prevent, eliminate or decrease the risk. This authority to investigate must be one that can be delegated in order to allow for timely responses to an health risk or potential health risk. Where the Chief Medical Officer of Health gives another person the authority to act, that person's authority will be to the same extent as if direction had been given by Chief Medical Officer of Health.

Under the new *Health Protection Act*, the Medical Officer of Health will be able to follow up on complaints of health hazards from any source. He/she may need to investigate, collect and analyze epidemiological data. This may involve designing and carrying out a study specific to an identified problem. It may involve the authority to enter premises to inspect and gather information or take samples for testing. See Section VI - Right of Entry.

Based on the analysis of the information, the Medical Officer of Health may decide there are reasonable and probable grounds that a health hazard exists. Where there is a complaint related to occupational or environmental health, the Medical Officer of Health will notify the appropriate department that is primarily responsible for the matter, and in consultation with that department, carry out an investigation of the complaint to determine whether a health hazard exists.[39]

[39]This provision is adopted from the Ontario *Health Protection and Promotion Act*, section 11.

Once assessed, the health hazard or potential health hazard will need to be managed. The new *Health Protection Act* will provide Medical Officers of Health with the required authority to take action to modify the hazard and protect health. The powers of the Medical Officer of Health for dealing with a health hazard include:

(a) make any inspection, investigation, examination, test, analysis or inquiry that he or she considers necessary;

(b) detain or cause to be detained any motor vehicle, trailer, train, railway car, aircraft, boat, ship or similar vessel;

(c) require any substance, thing, solid, liquid, gas, plant, animal or other organism to be produced for inspection, examination, testing or analysis;

(d) seize or take samples of any substance, thing, solid, liquid, gas, plant, animal or other organism;

(e) notwithstanding the Freedom of Information and Protection of Privacy Act, require any person to (i) provide information, including personal information, personal health information or proprietary or confidential business information, and
(ii) produce any document or record, including a document or record containing personal information, personal health information or proprietary or confidential business information, and the Medical Officer of Health may examine or copy it, or take it to copy or retain as evidence;

(f) take photographs or videotapes of a place or premises, or any condition, process, substance, thing, solid, liquid, gas, plant, animal or other organism located at or in it; or

(g) do any of the following:
(i) bring any machinery, equipment or other thing into or onto a place or premises,
(ii) use any machinery, equipment or other thing located at or in a place or premises,
(iii) require that any machinery, equipment or other thing be operated, used or dismantled under specified conditions,
(iv) make or cause an excavation to be carried out.

The Medical Officer of Health will be able to issue a written order to be hand delivered or

sent by registered mail to the person/organization. The Medical Officer of Health can make an order where he/she reasonably believes that a health hazard exists or may exist and an order is necessary to prevent, remedy, mitigate or otherwise deal with the health hazard. The Medical Officer of Health will also have the authority to placard a place or premises or other area in order to give notice to the public.[40] Where the issuance of a written order will result in a delay that will likely increase the hazard to the health of any person such that the hazard poses a serious and immediate threat, the Medical Officer of Health will be able to make a verbal order. In such cases, a written order must be made and delivered within 72 hours of the oral order being given. Under the new *Health Protection Act*, the requirements specified in an order must be necessary to achieve a decrease in the effect of or to eliminate the health hazard.

The Medical Officer of Health will be able to issue an order to any person/organization who (i) owns or occupies a premises, (ii) is or appears to be in charge of any substance, thing, plant or animal, or any solid, liquid, gas, or combination of them, or (iii) is engaged in or administers an enterprise or activity in or on any premises, [41] or (iv) any other person or category of persons specified in the regulations. The action required will be framed as clear directions or requirements to terminate or mitigate the health hazard. The person/organization who is so directed should be given every reasonable opportunity to comply with the directions.

The range of orders available under the Act will be broad,

(a) requiring the vacating of premises;

(b) requiring the owner or occupier of premises to close the premises or a specific part of the premises;

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[40]See, Ontario's *Health Protection and Promotion Act*, section 14(4) and New Brunswick's *Public Health Act,* section 6(4) .

[41]See, New Brunswick's *Public Health Act,* section 6(6); Ontario's *Health Protection and Promotion Act*, section 13(5).

(c) requiring the placarding of premises to give notice of an order requiring the closing of the premises;

(d) requiring the doing of work specified in the order in, on or about premises specified in the order;

(e) requiring the removal of anything that the order states is a health hazard from the premises or the environs of the premises specified in the order;

(f) requiring the cleaning or disinfecting, or both, of the premises or the thing specified in the order;

(g) requiring the destruction of the matter or thing specified in the order;

(h) prohibiting or regulating the manufacturing, processing, preparation, storage, handling, display, transportation, sale, offering for sale or distribution of any food or thing;

(i) prohibiting or regulating the use of any premises or thing;

(j) requiring the person named under subsection (2) to investigate the situation, or undertake tests, examination, analysis, monitoring or recording, and provide the Medical Officer of Health with any information the Medical Officer of Health requires;

(k) requiring the person named under subsection (2) to isolate, hold or contain a substance, thing, solid, liquid, gas, plant, animal or other organism specified in the order;

The Medical Officer of Health will also be required to give reasons for the order in the order.

A Public Health Inspector will have the same power as a Medical Officer of Health for making an order pertaining to a health hazard if the Public Health Inspector reasonably believes that a health hazard exists and the order is necessary to prevent, remedy, mitigate or otherwise deal with the serious health hazard. The Public Health Inspector can only make such an order in circumstances where in the time required for the Medical Officer of Health to

make the order a risk associated with the health hazard could increase.

Where an order is not carried out because (a) the individual/organization has refused to or is not complying with the order; (b) the individual/organization is not likely to comply promptly with the order; (c) the individual/organization cannot be readily identified or located; or (d) the individual/organization requests the assistance of the Medical Officer of Health in complying with the order, the Medical Officer of Health will have the authority to have the work done and recover the cost from the non-compliant individual/organization. Such actions may include:

(a) the placarding of premises to give notice of the existence of a health hazard or of an order made under this Act, or both;

(b) doing any work the Medical Officer of Health considers necessary in, on or about any premises;

(c) removing any thing from the premises or the environs of premises;

(d) detaining any thing removed from any premises or the environs of any premises;

(e) cleaning or disinfecting, or both, of any premises or thing; and

(f) destroying any thing found on the premises or the environs of the premises.

The recovery cost will be in addition to any offences and penalties under the Act and regulations. See Section IX - Enforcement.

V. COMMUNICABLE DISEASES

Rationale

> The communicable disease section refers to infectious diseases that are a threat to public health. The prevention and control of communicable diseases is a core public health function. The difficulty in dealing with communicable diseases is that the existence of a health risk may not be apparent until an individual becomes ill. As a result, the new *Health Protection Act* must not only be able to deal with the individual that has the communicable disease, but also provide mechanisms for monitoring the incidence of illnesses, taking action to prevent further cases and evaluating the change in an illness rate subsequent to action being taken.

Under the current *Health Act*, the Minister may make regulations with respect to the prevention or mitigation of communicable diseases, for relief of persons suffering from communicable diseases and for the burial of persons who have died from a communicable disease.[42] These regulations, the *Communicable Diseases Regulations*[43], set out specific provisions for the reporting of notifiable diseases and conditions, the isolation, quarantine of individuals, and the placarding of premises where there is a person suffering from a disease requiring isolation or quarantine.

Monitoring and Reporting

Surveillance systems are needed to monitor illnesses/diseases that are of public health importance. Communicable disease surveillance includes the surveillance of infections and diseases, determinants and risk factors for disease, environmental data, and related factors such as antimicrobial resistance or interventions to prevent disease such as immunization or

[42]Section 12(i).

[43]N.S. Reg. 64/99.

chemoprophylaxis and any adverse health events that result from these interventions.

Surveillance systems are most commonly used for infectious/communicable diseases such as measles and tuberculosis, but may also be used for other problems such as adverse events associated with vaccines. Mandatory reporting through legislation improves data quality in surveillance systems for communicable diseases.[44]

The current *Health Act* contains provisions requiring the reporting of certain illnesses. A physician, or householder, or person providing care to another, has a duty to report that a person has or is believed to have a notifiable disease and condition to the Medical Officer of Health.[45] Likewise, a teacher must report any incidents of students having a communicable disease.[46] Cases of tuberculosis and venereal disease are also subject to reporting.[47] The term Venereal Disease is no longer commonly used. The term Sexually Transmitted Diseases (STDs) is the term currently used. The *Communicable Diseases Regulations* sets out the specific reporting requirements for communicable diseases.[48]

To facilitate effective protection of the public's health, the new *Health Protection Act* will continue to include requirements for certain diseases and conditions to be reported to the Medical Officer of Health. This will be accomplished by making certain diseases notifiable.[49] There will be some changes in who will be required to report. In addition to physicians, who

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[44]A common surveillance system used in protection of the public's health is mandatory reporting. For example, Ontario's *Health Protection and Promotion Act*, sections 25, 27, 28; Alberta's *Public Health Act*, section 22; British Columbia's *Health Act*, sections 80, 83; Prince Edward Island's *Public Health Act*, section 12(2); New Brunswick's *Pubic Health Act*, sections 27-30; Manitoba's Bill 2, s. 45, amending *Public Health Act*, s. 12.1(1).

[45]Section 64(1).

[46]Section 70(2).

[47]Sections 75 & 92(i).

[48]N.S. Reg. 64/99, ss. 2-11.

[49]This is an accepted practice in protection of the public's health. See, *supra*, note 49.

are currently required to report, other health professionals, including registered nurses, medical laboratory technologists, administrators of institutions, and other individuals and groups as set out in the regulations will be required to report to the Medical Officer of Health information identified under surveillance programs in the case of a notifiable disease and condition. With respect to schools, under the current *Health Act,* teachers are required to report. Whether it is the teacher or principal or both that has the duty to report varies across jurisdictions.[50] The new *Health Protection Act* will require reporting from teachers and principals in schools. These individuals will be required to report where they have reasonable and probable grounds to believe that a person/student either had, has or may have, a notifiable disease or condition. The current requirement that a householder or non-health care professional providing care for another must report will be removed. The new Act will also provide for reporting requirements for deaths resulting from a notifiable disease or condition by the physician signing the death certificate. The form, manner and timing of such reports or specifics as to what types of diseases will require mandatory reporting, will be contained in regulations to facilitate greater flexibility and adaptability.

Making some diseases notifiable by law to the Medical Officer of Health is the best way to enhance reporting, which in turn triggers two activities: case investigation/management and case counting (for trend analyses and program planning and evaluation).

Orders

Under the current *Health Act*, a Medical Officer of Health can quarantine a person that has a communicable disease,[51] can prevent a student who resides in a residence where there is a communicable disease from attending school,[52] can order a person suspected of having active

[50]New Brunswick requires principals to report, section 29; Ontario requires principals to report, section 28; Alberta requires teachers to report, section 22; Prince Edward Island requires teachers or principals to report, section 12(2).

[51]Section 66.

[52]Section 70.

tuberculosis or is a contact to submit to a medical examination,[53] can order a medical examination without the person's consent to ascertain whether a person has a venereal disease,[54] as well as detain and treat the person.[55]

A difficulty with the current *Health Act* is that while it authorizes a Medical Officer of Health to order an examination relating to tuberculosis or a venereal disease, it does not provide adequate measures to deal with other known communicable diseases or emerging diseases. The new *Health Protection Act* will give Medical Officers of Health the authority to follow up on reports of notifiable diseases and conditions and take whatever action is necessary to prevent further cases. Under the new Act, the Medical Officer of Health will have a right of entry for the purpose of carrying out the provisions of the Act. See Section VI - Right of Entry.

Under the new *Health Protection Act*, where the Medical Officer of Health has reasonable and probable grounds that a person has a communicable disease or is likely to have a communicable disease (i.e. has been exposed), the Medical Officer of Health and other public health staff can recommend that the individual in question take certain actions. Where such advice is not complied with and the Medical Officer of Health is of the opinion a communicable disease exists or may exist or that there is an immediate risk of outbreak of a communicable disease, and that the communicable disease presents a risk to the health of people, the Medical Officer of Health will be able to issue an order.

Such orders will vary in degree of restrictiveness. The order may require the individual to be isolated, quarantined, hospitalized, vaccinated, inoculated, to conduct himself or herself in

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[53]Section 76.

[54]Section 93. Note that venereal disease is defined in section 2(ad) as "includ[ing] syphilis, cancroid and gonorrhea".

[55]Section 93.

such a manner as to not expose another person to infection, or to submit to a medical examination or to submit to/obtain medical treatment.[56] The order may also require the owner or occupier of premises to close the premises, to placard the premises, to clean or disinfect premises, or to destroy the matter or things specified. Such an order will be required to detail the exact actions required, including time lines. Requirements in such orders must be necessary to prevent, decrease or eliminate the risk to health presented by the communicable disease.

To be effective, orders must contain the reasons for the order. While orders are to be written, oral orders are permitted where the delay in obtaining a written order is likely to substantially increase the risk to the health of a person.

To ensure public health safety, it is imperative that the Chief Medical Officer of Health be aware of occasions where an individual with a communicable disease who initially submitted to an order from a Medical Officer of Health or a court order has failed or neglected to continue to comply with the order. In such cases, the physician will be required to report such failure to comply with treatment.[57]

Where an order requiring a person to isolate him or herself from other persons, to submit to an

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[56]This type of authority is comparable to that found in public health legislation in other jurisdictions. For example, orders under the Ontario's *Health Protection and Promotion Act* include, but are not limited to requiring: the owner or occupier to close premises, the placarding of premises, a person to isolate him or herself from others, the destruction of a matter or thing, a person to submit to an examination by a physician, a person that has a virulent communicable disease to place him or herself immediately under the care and treatment of a physician, a person to conduct him or herself in an manner so as not to expose others. Manitoba's *Public Health Act* as it is to be amended by the wording in Bill 2 is very similar to Ontario's provisions. The amendments will allow a Medical Officer of Health to order a person suspected of having a communicable disease to submit to a medical examination, in cases of epidemic or threatened epidemic of a communicable disease to order a person to submit to a medical examination, submit to or obtain medical treatment, be vaccinated, inoculated or immunized, be isolated quarantined or hospitalized or to conduct him or herself in a manner so as not to expose others.

[57]See Ontario's *Health Protection and Promotion Act,* section 36; New Brunswick's *Public Health Act*, section 32, which requires a physician to report the name and address of a person that has a communicable disease (for certain diseases) and has refused or neglected to comply with a prescribed treatment.

examination by a physician, place him or herself under the care and treatment of a physician or to refrain from exposing others to infection, is not complied with, the Chief Medical Officer of Health or Medical Officers of Health will be able to access the court system to obtain a court order.

The application for a court order can be made without notice to the individual (ex parte) and the court may make an interim order allowing the person to be detained for 72 hours. A court order to locate and apprehend a person may be directed to the police force. Whenever an order is written under this section it must include details of where the person is to be detained, what physician/clinical team is responsible for care and the process for the release of the individual.

Where an individual subject to a warrant is apprehended, the individual will be promptly informed as to where he or she is being taken, why he or she is being apprehended. The individual will also be informed of his or her right to retain and instruct counsel.[58] Such provisions are necessary to ensure that there is balance between individual rights and public safety in carrying out the objectives of public health protection legislation, and to ensure that there is consistency in the new *Health Protection Act* with the rights and liberties guaranteed by the *Charter of Rights and Freedoms.*[59]

Where the court order names a hospital as an isolation facility, the physician who will have responsibility for the treatment of the person will be designated by the facility. This may be the person authorized by the hospital by-laws or by Chief Executive Officer (or delegate). If a person is held in an institution, it will be the responsibility of the administrator of the institution to designate the physician responsible for the person who is subject of the order. In

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[58]These requirements are adopted from the proposed Manitoba legislation: Bill 2, s. 49(2) , amending *Public Health Act*, s. 19(4.1).

[59]*Canadian Charter of Rights and Freedoms,* s. 7, Part I of the *Constitution Act,* 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

circumstances where the isolation facility is not a hospital or institution, the Chief Executive Officer of the district health authority where the isolation facility is located will be responsible for designating a physician who is to be responsible for the care of the person isolated.

After the hearing, if the Judge is satisfied that the person has failed to comply with an order of the Medical Officer of Health and that the person poses a threat to public health because he or she is suffering from a communicable disease, has been exposed to a communicable disease or has been in contact with a person who has a communicable disease, the Judge will be able to make an order. In such case, the court can order a person to be taken into custody and be admitted to and detained in an isolation facility or quarantine facility. The court can also order an examination by a physician to determine whether the person is infected with a communicable disease and for the treatment of the communicable disease. The order may require a person to comply with the direction of the Medical Officer of Health. Where a person is detained under an order from the Judge, such detention will not be able to exceed 4 months.[60] A Medical Officer of Health can make an application to the court to extend the period of detention, with each extension up to a period of 4 months.

The new *Health Protection Act* would also provide for appeal mechanisms. See Section VIII - Appeal from Orders. However, the filing of an appeal will not stay the decision or order, unless the judge so orders.

Where the Medical Officer of Health is obstructed from taking action that is required under the Act, the new *Health Protection Act* will authorize the Medical Officer of Health (or designate) to use force and employ assistance of any other person, police, or peace officer as necessary to do what he/she is empowered to do under the Act and its regulations.

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[60]These requirements are adopted from the Manitoba legislation: Bill 2, s.4 9(4), amending *Public Health Act*, s. 19(7). The Ontario legislation allows for a person to be detained in a hospital for 4 months under the judge's order.

The Medical Officer of Health may share information on notifiable diseases and conditions, including nominal case by case information with public health authorities in other jurisdictions if this information is required for the prevention and control of disease. Otherwise the Medical Officer of Health and other Public Health staff must treat all information as private and confidential. See Section II - Privacy/Confidentiality.

The new *Health Protection Act* will allow for expenses incurred by DHAs, the Office of the Chief Medical Officer of Health, public health inspectors and public health nurses in carrying out directions given by a Medical Officer of Health in respect to a communicable disease to be recovered with costs from the person to whom an order was directed.

QUESTIONS

1. Do you agree with the components/contents that are included in this section?

2. Is there any component/issue that should be added to this section/considered for this section? Is anything missing?

3. Should any issue/s in this section be expanded in more detail? If yes, What and Why?

4. What other suggestions do you have?

VI. RIGHT OF ENTRY

Rationale

> The purpose of public health legislation is to improve and protect the public health of Nova Scotians. In order to achieve this purpose, legislation must provide for the Minister of Health and/or Office of the Chief Medical Officer of Health to utilize measures to facilitate the investigation and monitoring of potential health hazards, communicable diseases, and certain non-communicable diseases.

The exercise of powers under public health protection legislation can conflict with certain individual rights, such as the right to privacy. In balancing individual rights, the new *Health Protection Act* will contain provisions outlining who can enter a premises, what conditions must exist to justify such an entry, and when and to whom notice must be given.

Under the new Act, a Medical Officer of Health or Health Inspector will be able to enter a premise that is not a private residence at reasonable times without the consent of the owner/occupant to take samples for the purpose of conducting tests or analysis in order to determine whether a health hazard exists or whether there is an agent of a communicable disease. A Public Health Nurse will be able to enter a premises in relation to a communicable disease or dangerous disease for the purpose of assessment. In the case of a dwelling (i.e. "private residence") consent must be obtained from the owner/occupier prior to entry, and if consent is refused, then a warrant must be obtained in order to enter.

To obtain a warrant, the court must be satisfied that there is reasonable and probable grounds for believing that it is necessary to enter and have access to a premise to conduct

examinations, tests and enquiries for the purposes of the Act. A warrant would be valid for 15 days. The Act will authorize a Medical Officer of Health, Public Health Inspector or Public Health Nurse to use reasonable force or to obtain assistance from a peace officer or other person with respect to right of entry. A Medical Officer of Health, Public Health Nurse or Public Health Inspector will be able to remove documents or records from a premise for the purposes of the Act and Regulations.

A person cannot hinder or obstruct a Medical Officer of Health, Public Health Inspector or Public Health Nurse from entering a premise or carrying out their duties. A person's refusal to consent to the entering of a dwelling will not be considered an obstruction, except where a warrant has been obtained.

An exception to the requirement for consent would exist where there is an emergency.

VII. PUBLIC HEALTH EMERGENCY

Rationale

In a very limited number of situations, there may be such an immediate and high degree of threat to public health (from either a health hazard or a dangerous disease) that normal processes may need to be suspended to allow for more timely and restrictive control measures. An example might be a bio-terrorism incident involving a highly infectious agent, like smallpox, which causes severe morbidity and mortality. This would be termed a "public health emergency", i.e. a situation that lies on a continuum between every day business and a state of emergency under the *Emergency Measures Act.* Although in a "state of emergency", the Minister has all the powers required to deal with a "public

health emergency", there could be a "public health emergency" that does not require the declaration of a "state of emergency".

While the new *Health Protection Act* allows for extra-ordinary powers to be used in a public health emergency, in all or part of Nova Scotia, these powers would only be able to be exercised where the protection of public health required immediate action to deal with a situation of extreme gravity.

A public health emergency is one in which a serious threat to the health of the population exists, (whether real or imminent) which requires the immediate application of certain measures to protect the health of the public. A public health emergency can only exist in the face of a threat or existence of a "dangerous disease" or "health hazard" which poses an imminent and serious threat to the safety of the public's health.. Provisions for dealing with a public health emergency are seen in other jurisdictions.[61]

A public health emergency would allow for special measures to be implemented that are required to protect the health of the public. Such measures could allow for the following:

- Order compulsory vaccination for the entire population or any part of it
- Prepare a list of people who get priority for vaccinations, drugs, medical supplies and equipment
- Order the closing of any educational setting or place of assembly
- Prohibit or limit access to certain areas or evacuate people from an area

[61] Manitoba's Bill 2, s. 50, amending *Public Health Act*, s. 22; P.E.I.'s *Public Health Act*, section 18; Ontario's *Health Promotion and Protection Act* allows for an oral order to be issued to address a health hazard where to issue a written order is likely to increase substantially the hazard to someone's health; Saskatchewan's *Public Health Act, 1994*, has provisions for dealing with epidemics which grant powers similar to those found for dealing with public health emergencies, section 45.

• Ensuring that necessities are provided to a person who is quarantined when the person has no alternate means of obtaining such necessities.

•Order construction of any work or the installation of facilities required for a public health emergency

•Authorize the employment of qualified retired and foreign trained health care workers and students and health care workers who are not currently employed or licensed with contractual arrangements for safety, salary and insurance.

• Order the use of any premises required for a public health emergency

• Secure the supply of vaccines, drugs and medical supplies or equipment from any supplier.

When dealing with a public health emergency, the Medical Officer of Health can be assisted by any other person that he or she considers necessary and that person will be able to exercise the powers of the Medical Officer of Health.

QUESTIONS

1. Do you agree with the components/contents that are included in this section?

2. Is there any component/issue that should be added to this section/considered for this section? Is anything missing?

3. Should any issue/s in this section be expanded in more detail? If yes, What and Why?

4. What other suggestions do you have?

VIII. APPEAL FROM ORDERS

Where a health hazard is found to exist, the legislation will provide the authority for the issuance of an order to remedy the health hazard (See Section IV - Health Hazards). Procedural safeguards will be included in the new *Health Protection Act*.

Procedural safeguards would include the right of appeal where the person ordered or required to take action believes that the order or action required is not warranted. A person will have 30 days in which to appeal an order.

Where the evidence presented to the court demonstrated to the Judge that a health hazard exists, and that the person has not complied with the order, the Judge may order the person to comply with the order of the Medical Officer of Health

The commencing of an appeal does not suspend the requirement to carry out the directions of an order. A court order may not be appealed to the Court of Appeal.

Where an order is issued under the communicable disease provisions, the person subject to the order will have the right to be notified of any applications to the court for an order and the right to be present and have legal representation at any such hearings. The person subject to a court order will have a right of appeal of that order to the Nova Scotia Supreme Court (Appeal Division). The filing of a notice of appeal does not suspend the decision or order, unless the judge of the Appeal Court orders the suspension of the order.

QUESTIONS

1. Do you agree with the components/contents that are included in this section?

2. Is there any component/issue that should be added to this section/considered for this section? Is anything missing?

3. Should any issue/s in this section be expanded in more detail? If yes, What and Why?

4. What other suggestions do you have?

IX. ENFORCEMENT

Offences and Penalties

The failure to comply with an order under the new *Health Protection Act* and regulations will constitute an offence under the Act. The Act would allow for the imposing of fines and penalties for each day that an offence continues under the Act. Both individuals and corporations would be subject to penalties, with officers and directors of corporations being subject to personal liability. Penalties would be imposed for obstructing of a medical officer of health in carrying out his or her duties as well as failure to comply with an order. The Act would also allow for a penalty to be imposed for the selling of a vaccine that is part of the supply purchased by the Department of Health for the publicly funded immunization programs.

The Act would not stipulate the monetary amount of penalties and fines, rather the monetary amount would be listed in regulations. Fines and penalties can be imposed for each day that an offence continues under the Act.

Evidence

In order for a Medical Officer of Health to issue an order, he or she must produce a certificate indicating that a health hazard or public health risk exists or is believed to exist. A report from a laboratory is sufficient for the purposes of issuing an order.

QUESTIONS

1. Do you agree with the components/contents that are included in this section?

2. Is there any component/issue that should be added to this section/considered for this section? Is anything missing?

3. Should any issue/s in this section be expanded in more detail? If yes, What and Why?

4. What other suggestions do you have?

X. MISCELLANEOUS

a. Location of Cemeteries

The current *Health Act* contains provisions dealing with the location of cemeteries.[62] The current provisions stipulate that any new cemetery or extension of an existing cemetery must be two hundred yards away from certain premises, unless there is written consent from the Minister to a lesser distance. However, in practice it is the Department of Environment and Labour that oversees the construction of or extension of cemeteries.

The Department of Environment and Labour refers to the *Health Act* for the location

[62]Section 59.

requirements of 200 yards from certain premises, such as colleges, schools, hospitals or dwelling houses. In addition, to be issued a permit, the cemetery must also meet the clearance requirements from drinking water supplies and watercourses according to the Department of Environment and Labour's policy.

Furthermore, although the current *Health Act* allows the Minister to make an exception to the 200 yard requirement, in practice this is no longer done. The Department of Environment and Labour has designated cemeteries as a listed activity, and issues an "Industrial Approval" under its *Activities Designated Regulations*.[63]

In light of the above, the new *Health Protection Act* will not include provisions pertaining to the location of cemeteries. The location of cemeteries is viewed as being properly within the ambit of the Department of Environment and Labour, and as such inclusion of location requirements in the new *Health Protection Act* creates confusion.

b. Internment and Disinterment

The new *Health Protection Act* will continue to set out specific provisions for dealing with deaths resulting from certain communicable diseases.[64] The new Act will continue to contain provisions for disinternment.[65]

XI. FOOD SAFETY

Details around food premises, food handlers, etc. will be contained in the Section - Food Safety. The aim of this section of the Act will be to provide an efficient, effective and

[63]N.S. Reg. 47/95, s. 28.

[64]Such provisions are contained in the current *Health Act*, section 55.

[65]Such provision are contained in the current *Health Act*, sections 57, 58.

appropriate food inspection system in order to provide consumers with safe and wholesome food and food products.

The Act will set out requirements for operating a food establishment. This includes the obtaining of a permit and the circumstances where the granting of a permit may be refused, and the suspension and revocation of a permit. An applicant or permit holder will have a right of appeal, with the manner of appeal set out in regulations. The Act will set out criteria for food establishments' operations.

Under the Act, an administrator or inspector will have the authority to enter a premise or building where it is believed that food is being processed, produced, prepared, handled or stored. A warrant will not be required. In the case of a dwelling, consent of the occupant will be required or a warrant.

The Act will authorize the making of regulations pertaining to food safety. These include:

(a) prescribing the powers and duties of administrators and inspectors or any class of inspectors;

(b) providing for the exemption from this Part or the regulations, or any part thereof, of any person or any class of persons or of any food product and prescribing the terms and conditions of the exemption;

(c) prescribing the manner of and the devices to be used in the operation of permitted food establishments;

(d) respecting the facilities and equipment to be provided and maintained at permitted food establishments and the operation of permitted food establishments;

(e) respecting cleanliness and sanitation of permitted food establishments;

(f) requiring and governing the detention and disposal of any food at a food establishment and prescribing the procedures for the detention and

disposal;

(g) respecting the transportation and delivery of food from a permitted food establishment;

(h) prescribing the records to be made and kept by the operator of a permitted food establishment;

(i) providing for the issue, renewal, suspension, reinstatement or revocation of or refusal to issue or renew permits and prescribing the fees payable for permits or the renewal of permits;

(j) providing for the inspection of places in which milk, milk products, or other foodstuffs are produced, manufactured, stored, kept for sale or sold, and of vehicles in which they are transported;

(k) prohibiting the sale or delivery of milk, milk products, or any other foodstuffs from a place in which they are produced, manufactured, stored, kept for sale or sold, if conditions in that place are unsanitary or if the person in charge of the place refuses to permit the place to be inspected by an inspector;

(l) respecting how milk or cream shall be pasteurized;

(m) respecting the temperature to which milk or cream shall be subjected and in respect of the time during which such temperature shall be maintained and the period during which such milk or cream shall be cooled and the temperature to and the manner in which such milk or cream shall be so cooled;

(n) respecting the provision of safe and potable water supplies, for the control of sources of water and systems of distribution, and respecting the prevention of contamination or pollution of water that is used for human consumption;

(o) providing for inspection of premises and vehicles before the issue of permits;

(p) providing for the refusal of permits and for their suspension or cancellation;

(q) providing for the keeping of records of permits and for inspection of those records by any person;

(r) prescribing conditions to which permits may be subject;

(s) governing appeals;

(t) prescribing terms and conditions under which food may be inspected at any permitted food establishment and the fees payable for inspection;

(u) prescribing standards for any class or variety of food;

(v) providing for the taking at a permitted food establishment samples at the expense of the owner for the purpose of testing;

(w) providing for the labeling of food at a permitted food establishment;

(x) extending the period during which food or things may be retained by an inspector;

(y) respecting the detention of food or things seized pursuant to this Part and for preserving or safeguarding them;

(z) prescribing forms and providing for their use;

(aa) further defining the word “food”;

(bb) defining any word or expression used but not defined in this Part;

(cc) respecting any matter necessary or advisable for the administration of a system of administrative penalties;

(dd) respecting any matter, whether or not of the kind or type contained in this subsection, necessary or advisable to carry out effectively the intent and purpose of this Part.

QUESTIONS

1. Do you agree with the components/contents that are included in this section?

2. Is there any component/issue that should be added to this section/considered for this section? Is anything missing?

3. Should any issue/s in this section be expanded in more detail? If yes, What and Why?

4. What other suggestions do you have?

Schedule "A"

The Act will allow for regulations to be made with respect to the following:

(a) respecting the control of health hazards;

(b) classifying persons, organizations, premises, places animals, plants and things or any of them, for the purposes of the regulations;

(c) respecting standards and requirements in relation to the Act and the regulations;

(d) exempting any person, organization, premises, institution, food, substance, thing, plant, gas, heat, radiation or class of them for any provision of this Act and its regulations and prescribing conditions that shall apply in respect of such an exemption;

(e) respecting the construction, equipment, facilities, including sanitary facilities, establishment and maintenance of recreational camps;

(f) respecting standards and requirements in respect of industrial or construction camps or other places where labour is employed and requiring owners and operators of such camps, works or other places to comply with such standards and requirements.

(g) respecting the detention, isolation, examination, disposition or destruction of any animal that has or may have a disease or a condition that may adversely affect the health of any person;

(h) respecting the immunization of domestic animals against any disease that may adversely affect the health of any person;

(i) respecting the reporting of cases of animals that have or may have diseases that adversely affect the health of any person;

(j) notwithstanding the *Freedom of Information and Protection of Privacy Act,* respecting the reporting of bites of persons by animals or contacts to persons that may result in human rabies, and requiring such reporting, specifying the person or class of persons who must make such reports and requiring and governing the furnishing of additional information and the form and content of such reports and additional information;

(k) respecting the classes of persons who shall make and receive those reports concerning animals that have or may have diseases that adversely affect the health of any person;

(l) respecting the supply, quality, transportation, storage, sale and use of vaccines, serums, drugs and biological preparations;

(m) respecting the payment of fees for vaccines;

(n) notwithstanding the *Freedom of Information and Protection of Privacy Act,* respecting the immune status of employees who work in hospitals and institutions;

(o) respecting certificates or other means of identification for Medical Officer of Health, public health nurses and public health inspectors;

(p) governing the handling, transportation and burial of bodies of persons who have died of a communicable disease or who had a communicable disease at the time of death;

(q) specifying additional persons who should report existence or the probable existence of a notifiable disease or condition, notwithstanding the *Freedom of Information and Protection of Privacy Act,* and specifying to whom it should be reported;

(r) notwithstanding the *Freedom of Information and Protection of Privacy Act,* respecting the control, classification and reporting of communicable diseases, notifiable diseases or conditions, and dangerous diseases, including the control of disease vectors;

(s) designating a disease as a notifiable disease or condition or as a dangerous disease;

(t) respecting the evacuation of persons from localities where there are a large number of cases of a communicable disease or a dangerous disease;

(u) respecting the isolation or quarantine of persons having or who have been exposed to a communicable disease or a dangerous disease;

(v) notwithstanding the *Freedom of Information and Protection of Privacy Act,*

respecting the mandatory reporting of immunizations by a physician or public health nurse;

(x) respecting the construction, maintenance, inspection, cleaning, purifying, ventilating and disinfecting of facilities providing services to the public;

(y) respecting any matter related to the health or safety of persons in, on or about public pools, and requiring owners and operators of public pools to comply with such regulations, including, but not limited to,

(i) governing the construction, alteration, repair, location, operation, maintenance and use, or prohibiting any of them, of such pools and related buildings, appurtenances and equipment,

(ii) requiring the installation and maintenance of safety equipment,

(iii) requiring the presence of lifeguards and other staff, and

(iv) prescribing standards and requirements in respect of lifeguards and staff and requiring compliance with such standards and requirements;

(z) respecting responsibilities, guidelines and standards for public health laboratories;

(aa) respecting reporting requirements for a district health authority;

(ab) respecting forms for the purposes of this Act and its regulations;

(ac) defining any other word or expression used but not defined in this Act;

(ad) further defining any word or expression defined in this Act;

(ae) respecting any matter that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.