

BILL C-12: THE QUARANTINE ACT

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21 October 2004



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LEGISLATIVE HISTORY OF BILL C-12

HOUSE OF COMMONS

Bill Stage	Date
First Reading:	8 October 2004
Referred to Committee:	26 October 2004
Committee Report:	13 December 2004
Report Stage and Second Reading:	9 February 2005
Third Reading:	10 February 2005

SENATE

Bill Stage	Date
First Reading:	10 February 2005
Second Reading:	9 March 2005
Committee Report:	12 April 2005
Report Stage:	13 April 2005
Third Reading:	14 April 2005

Royal Assent: 13 May 2005

Statutes of Canada 2005, c. 20

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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PUBLIÉ EN FRANÇAIS

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BILL C-12: THE QUARANTINE ACT*

BACKGROUND

The existing *Quarantine Act* has remained largely unchanged since its adoption in 1872, undergoing minor revisions in 1985 and 1996. Although the legislation has helped to prevent the importation of communicable diseases into Canada from abroad, or the export of such diseases, the Act was adopted at a time when the spread of disease was much more localized and intercontinental travel was strictly by ship. Bill C-12, which would repeal and replace the original *Quarantine Act*, focuses on airline travel rather than marine travel.

The outbreak of Severe Acute Respiratory Syndrome (SARS) in the spring of 2003 resulted in pleas for updated public health responses, not only in Canada but worldwide. The avian flu outbreak added to this outcry, as did the repeated warnings from the health care community that a deadly flu epidemic could emerge at any time. The National Advisory Committee on SARS and Public Health was established in May 2003 by the Minister of Health. Chaired by Dr. David Naylor, the Committee's mandate was to provide a third-party assessment of current public health efforts and of lessons learned for ongoing and future infectious disease control. The Naylor report outlined the jurisdictional aspects of public health and described these as primarily provincial. The federal government, however, has authority over quarantine provisions and national borders. The report recommended that the federal government ensure that an adequate complement of quarantine officers be maintained at all ports of entry and that better collaboration with port authorities and personnel be established to clarify responsibilities in the event of a health threat. Bill C-12 addresses these recommendations.

Finally, the World Health Organization (WHO) is currently revising its 1969 International Health Regulations (IHR), which help to ensure maximum security against the international spread of diseases while minimizing interference to world traffic. The IHR involve:

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

- notification by member states to the WHO of specified communicable diseases;
- health-related rules for international trade and travel;
- health and sanitation methods; and
- health documentation for travellers.

The proposed revision of the IHR contains four major changes. First, member states would be required to notify WHO of all events that potentially constitute a public health emergency of international concern, irrespective of cause. Second, the IHR would be the legal framework for a global health security epidemic alert and response strategy. Third, each member state would designate a national centre to act as the contact point for WHO. And finally, the IHR would set out the minimum core surveillance and response capacities required at the national level. Bill C-12 is aligned with Canada's obligation under the IHR and responds to the May 2003 request by the WHO that countries take steps to enhance, support and strengthen national efforts to address the SARS outbreak.

On 12 May 2004, the Honourable Pierre Pettigrew, then Minister of Health, introduced Bill C-36, An Act to prevent the introduction and spread of communicable diseases. The bill, which would have replaced the existing *Quarantine Act*, died on the *Order Paper* at the call of the 2004 federal election. On 8 October 2004, the bill was reintroduced with minor changes as Bill C-12, also entitled An Act to prevent the introduction and spread of communicable diseases (short title: the Quarantine Act [clause 1]).

DESCRIPTION AND ANALYSIS

Bill C-12 does not contain a Preamble.

A. Interpretation (Clause 2)

Clause 2 sets out a number of definitions that apply to this bill, including "communicable disease," which is defined as a human disease that is caused by an infectious agent or a biological toxin and poses a risk of significant harm to public health, or a disease listed in the schedule to the proposed Act, and includes an infectious agent that causes a communicable disease. Another important definition is "health assessment," which means an

evaluation of the medical and travel history of a traveller and a physical examination, including an examination of the traveller's head, neck and extremities and the measurement of vital signs such as the traveller's temperature, heart rate, and respiratory rate.

B. Purpose (Clause 4)

The existing *Quarantine Act*, c. Q-1, does not contain a Purpose clause.

Clause 4 sets out the purpose of the proposed Act, which is “to protect public health by taking comprehensive measures to prevent the introduction and spread of communicable diseases.”

In Bill C-36, the phrase “while ensuring respect for the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*” was also included.

C. Powers of Minister (Clauses 5 to 11)

1. Designation of Officers

Clause 5 creates a number of classes of persons involved in the administration and enforcement of the bill. The existing legislation refers only to quarantine officers, who have a wide range of responsibilities. Clause 5(1) allows the Minister of Health to designate persons or classes of persons as analysts, screening officers, or environmental health officers. Clause 5(3) creates the new classification of review officer. A review officer must be a medical practitioner.

Clause 5(2) places a limit on who may be a quarantine officer by restricting the designation to medical practitioners or other health care practitioners. Under the existing Act, any person may be designated as a quarantine officer if the Minister believes that person to be qualified.

Clause 5(4) requires quarantine officers, environmental health officers, and screening officers who are not also customs officers, to show their certificate of designation on request when inspecting a place or conveyance or questioning a person.

2. Quarantine Stations and Facilities

Clause 6(1) allows the Minister to establish a quarantine station anywhere in Canada. The same power is found in subsection 3(1) of the existing Act. Clause 7 allows for the designation of any place in Canada as a quarantine facility.

Clause 6(2) requires operators of facilities that contain a customs office to provide space and equipment free of charge for establishing a quarantine station. Similarly, if necessary to protect public health, clause 8(1) requires any person in charge of a place to provide it for temporary use as a quarantine facility. Clause 8(3) allows for compensation for the temporary use of a place as a quarantine facility.

3. Entry and Departure Points

Clause 9 allows the Minister to designate any point in Canada as an entry point.

Clause 10 allows the Minister to designate any point in Canada as a departure point if, in the Minister's opinion, there is a public health emergency of international concern.

4. Ministerial Agreements

Clause 11 allows the Minister to enter into agreements respecting the administration and enforcement of the Act with the following stakeholders:

- a department or agency of the Government of Canada;
- a department or agency of a province; and
- a public health authority.

D. Travellers (Clauses 12 to 33)

This part of the proposed Act sets out the obligations of travellers with respect to disclosing health information and submitting to health assessments and medical examinations. It also sets out the responsibilities of screening officers and quarantine officers.

1. Obligations and Responsibilities of Travellers

“Traveller” means a person, including the operator of a conveyance, who arrives in Canada or is in the process of departing from Canada (clause 2). Clause 20(2) adds that for the purposes of clauses 21 to 33, “traveller” includes any person required to undergo a health assessment under clause 20(1), which requires any person at an entry or departure point to undergo a health assessment if the quarantine officer has reasonable grounds to suspect that the person has recently been in close proximity to a person who has a communicable disease or who is infested with vectors. (A vector is defined in clause 2 as “an insect or animal capable of transmitting a communicable disease.”)

The bill requires travellers to do the following:

- immediately after entering Canada, or leaving through a departure point (which under clause 10 can be any point in Canada designated as such if there is “a public health emergency of international concern”), present themselves to a screening officer (clause 12 and clause 13); departing travellers may, alternatively, present themselves to a quarantine officer;
- answer any questions and provide any information or record in their possession that the screening officer or quarantine officer may reasonably require (clause 15(1));
- if they have reasonable grounds to suspect that they have a communicable disease or are infested with vectors, or that they have recently been in close proximity to a person who has a communicable disease or is infested with vectors, disclose that information to a screening officer or quarantine officer (clause 15(2)). This clause has been modified from the equivalent clause in Bill C-36. Clause 16(1) of that bill would have required any traveller who knows that he or she has a communicable disease – not who has reasonable grounds to believe that he or she has a communicable disease – to disclose that to an officer;
- in order to prevent the introduction and spread of a communicable disease, comply with any reasonable measure ordered (clause 15(3)). This clause has been modified from the equivalent clause in Bill C-36. Clause 16(3) in that bill would have required every traveller to comply with any non-intrusive measures, not any reasonable measures;
- undergo a health assessment if:
 - the quarantine officer has reasonable grounds to suspect that they have a communicable disease or are infested with vectors, or that they have recently been in close proximity to a person who has a communicable disease or is infested with vectors (clause 19(1)(a)). This clause is similar to subsections 8(1)(b), (c) and (d) and subsections 11(a) and (b) in the existing Act, which provide for medical examinations for infectious or contagious diseases and dangerous diseases;
 - they have refused to be screened under clause 14(1) (clause 19(1)(b)); or
 - they have contravened clause 15(1) or (3) (clause 19(1)(c));
- undergo a health assessment at an entry or departure point if the quarantine officer has reasonable grounds to suspect that they have recently been in close proximity to someone who has a communicable disease or is infested with vectors (clause 20);
- be disinfested or have their clothing and personal belongings disinfested if, after a health assessment, the quarantine officer has reasonable grounds to believe that they are infested with vectors (clause 21(1)). This clause is similar to section 15 in the existing Act, which provides for the disinfesting of a person and his or her clothing and baggage;
- undergo a medical examination if the quarantine officer has reasonable grounds to believe that they have a communicable disease or are infested with vectors, or that they have recently been in close proximity to a person who has a communicable disease or is infested with vectors (clause 22(1)); and

- comply with treatment or any other measure ordered to prevent the introduction and spread of a communicable disease if, after a medical examination, the quarantine officer has reasonable grounds to believe that they have a communicable disease or are infested with vectors, or that they have recently been in close proximity to a person who has a communicable disease or is infested with vectors (clause 26).

Clause 23 allows a traveller to request, at any time, an examination by a medical practitioner of his or her choice, to be conducted at the traveller's expense and at the place the traveller is detained. The quarantine officer may accept the request if the examination would not unduly delay measures taken in the administration of the Act.

2. Detention of Travellers

Clause 28(1) is similar to section 8(2) of the existing Act, which outlines the circumstances under which a traveller may be detained or permitted to proceed to his or her destination. Clause 28(1) allows a traveller to be detained in the following situations:

- the traveller refuses to be disinfested or undergo a health assessment;
- the traveller is required to undergo a medical examination;
- the traveller fails to comply with an order to comply with treatment or any other measure;
- the traveller is believed to have a communicable disease or to be infested with vectors, or to have recently been in close proximity to a person who has a communicable disease or is infested with vectors, and to be capable of infecting others;
- the traveller has been arrested for failing to comply with an order to report to a public health authority or to comply with treatment; or
- the traveller has been arrested without a warrant for refusing to be isolated or refusing to comply with certain measures.

Clause 31 deals with court orders. Clause 31(1) requires a quarantine officer in certain circumstances to obtain a court order requiring the traveller to submit to a health assessment or medical examination, to be treated or disinfested, or to undergo any other relevant measure.

Clause 32 requires that a quarantine officer not detain a traveller if: the officer believes that the traveller does not pose a risk of significant harm to public health; the traveller is

transferred to a public health authority; the traveller's release is ordered by a review officer or the Minister; or if other reasonable means are available to prevent or control a risk of significant harm to public health.

Clause 33 allows for the transfer of a detained traveller to a public health authority.

a. Confirmation and Review of Detention

Clause 29(1) provides a detained traveller with the right to a review of the confirmation of his or her detention, and would require a quarantine officer to immediately inform a detained traveller of that right. Should a traveller request a review, clause 29(5) requires the quarantine officer to send the request immediately to a review officer, who is required under clause 29(6) to conduct a review within 48 hours of receiving the request. Clause 29(6) also requires the review officer to order the traveller's release if, in the officer's opinion, the traveller does not pose a risk of significant harm to public health.

Clause 30 allows the Minister to review any decision to detain a traveller and to order his or her release if, in the Minister's opinion, the traveller does not pose a risk of significant harm to public health.

Clause 29(2) requires a quarantine officer to provide a detained traveller with the opportunity to be examined by a medical practitioner at least every seven days. Clause 29(3) requires a quarantine officer to confirm, at least every seven days, that a traveller's continued detention is necessary and communicate the reasons for the continued detention to the traveller.

3. Obligations and Powers of Authorized and Designated Persons

a. Authorized Persons

Clause 14(1) allows any authorized person to screen travellers for communicable diseases. Clause 14(2) requires the authorized person to report any traveller who refuses to be screened to a screening officer or quarantine officer.

b. Screening Officers

Clause 16(1) requires screening officers to notify a quarantine officer and follow that officer's directives in certain circumstances. Under clause 16(2) screening officers may isolate a traveller until a quarantine officer can assess him or her.

Clause 17 requires either a screening officer or a quarantine officer to inform a traveller of a measure to be taken prior to its being taken, if reasonably possible.

c. Quarantine Officers

The bill allows and/or requires quarantine officers to do the following:

- detain and disinfect baggage (clause 21(2));
- enter and disinfect any place where there has been a traveller or baggage that was or may be disinfected (clause 21(3)); and
- order a traveller to report to a public health authority (clause 25(1)). This clause is similar to subsections 8(2) and 8(4)(a) in the existing Act, which together allow a quarantine officer to permit a person to proceed directly to his or her destination provided that the traveller agrees to report to the medical officer of health for the area.

d. Peace Officers

Bill C-12 allows a peace officer to arrest a traveller without a warrant in two situations: at the request of a screening officer or quarantine officer, if the peace officer believes on reasonable grounds that the traveller has either refused to be isolated or refused to comply with a measure ordered by a screening or quarantine officer (clause 15(3)); and at the request of a quarantine officer if the traveller resists detention by a quarantine officer under clause 28(1) (clause 28(2)).

E. Conveyances (Clauses 34 to 43)

In the existing *Quarantine Act*, sections 5 to 7 describe a quarantine officer's powers with respect to conveyances. The existing *Quarantine Regulations*, C.R.C., c. 1368, split the provisions dealing with conveyances into separate sections for Maritime Traffic (sections 12 to 18), Air Traffic (sections 19 to 22) and Land Traffic (section 23).

1. Obligations of Owners

Clause 42 allows the Minister to require owners of conveyances to provide a deposit to ensure compliance with the Act. Section 24(1) of the existing Act contains a similar provision.

2. Obligations of Operators

Before arriving in Canada or leaving Canada at a departure point, operators (defined in clause 2 as any person in charge of a conveyance, including the conveyance crew) are required by clauses 34(1) and 34(2) to report a suspicion on reasonable grounds that: (1) a person or thing on board could cause the spreading of a communicable disease, (2) a person on board has died, or (3) any prescribed circumstances exist. In the event that this prior reporting is not possible, the operator shall report any of these situations at the entry or departure point (clause 34(3)). Clause 34 is similar to section 12 of the *Quarantine Regulations* relating to Maritime Traffic and section 19 relating to Air Traffic. Section 12 of the Regulations, however, outlines particular symptoms of illnesses that require reporting. It also requires the operator to report having recently been in a country that is, or is suspected of being, infected with smallpox or the plague.

Clause 38 requires operators to provide information or records to officers. This clause is similar to the requirement for travellers to provide information under clause 15(1) of the bill. Clause 38 is in keeping with subsection 12(2) of the Regulations but is broader, as subsection 12(2) lists specific information to be provided while clause 38 requires operators to provide any information or records that the officer may reasonably require.

The failure to provide information under clause 38 may result in the conveyance being detained in accordance with clause 37(2).

3. Powers of Officers

Clause 37(2) allows a screening officer to detain a conveyance on the suspicion that it or its cargo is a source of a communicable disease. A screening officer is also able to prevent others from entering or exiting the conveyance, and from moving the conveyance until it is inspected by an environmental health officer. This clause is similar to subsection 5(c) of the existing Act, which allows a quarantine officer to detain any conveyance and goods until the requirements of the *Quarantine Act* and Regulations are complied with.

An environmental health officer has a number of options under clause 39(1) if he or she believes that the conveyance or any thing on board could be the source of a communicable disease. For example, the officer may order the owner, operator, or any person using the conveyance to:

- take measures to prevent people from entering or exiting the conveyance;
- move the conveyance;
- disinfect, disinfest, decontaminate or fumigate the conveyance, its contents, or any place it has been (this is included in subsection 7(1)(a) of the existing Act);
- destroy or dispose of the conveyance or its contents;
- carry out any measures necessary to prevent the introduction and spread of a communicable disease; or
- remove the conveyance from Canada, and present a declaration of health at its destination (this is included in subsection 7(1)(b) of the existing Act).

Under clause 41(1), the person subject to such an order is responsible for the cost of carrying out the order, and until the cost has been paid, the conveyance and its contents may be detained (clause 41(2)). These provisions respecting costs and detaining a conveyance until costs are paid are included in the existing Act under subsections 7(1) and 7(3).

Clause 40(1) provides that an environmental health officer may carry out the clause 39(1) order if a person refuses to comply with it. (This action is currently provided for in subsection 7(2) of the existing Act, but only with respect to cleansing or removing the conveyance. In Bill C-36, clause 41(1) would have also required a person to pay the costs of carrying out an order under clause 40(1).) Only after the order has been carried out is the officer required to advise the person of the action taken (clause 40(2)).

4. Powers of Minister

Clause 43 allows the Minister to compensate owners of conveyances or other things damaged or destroyed in the carrying out of an order.

F. Cadavers, Body Parts and Other Human Remains (Clauses 44 to 46)

Clause 44(1) requires an operator carrying a cadaver, body part or other human remains into Canada to produce a death certificate. A screening officer must inform a quarantine officer if no death certificate is produced, or if the officer believes the human remains may have a communicable disease or be infested with vectors (clause 44(2)). Producing a death certificate is currently required under subsection 27(1) of the *Quarantine Regulations*.

G. General Powers (Clauses 47 to 53)

In addition to powers that may be exercised if there is a belief, based on reasonable grounds, that a traveller, conveyance or other thing has a communicable disease or is infested with vectors, the bill contains a number of proposed powers relating to rights of entry, inspection, and compelling the production of documents for the purpose of determining whether someone or something has a communicable disease or is infested with vectors.

Clause 47(1) allows a quarantine officer or an environmental health officer to stop a conveyance, move it for the purpose of inspection, enter it and inspect it. Officers are also allowed to open and examine any thing, and require a person to produce any record necessary to conduct the inspection. Officers are allowed to conduct tests, and take samples and measurements. To enter and inspect a dwelling place, a quarantine officer or environmental health officer must obtain a warrant unless he or she has the consent of the occupant (clause 48(1)).

Clause 51 requires any person with information about a traveller that is reasonably required by an officer to provide that information or record to the officer.

H. Information (Clauses 54 to 57)

Clause 54(1) allows for the protection of the identity of a person who discloses information about a contravention or possible contravention of the Act. Clause 54(3) protects a person from employer repercussions for reporting a contravention of the Act, and also protects a person in certain other circumstances.

Clause 55 allows the Minister to collect medical information in order to carry out the purposes of the Act. Clause 56 allows the Minister to disclose confidential business or personal information to certain organizations and individuals, provided that the disclosure is necessary to prevent the spread of a communicable disease. Clause 57 allows the Minister to disclose specific information to a peace officer if there are reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of offences involving infectious agents or biological toxins.

I. Emergency Orders (Clauses 58 to 61)

Clause 58(1) allows the Governor in Council to prohibit the entry of persons who have been in a foreign country or a specified part of a foreign country, or to subject persons entering Canada to certain conditions. To make such an order, the Governor in Council must believe that:

- there is an outbreak of a communicable disease in the named country;
- the introduction or spread of the disease would pose an imminent and severe risk to public health in Canada;
- the entry of persons who have been in the named country may introduce or contribute to the spread of the communicable disease in Canada; and
- there is no reasonable alternative to prevent the introduction or spread of the disease.

Clause 59 also allows the Governor in Council to prohibit or set conditions on importing any thing into Canada, in order to prevent the introduction or spread of a communicable disease in Canada. In the event that immediate action is required to deal with a significant risk to public health, clause 60(1) allows the Minister to make interim orders that would normally be the subject of a regulation.

J. Regulations (Clauses 62 and 63)

Clause 62 allows the Governor in Council to make regulations with respect to a number of subjects under the Act.

Clause 63 allows the Minister to make regulations amending the Schedule to the Act and designating the authority to whom operators of conveyances shall report when arriving in or departing from Canada.

K. Offences and Punishment (Clauses 65 to 72)

Clauses 65 to 72 create a number of offences and maximum penalties for each offence. Most offences are summary conviction offences, with a maximum fine of either \$750,000 or \$200,000 and a maximum prison term of six months. Only offences under clause 67 and clause 72 may proceed either by way of indictment or by summary conviction. The maximum penalty under clause 67 (causing a risk of imminent death or serious bodily harm to

another person while wilfully or recklessly contravening the Act or the regulations), on conviction on indictment, is a \$1,000,000 fine or three years' imprisonment or both. The maximum penalty under clause 72 (failing to disclose that one has a communicable disease or is infested with vectors, or that one has recently been in close proximity to such a person; or wilfully obstructing or misleading an officer), on conviction on indictment, is a \$500,000 fine or three years' imprisonment or both.

L. Related Provisions (Clauses 73 to 80)

A number of clauses in this section relate to prosecutions under the Act, including limitation periods, evidence and sentencing orders, in addition to punishments detailed in clauses 67 to 72.

Clause 73, in particular, allows for the prosecution of officers, directors, agents or mandataries of a corporation who were involved, either passively or actively, in the commission of the offence, regardless of whether the corporation has been prosecuted or convicted.

M. Consequential Amendment (Clause 81)

Clause 81 of the bill adds section 100(5) to the *Immigration and Refugee Protection Act*, and specifies that the period relating to an officer's obligation to refer a claim to the Refugee Protection Division does not begin to run until the day on which the traveller's detention or isolation under the *Quarantine Act* ends.

N. Repeal (Clause 82)

Clause 82 repeals the *Quarantine Act*, c. Q-1.

O. Coming Into Force (Clause 84)

Clause 84 states that the provisions of the Act, other than clause 83 (which is a coordinating amendment relating to the *Public Safety Act, 2002*), come into force on a day or days to be fixed by order of the Governor in Council.

P. Schedule

The Schedule lists a number of diseases that are considered to be communicable diseases for the purpose of the Act.