Chapter 9 - Meat Retail and Distribution

9.1 Introduction

There are thousands of businesses in Ontario which distribute and/or deliver meat and meat products directly to consumers including warehouse distributors, hotels, institutions, restaurants, caterers, grocery stores, and retail stores. Some of these businesses are part of a larger meat or food processing operation such as a free standing meat processor or abattoir, but most are not. These businesses are currently subject to inspections by public health inspectors pursuant to the *Health Protection and Promotion Act* (*HPPA*).[1]

While food safety is important at all stages of the food continuum, it is especially so in the retail and distribution stage where the meat will be sold, sometimes in a ready-to-eat form, to the consumer. Meat that is not properly stored, handled, or prepared at any food service premises may not be safe for consumption.

9.2 Food Safety Issues

The risks to food safety that are present at other stages in the continuum can also be present at the food service, retail and distribution stage.[2] Biological hazards are a significant concern, especially where the meat is not stored or cooked at a safe temperature, or where new or additional micro-organisms are introduced into the meat through contamination from food handlers, equipment or other foods. Chemical hazards can be introduced to the meat if it is not protected from contamination during handling, storage, cooking or processing. Physical hazards such as sharp objects can also contaminate meat if it is not properly protected from external contaminants.

Risk controls implemented to minimize or eliminate hazards at earlier stages along the meat production continuum can be negated by a failure to control risks at this stage.

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[1] *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7.

[2] See the portion of the chart of the assessment of the biological, chemical and physical hazards for retailers at Appendix F.

9.3 Current Ontario System

9.3.1 Legislation

The prevention and management of risks in meat retail and distribution falls within the scope of authority of the Public Health Branch of the Ministry of Health and Long-Term Care (MOHLTC) and the Boards of Health across Ontario. The purpose of the governing legislation, the *HPPA*, is:

> *… to provide for the organization and delivery of public health programs and services, the prevention of the spread of disease and the promotion and protection of the health of the people of Ontario.*[3]

Under the *HPPA*, every Board of Health is required to ensure the provision of health programs and services in a number of areas related to food safety including: ensuring the maintenance of sanitary conditions and the prevention or elimination of health hazards; controlling of reportable diseases including foodborne illnesses;[4] and, collecting and analyzing epidemiological data.[5] Further food safety protection is provided by prohibiting the sale of any food that is unfit for human consumption by reason of disease, adulteration, impurity or other cause.[6]

Under the *HPPA*, medical officers of health are obligated to ensure inspection of food premises in the health unit for the purpose of preventing, eliminating and decreasing the effects of health hazards and to investigate complaints of health hazards.[7]

Food premises include premises where meat is processed, prepared, stored, handled, displayed, distributed, transported, sold or offered for sale.[8] This means the scope of the authority and responsibility of the Boards of Health

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[3] *HPPA, supra* note 1, s. 2.
[4] Under the *Specification of Reportable Diseases* regulation made under the *HPPA*, the following foodborne illnesses are reportable diseases: *botulism, campylobacter enteritis*, food poisoning, institutional outbreaks of gastroenteritis, *listeriosis, salmonellosis, shigellosis, trichinosis*, and *yersiniosis*. O. Reg. 559/91 amended to O. Reg. 96/03.
[5] *HPPA, supra* note 1, s. 5.
[6] *Ibid.,* s.17.
[7] *Ibid.,* ss.10. & 11.
[8] *Ibid.,* s.1.

is very broad and includes all businesses which distribute and/or deliver meat or meat products directly to the consumer.

9.3.2 Jurisdiction and Funding

In general, the MOHLTC develops the guidelines for food safety programs, the Boards of Health set the budget and the policies for the health unit,[9] and the medical officer of health[10] oversees the day-to-day operations of the health unit.

All areas of Ontario have a Board of Health that provides public health programs and services under the *HPPA* except areas of the province which do not form part of a municipality and are referred to as unorganized territories. The provincial government provides 100% funding for public health programs and services in the unorganized territories. The public health funding provided to the unorganized territories remained the same for at least twelve years and as of 2003, was below the per capita rate for public health spending across Ontario.[11]

There is no statutory funding formula for the apportionment of the costs of public health programs and services as between the provincial government and municipalities.[12] The amount of funding provided by the provincial government to Boards of Health has varied between 0 and 75%.[13] Each medical officer of health ensure a budget is prepared and given to its Board of Health and the MOHLTC for approval. Upon approval, the municipality

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[9] The term "health unit" is commonly used to refer to the organization that provides public health services in an area, however the *HPPA* uses it to refer to the geographical jurisdiction of the Board of Health within which the Board of Health is responsible to provide public health services and programs. *HPPA, supra* note 1, s.1.

[10] Boards of Health are obligated to appoint a full time medical officer of health (MOH) or a physician to be acting medical officer of health where the office of MOH is vacant or the MOH is absent or unable to act under s.62 of the *HPPA, supra* note 1.

[11] The per capita rate amongst the thirty-seven Boards of Health ranged between $23 to $65 with an average of $37 in 2002. *2003 Annual Report of the Office of the Provincial Auditor of Ontario*, s. 309. In 2003, the statistics were similar with a range from $23.38 to $62.84 with an average of $40.28. Canadian Institute of Public Health Inspectors Ontario Branch Inc., *Health Unit PHI Staffing 2003*, available from http://action.web.ca/home/ciphiont/readingroom.shtml?sh_itm=38e55b2d62af04a7a1433a1ad3e2cad6 [accessed 26 May 2004].

[12] The province is permitted, but not required to contribute to provision of services under the *HPPA*. See *HPPA, supra* note 1, s.76.

[13] For mandatory programs and services. Typically, the province does not contribute to certain capital costs such as building costs.

or municipalities within the health unit and the provincial government are to provide funds. For the last four years, the provincial government has provided funding to the Boards of Health for approximately 50% of their approved budgets with the balance paid by the municipalities.[14] In addition, the provincial government has provided other funds to public health units, on request, for emergency or unexpected costs, such as those associated with the SARS outbreak and *E. coli* in Walkerton's water. A recent announcement by the provincial government promises to increase funding by 5% per annum over the next five years until it reaches 75%.

There have been problems with the funding system. One particular irritant is the difference in fiscal years. The Boards of Health operate on the calendar year while the fiscal year-end for the province is March 31. It is often late in the calendar year before the Boards receive the approval and funding they sought when their budgets were set and too often the MOHLTC asks the Boards to provide additional programs after their budgets have been finalized.

In 2004, the MOHLTC obtained approval for 50% funding for additional public health inspectors at Boards of Health across Ontario. However, not all of the Boards of Health have been able to obtain approval from their municipalities for the other 50% needed to hire the additional inspectors. There are municipalities that are having difficulties finding the funding to provide required services and may have to reduce their existing complement of public health inspectors.

I am advised that Ontario is the only province where municipalities pay for public health. Although many stakeholders recognize the difficulties associated with split funding, many also identify a need to tailor services for a particular community. Participation in the funding process gives municipalities an opportunity to consider and address those needs.

9.3.3 Regulatory and Inspection Scheme

The MOHLTC has developed and published Mandatory Health Programs and Services Guidelines since 1984 with the most recent revision in

[14] The MOHLTC has provided funding in excess of 50% for some specific programs.

December 1997 (the "Mandatory Programs").[15] The Mandatory Programs set out requirements and standards that every Board of Health must follow, including standards for programs relating to "infectious diseases" and "food safety."

The goal of the food safety program is to "improve the health of the population by reducing the incidence of foodborne illness". The objectives are to ensure that food is stored, prepared, served and distributed in a manner consistent with accepted public health practices and to stop the sale or distribution of food that is unfit for human consumption.

In terms of inspection and requirements for food premises, the Mandatory Programs require that Boards of Health:

- assess all food premises annually to determine their risk status at high, medium or low according to the MOHLTC's HACCP protocol;[16]
- provide inspections of all food premises, to ensure compliance with the *Food Premises* regulation[17] under the *HPPA*. At least three inspections of high risk food premises, two inspections of medium risk food premises, and one inspection of low risk food premises are to be completed each year. Further inspections are to be completed as necessary to ensure correction of non-compliance, investigation of foodborne illnesses and foodborne outbreaks, investigation of food-related consumer complaints within 24 hours of notification, and compliance with food recalls;

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[15] *HPPA, supra* note 1, s.7.

[16] The *Hazard Analysis Critical Control Point Protocol* of the MOHLTC, January 1, 1998, sets out guidelines for the assessment of risk of food premises. For example, high risk food premises prepare hazardous foods and service a high risk population (ex. full menu daycares), use processes involving many steps and foods frequently implicated as the cause of foodborne illness, or are implicated or confirmed as the cause of foodborne illness within the last year. Medium risk food premises prepare hazardous foods without meeting the criteria for high risk (ex. fast food restaurants) or prepare non-hazardous foods without extensive handling or high volume (ex. bakeries). Low risk food premises do not prepare hazardous foods, but may serve pre-packaged hazardous foods or store non-hazardous foods only (ex. some food banks).

[17] R.R.O. 1990, Reg.562, as amended.

- ensure that food handler training courses are provided in accordance with the MOHLTC's food handler training protocol to food handlers in high and medium risk food premises.

In addition to food premises inspection, the Mandatory Programs require that Boards of Health undertake food recalls in accordance with the MOHLTC's food recall protocol, provide semi-annual and annual food safety data to the MOHLTC and have a written protocol for responding to food-related complaints, based on a risk-assessment approach.

The *Food Premises* regulation applies to most food premises[18] in Ontario and sets out the requirements that must be met to operate a food premises. Operating a food premises which does not comply with these requirements is prohibited.[19] The standard requirements for food premises relate to: building maintenance; required equipment and maintenance; manufactured meat products and meat; maintenance of furniture and appliances, cleanliness and sanitation; and, employees or operators who handle food.

On March 29, 2004, a regulation amending the *Food Premises* regulation, which becomes effective September 1, 2004, was filed.[20] Most of the amendments are designed to protect food safety including specific standards to be met for the cooking, re-heating, freezing and refrigeration of certain meat and fish products. The amendment also imposes a prohibition on uninspected meat at food premises with the exception of meat obtained through hunting.

9.3.4 Licensing

Food premises are not currently licensed by the MOHLTC or the Boards of Health. A person who intends to commence operation of a food premises is required to give notice of that intention to the local medical officer of health. No fee or documentation is required and there is no requirement to advise

[18] R.R.O. 1990, Reg. 562, as amended exempts some boarding houses, camps in unorganized territory and recreational camps, and churches, service clubs and fraternal organizations which prepare and serve meals for special events for their members and personally invited guests.
[19] The *Food Premises* regulation sets standard requirements for all food premises except exempted food premises and some categories of food premises which only have limited requirements such as catering vehicles, mobile preparation premises, vending machines, and locker plants.
[20] O. Reg. 74/04.

that a food premises is closing.[21] During the course of the Review, I was advised that there are many operators of food premises who do not comply with this requirement and although many of them do come to the attention of Boards of Health by other means, it is likely that some food premises are not being inspected because Boards of Health are not aware of their existence.

In Ontario, municipalities are permitted to make by-laws to require all or some classes of food premises to either register or apply for a licence.[22] Municipalities may charge fees for licences, but those fees are not to exceed the costs directly related to the administration and enforcement of the by-law licensing that class of business.[23] The fees charged by each municipality vary depending on the type of food premises, but typically range from $50 to $320 per year.[24] Some municipalities do not exercise this licensing power, while others only license a few classes of food premises.

Although municipalities keep lists of registered or licensed food premises and, pursuant to the *Municipal Act, 2001,* will be required to establish and maintain such lists before Janaury 1, 2005,[25] they do not routinely share this information with the Boards of Health.

It is a waste of resources to have inspectors spending their time locating food premises that have failed to notify the medical officer of health. Food premises should be required to register upon opening and to provide ongoing and up-to-date information on their location and the nature of their business to their Board of Health.

I recommend that the provincial government amend the *Health Protection and Promotion Act* to require each food premises in Ontario

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[21] *HPPA, supra* note 1, s. 16.
[22] *Municipal Act, 2001*, S.O. 2001, c. 25, [hereinafter *Municipal Act, 2001*] *s*. 150 (licensing of businesses), s. 157 (registering of businesses).
[23] *Ibid.*, s. 150(9).
[24] Several municipalities charge different fees for different classes of food premises with categories for refreshment vehic les such as hot dog vendors and food stands, food shops such as butcher shops and fish stores, and restaurants/eating establishments.
[25] *Municipal Act, 2001*, *supra* note 22, s. 158.

to register with the Board of Health in the jurisdiction in which the food premises carries on business.

In implementing this recommendation, the provincial government should amend the *HPPA* or the *Food Premises* regulation to require every food premises to pay a fee to cover the administrative costs of the registration system. The amendments to the legislation or regulation should give public health inspectors the specific authority to order that a food premises be closed until it has complied with the registration requirements.

9.3.5 Surveillance, Testing and Traceability

The MOHLTC and the Boards of Health are responsible for assessing the level of foodborne illness in Ontario and should be identifying, measuring, and tracking illnesses, analyzing the data for trends, investigating potential hazards and outbreaks, responding to outbreaks and attempting to design programs and services to prevent foodborne illnesses. In Chapter 3, I addressed the issues of surveillance of foodborne illness including testing of meat products and traceability.

The goal of the Ontario food safety system must be to protect human health and in order to achieve this goal, the food safety system must be informed by its risks. Information about risks comes from illness and meat product surveillance.At present, there is no requirement to label meat with sufficient details to permit an easy and efficient traceback. Under the *HPPA*, the operators of food premises in which meat products are manufactured are required to keep records for at least one year of meats received for processing including, the kinds of meats, the names and addresses of suppliers, weights and the dates of receipt.[26] These records can provide assistance during a recall or health hazard or foodborne illness investigation, but the assistance is limited. It is difficult to access the records when the food premises is closed or the operators cannot be located. Also, I was advised that the records are often inaccurate, outdated or incomplete. They may indicate the volume of meat purchased, but not always which specific meat products were received on a particular date.

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[26] *HPPA*, *supra* note 1, ss. 16(4) & (5) and *Food Premises* , R.R.O. 1990, Reg. 562 as amended.

Earlier in this Report, I recommended the development of a traceability system for meat throughout the continuum. The system should include the meat distribution and retail sector and collect and retain sufficient information to ensure that food recalls and health hazard and foodborne illness investigations can be thoroughly and efficiently conducted.

9.3.6 Inspectorate

Boards of Health in Ontario are required to employ inspectors who are either veterinarians or hold a Certificate in Public Health Inspection (Canada) granted by the Canadian Institute of Public Health Inspectors (CIPHI).[27] A Certificate in Public Health Inspection (Canada) is granted by the CIPHI to persons who fulfill specific requirements. They must complete one of five accredited programs offered at five post-secondary educational institutions across Canada,[28] pass a certification examination, and complete at least 12 weeks of a practicum under the supervision of a qualified person.

The prerequisite educational programs address over 450 instructional objectives including the risks and regulation of food establishments, disease control, zoonotic diseases, and foodborne and enteric diseases. The five accredited programs range from 2 to 4 years, depending on whether the candidate has already completed another post-secondary education program.

The mandatory national requirement for a specified post-secondary qualification, a standardized examination and a practicum prior to certification is far beyond the prerequisite education and training required of meat inspectors hired by either OMAF or the Canadian Food Inspection Agency (CFIA).

Public health inspectors are not subject to any ongoing continuing education requirements, other than those mandated by their employers. Public health inspectors are not self-regulated under legislation, like some professions and as a consequence, there are few steps that CIPHI can take to ensure that a

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[27] *Qualifications of Boards of Health Staff*, R.R.O. 1990, Reg., 566, amended to O. Reg. 630/00, s.5.

[28] Ryerson Polytechnical University, British Columbia Institute of Technology, Concordia University College of Alberta, University College of Cape Breton and First Nations University of Canada.

public health inspector adheres to its code of conduct or receives any minimum continuing education to ensure that the inspector remains knowledgeable and competent. Their certificates are granted once, are not renewed and cannot be revoked.

Only one out of 29 health units who provided responses to my request for information advised that it had enough public health inspectors to complete the Mandatory Programs and it added a caveat that the staffing was only sufficient in the absence of emergencies. Most indicated that between one to ten more inspectors were needed to meet the requirements of the Mandatory Programs. In light of the information I received regarding insufficient staffing, resources and budgets, it is not surprising that I heard frank admissions from public health inspectors that the ongoing training for them was insufficient and not consistent.

There are new and emerging issues which present a challenge to the meat inspection and regulatory system in Ontario. This challenge cannot be met unless the inspectorate, the primary line of defence, is kept informed through continuing education. For example, butchers who dress cows slaughtered on farm by a producer are required by law to remove specified portions of the carcasses which are at highest risk to contain the agents which cause mad cow disease[29]. A public health inspector who is not trained in emerging issues such as mad cow disease may not be properly prepared to ensure that meat processors are following these requirements.

I recommend that the Ministry of Health and Long-Term Care develop and implement a plan for the continuing education and training of public health inspectors across the province addressing meat safety and the regulatory standards for food premises.

The plan should be developed in consultation with Boards of Health and CIPHI which has an interest and expertise in the training of inspectors.

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[29] *Health of Animals Regulations*, C.R.C., c. 296, s. 6.2.

9.3.7 Food Handler Training / Certification

There are significant food safety risks such as contamination and growth of pathogens in meat that can be alternatively increased or minimized depending on the manner in which food is handled during preparation, storage and transport. For this reason, it is important that those who handle and prepare meat products receive food handler training.

Food handler training typically includes education on issues including:

- foodborne illness and allergies;
- food safety (hazards, food spoilage and food microbiology, safe food handling and preparation including time-temperature control, contamination, hand washing, personal hygiene, HACCP); and
- food premises sanitation (sanitizing, cleaning, and pest control).

Frequently, courses on food handling also include information on issues which may promote compliance with the regulatory regime including:

- legislation and regulation (the *HPPA*, the *Food Premises* regulation and municipal by-laws);
- the role and responsibilities of food premises, health units, and public health inspectors in the food safety system.

Some retail, grocery and food service stakeholders would like to see nationally accepted food safety or food handler training, but do not object to current service providers including colleges, Boards of Health, and public service organizations continuing to offer courses and proctor examinations.[30] At present, despite the requirement of the Boards of Health to provide food handler training to the public, food handlers at food premises are not required to have such training. There have been proposals made in the past decade in Ontario to amend the *HPPA* or the *Food Premises* regulation to require a minimum level of food handler training for persons working in food premises, however, no such amendments have been made.

[30] A number of courses have been developed by different food premises sectors, including some on a national scale, however, there is no nationally accepted course for use by all sectors.

There are several municipalities across Canada which require food handler training through municipal by-laws including Winnipeg, Manitoba and Brantford, Ontario. There are also a number of provinces that require that at least one person with food safety training be on the food premises or available during all hours of operation and some also require the operator of the business to have such training.[31]

Although the training and courses vary greatly, all of the 37 Boards of Health in Ontario offer food handler training courses with certification and some also offer basic food safety training without certification. In 2003, 17,885 food handlers were certified by the Boards of Health across Ontario.

Both the Toronto Public Health Unit and York Region Health Services Department developed food handler certification programs which have been adapted and used by several other Boards of Health.[32] Some Boards of Health certify individuals who have taken courses offered by agencies other than health units, such as the TVOntario web-based course[33] and the Ontario Independent Meat Processors' food handler training course. Other Boards of Health that responded to the Review advised that the food safety training they provided was based on courses they had developed. It appears that there are at least 19 different food safety and food handler training programs offered by the Boards of Health.

I commend the efforts of those who developed the materials for the programs being offered by the Boards of Healthin Ontario. Many of them are training or certifying large numbers of individuals each year from a variety of food premises in their jurisdictions. However, I am concerned about the duplication of effort and inefficient use of resources in offering 19 different courses that have the same goal.

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[31] Alberta, British Columbia and Saskatchewan.

[32] Toronto Public Health Unit, *Food Handler Certification Program* (3rd ed., 2001), available from http://www.toronto.ca/health/foodhandler/fh_index.htm [accessed 26 May 2004] and York Regional Health Unit, *PROTON – Food Handler Certification Program*, available from http://www.region.york.on.ca/Services/Public+Health+and+Safety/Food+Safety/PROTON.htm [accessed 26 May 2004].

[33] In Good Hands is a Lifelong Learning Challenge Fund project which is financially supported by the Government of Ontario. TVOntario, Contact North/Contact Nord, the Thunder Bay District Health Unit, Norlink Communications and Mr. Submarine Ltd. are involved in the development of the In Good Hands online workplace training course. http://www.ingoodhands.ca/about.html [accessed 26 May 2004].

There is convincing evidence that food handler training improves the likelihood that a food premises will comply with the food safety requirements of the *Food Premises* regulation.[34] Food handler training can also provide benefits to the individuals, their families and anyone to whom they may serve food at their homes.

I heard from several stakeholders that there is significant turnover of staff at some food premises, especially fast food and seasonal premises, which makes mandatory food handler training for all food handlers at those premises impracticable. It is noted, however, that there are many training programs in Ontario designed for individuals in certain employment sectors to educate them in risk assessment and control. These include Workplace Hazardous Materials Information System training, the Smart Serve Responsible Server Training Program, babysitting courses and first aid courses. Some of these programs are required by employers as a prerequisite to hiring, while others are mandated by legislation. The risks to the public associated with food handling at food premises are as dangerous as the risks addressed by these other training programs and as such, it is not unreasonable for the public to expect and require training for food handlers at food premises.

Operators who have authority to manage and control the actions of staff and implement safe food handling procedures must, at a minimum, have a base level of knowledge of safe food handling.

I recommend that the provincial government amend the *Health Protection and Promotion Act* to require that the operator of a food premises and at least one staff member, present at a food premises during all hours of operation, be a certified safe food handler.

Certification would be achieved upon the successful completion of a standardized food handler examination. Most people would need to take a food handler training course to successfully pass the examination unless they had training through other education or experience. Re-certification

[34] Toronto Public Health Unit, Healthy Environments Services, *Food Premises Inspection and Disclosure System: Evaluation Report* (17 December 2002).

should be required every five years. The mandatory food handler course or examination should be phased in over a period no longer than two years for high and medium risk food premises. The MOHLTC should work with its provincial counterparts in other provinces and industry to work towards a national standard for food handler training and ensure that the Ontario system is consistent with the national standard.

9.3.8 HACCP

There is no requirement that all food premises have HACCP-based food safety programs in place although HACCP principles are being used in the inspection and regulation system of food premises. Boards of Health are directed under the Mandatory Programs to conduct HACCP-based audits of food premises which are determined by the health unit to be "high risk."

Earlier in this Report, I recommended that mandatory HACCP-based programs be implemented throughout the meat production continuum. There is controversy about implementing such programs on a mandatory basis in all food premises as some argue that small operations such as seasonal stalls and small restaurants will not be able to implement a rigorous and structured HACCP program. In addition, some retail and grocery stakeholders expressed concern about whether HACCP-based plans should be applied to all portions of their operations.

Certain industry organizations have developed or are presently developing HACCP-based programs or food safety programs within quality assurance or branding programs and encourage implementation by all their members.[35]

A project in Ontario assessed whether a HACCP-based program to identify generic risk factors, educate staff and management, and encourage monitoring of the risk factors by staff and management would be effective in food service establishments. The results showed that the operators of the test sites were more likely to have increased knowledge and improved practices and continue to use the program.[36] The study recommended that

[35] Examples include the Canadian Restaurant and Food Services Association and Canadian Council of Grocery Distributors for food service, warehouses and grocery stores.
[36] Central West Food Safety Project, *The Efficacy of Applying HACCP principles to Small-Scale Food Service Premises*, presentation at CIPHI Ontario Branch Conference (October 2003).

further work be done to expand and evaluate the use of HACCP-based programs at all food premises.

I recognize that the implementation of my recommendation that HACCP-based programs be required in all food premises will take some time. HACCP-based programs for food premises have not yet been developed by the provincial government as has been done for food manufacturers.[37] I believe that mandatory HACCP-based programs in food premises should be introduced in stages over a reasonable period of time.

First, MOHLTC, in conjunction with public health units and industry, should develop a HACCP-based program for food retail premises. The program should adhere to internationally recognized food safety standards, guidelines and principles including Codex Alimentarius and be designed to meet the specific requirements of different categories of food retail premises. Second, the program should be tested by implementation on a voluntary basis and assessed to determine whether it is effective in improving food safety and whether it should be implemented in all food premises or restricted to those that are medium and high risk. A study should also be undertaken to determine what support and assistance small and medium-sized enterprises (SMEs) will need to implement mandatory HACCP-based programs. Third, the government should make HACCP-based programs mandatory for at least medium and high risk food premises.

I recommend that the provincial government in cooperation with the food industry develop a HACCP-based food safety program for food premises in Ontario.

9.4 Meat Retail and Distribution Standards

There are three systems of inspection and standards for food premises in Canada – federal meat inspection, provincial meat inspection and public health inspection.

The *Meat Inspection Act* (Ontario) sets out specific requirements for meat processing operations in abattoirs which OMAF inspectors ensure are met.

[37] The HACCP Advantage program for meat processors.

The *Meat Inspection Act* (Canada) sets out specific requirements for meat processing operations, distributors and retailers which sell meat or meat products interprovincially or internationally and CFIA inspectors ensure they are met. Each province in Canada has a different system of public health inspections for their meat processors and meat retailers. Although most provinces require public health inspections of food premises, the standards set out in their health legislation range from basic to sophisticated. In British Columbia, for example, food premises have been required to have HACCP-based plans since July 2000.[38]

Some retail, grocery and food service stakeholders want the standards for their businesses harmonized across the country as chains operate nationwide and find it costly and confusing to meet different standards in different provinces. The stakeholders suggest that the Food Retail and Food Services Regulation and Code should be the basis for the standards in each province.[39] In my view, consistent standards across the country is a worthy goal which should be supported and pursued. Until that is achieved, the provincial government should at least ensure that all meat retail operations in Ontario, whether attached to an abattoir operation or separate from it, are subject to the same standards.

I recommend that the provincial government ensure that the standards for all meat retailers be consistent whether under the *Food Premises* regulation or pursuant to any regulation developed under the *Food Safety and Quality Act, 2001*.

9.5 Public Health in Ontario and the Delivery of Public Health Food Safety Programs in Ontario

At present, food premises of all types except provincially and federally inspected abattoirs and attached processing and retail operations, are inspected by public health inspectors.

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[38] Written procedures to identify and address critical control points, steps or locations which could cause a health hazard under the *Food Premises* Regulation, B.C. Reg. 210/99, as amended up to B.C. Reg.361/99.

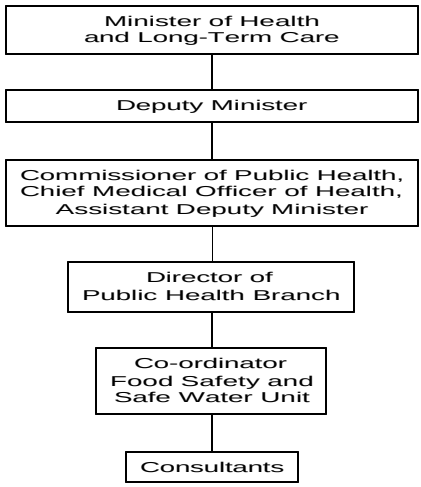
[39] Canadian Food Inspection System, Food Retail and Food Services Regulation and Code, available from http://www.cfis.agr.ca/english/regcode/frfsrc/frfsc_idx_e.shtml [accessed 26 May 2004] were approved by the Canadian Food Inspection System Implementation Group on April 12, 1999, but has since been amended. See http://www.cfis.agr.ca/english/regcode/frfsrc-amendmts/frfsc01_e.shtml [accessed 26 May 2004].

9.5.1 Public Health Branch of the MOHLTC

The MOHLTC is responsible for administering the health care system and providing services to the public, including community and public health and health promotion and disease prevention.

In the Public Health Branch of the MOHLTC, there is a Food Safety and Safe Water Unit which is operated by a coordinator and less than a handful of consultants. I was surprised at the small number of staff involved in the food safety program at the MOHLTC.

The structure of the MOHLTC as it related to the Food Safety and Safe Water Unit is as follows:



The provincial auditor raised concerns relating to the delivery of public health by the MOHLTC in the 1997 and 2003 annual reports and made the following suggestions:[40]

1997 Auditor's Report	2003 Auditor's Report
The MOHLTC should determine whether the Boards of Health had fully implemented food safety training and HACCP protocols.	The MOHLTC had not conducted regular assessments of the health units in the past five years (despite the 2002 Walkerton Inquiry report recommending such assessments).
The MOHLTC should assess whether the food safety inspection protocols had been implemented by the Boards of Health and whether they had been effective.	None of the 33 reporting health units had conducted all of the mandatory food premises inspections and some had not reported at all to the MOHLTC.
The MOHLTC should put further efforts into determining whether the funding for mandatory programs was allocated equitably across the province.	The MOHLTC had not analyzed whether the public was receiving different levels of public health service in different areas of the province.

From my perspective, it is apparent that the Food Safety and Safe Water Unit is understaffed and notwithstanding the dedication of the staff, has insufficient capacity to provide effective oversight and leadership of health units.

9.5.2 Boards of Health

Boards of Health provide public health inspection of all food premises to ensure compliance with the *Food Premises* regulation under the *HPPA* and in accordance with the Mandatory Programs.

The Boards of Health have fourteen program standards that they are required to meet under the Mandatory Programs:

- chronic diseases and injuries (chronic disease prevention, early detection of cancer, injury prevention including substance abuse prevention),
- family health (sexual health, reproductive health, child health),

[40] 1997 and 2003 *Annual Reports of the Office of the Provincial Auditor of Ontario*, ss 3.10 and 3.09 respectively.

- infectious diseases (control of infectious diseases, *food safety*, infection control, rabies control, safe water, sexually transmitted diseases, tuberculosis control, vaccine preventable diseases).

The MOHLTC asks each of the Boards of Health in Ontario to complete and return a mandatory program indicator questionnaire which contains a section on food safety programs and a food safety program audit report each year. The reports are not always received or if received, not always in a timely manner. There is little capacity in the Food Safety and Safe Water Unit to analyze the data and no effective enforcement steps have been taken against Boards of Health who fail to report or comply with the Mandatory Programs.[41]

The chart below is a summary of the analysis of the food safety program reports received by the MOHLTC from Boards of Health from 1998 to 2003 regarding the number of food premises inspections completed:[42]

Year	No. of Health Units	No. of Health Unit Responses	High Risk HACCP inspections		High Risk 3 inspections		Medium Risk 2 inspections		Low Risk 1 inspection	
			= 40%	= 80%	= 40%	= 80%	= 40%	= 80%	= 40%	= 80%
2003	37	37	20	11	9	10	11	8	5	8
2002	37	37	ND	ND	14	7	9	8	7	5
2001	42	42	ND	ND	16	3	11	4	8	6
2000	42	42	ND	ND	21	3	16	1	7	3
1999	42	42	ND	ND	24	4	13	3	10	5
1998	42	42	ND	ND	34	1	23	1	14	1

Note: ND means no data analysis on this category in that year.

It is clear that most of the Boards of Health are not meeting the Mandatory Program requirements for inspections of food premises and for the completion of HACCP audits. This is particularly disturbing as the number of inspections required was reduced within the last twenty years from twelve to three per year for high risk food premises.

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[41] For example, budgets of Boards of Health are approved and funds provided no matter the completion rate of food premises inspections.

[42] The table shows the percentage of compliance with the Mandatory Programs number of inspections for the type of food premises (i.e. high, medium or low risk). For example, = 80% means that the health unit had a compliance rate of 80% or greater in completing the mandatory number of inspections of food premises.

In order to obtain a better view of how the food safety standards of the Mandatory Programs are being interpreted and implemented in health units across the province, I requested information from each Board of Health as comprehensive, up-to-date data and auditing information was not available through the MOHLTC. Twenty-nine of the thirty-seven Boards of Health responded to my request and provided extremely useful information which has been used in this Report.

The responses evidence a substantial variation in the nature and delivery of food safety programs and services at Boards of Health across Ontario. As noted earlier, the per capita expenditure on public health by each of the Boards of Health also varies across the province.

The populations serviced by each individual Board of Health range from 73,000 to 2.5 million. The number of food premises requiring inspections in the health units varies from approximately 218 to over 16,500 and the number of inspections from 70 to 27,500 each year. The number of full time employees devoted to public health food premises inspections at each Board of Health ranges from the equivalent of 1¼ to 80 public health inspectors. The number of complaints received each year with respect to food premises at the health units varies from zero to over 3,500. The portion of the budgets of Boards of Health spent on the food safety program ranges from 3.6% to 10%.

Many of the responding Boards of Health advised that additional public health inspectors are required in order for them to provide the Mandatory Programs but also indicated they have been unable to obtain necessary funding. The municipal funding for Boards of Health comes from municipal taxes. Municipalities have many demands on their funds and cutbacks have impacted Boards of Health. However, without additional funding, it is clear that Boards of Health will continue to be unable to fulfill their statutory duty to provide the Mandatory Programs. This problem is exacerbated as inspectors and resources are being diverted from food safety and other Mandatory Programs to new initiatives, emergency reassignments, and to accommodate the growing demand for other types of inspections[43].

[43] The West Nile virus, smoking by-law enforcement and water safety have been of new or increased concern in the past four years. Inspections and investigations of complaints with

The seasonal basis of many food premises presents further challenges to implementing the Mandatory Programs.

9.5.3 Public Health Renewal

There are serious public health issues in Ontario that require urgent government action. These issues have been identified in the Naylor Report,[44] the Walker Report,[45] and the Interim SARS Commission Report,[46] among others, which have called for extensive renewal of the public health system with recommendations for achieving that objective.

The mandate of this Review was not focussed on these issues to the same extent, however, I did identify many of the same concerns that have been so carefully considered by others and wish to add my support to their comments and recommendations.

From my examination and the previous work done regarding public health renewal, I would emphasize the following:

- food safety must be among the first priorities of Ontario's public health system with the MOHLTC and Boards of Health taking a strong and primary role to prevent harm to the health of the Ontario public.
- emergency planning and preparedness, including communication strategies and coordination with other government agencies and industry are required.
- the provincial government must commit the necessary resources and leadership for effective public health protection against foodborne illness including the provision of resources, direction and leadership

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respect to personal services (ex. tattoo, body piercing, and electrolysis) have recently increased. Public health inspectors have also been reassigned in the last three years to respond to pressing issues, such as with SARS.

[44] The Report of the Advisory Group on SARS and Public Health chaired by Dr. Naylor, *Learning from SARS – Renewal of Public Health in Canada*, Health Canada, 2003.

[45] Ontario, *The SARS Commission Interim Report: SARS and Public Health in Ontario* (15 April 2004), principles 3,5, and 20; Ontario, *For the Public's Health: A Plan of Action, Final Report of the Ontario Expert Panel on SARS and Infectious Disease Control* (April 2004), [also known as the "Walker Panel" or "Walker Report"], recommendations 82, 83, and 84.

[46] *Ibid.*

to the Boards of Health to ensure consistent and effective delivery of food safety programs across the province.

- the public health goals and objectives as they pertain to food safety for the Province of Ontario need to be clearly articulated and the performance of the food safety system measured by the provincial government.

I recommend that additional staff and resources be provided for the Food Safety and Safe Water Unit at the Public Health Branch of the Ministry of Health and Long-Term Care so that it can provide timely and effective leadership and direction to the Boards of Health.

The MOHLTC should provide appropriate policy direction and up-to-date resource materials to Boards of Health and coordinate the use of resources by Boards of Health in order to reduce inefficiencies and duplication of efforts and to ensure that everyone across Ontario receives the same high standards of public health food safety programs.

I recommend that the Ministry of Health and Long-Term Care take all necessary steps to improve compliance by the Boards of Health with the Mandatory Health Programs and Services Guidelines in respect of food safety standards.

The MOHLTC should conduct a review of its Mandatory Programs food safety standards in consultation with Boards of Health and other stakeholders and correct any identified deficiencies. The review should specifically address the number of annual inspections. In order to improve compliance with the Mandatory Programs, the MOHLTC may need to provide 100% funding for mandatory food safety programs, tie funding to compliance, or investigate other monitoring and enforcement tools.

I recommend that the provincial government provide adequate resources to the Boards of Health to hire sufficient numbers of public health inspectors and support staff to fulfill the requirements of the food safety program of the Mandatory Health Programs and Services Guidelines.

I recommend that the Ministry of Health and Long-Term Care conduct annual audits to assess compliance of Boards of Health with the food safety standards of the Mandatory Health Programs and Services Guidelines. The results of the annual audits should be made public and all necessary steps should be taken to ensure full compliance by all Boards of Health.

I recommend that the Ministry of Health and Long-Term Care deliver an annual public report that sets out its objectives and evaluations for food safety standards, the reduction of foodborne illness and the performance of Boards of Health, including their compliance with Mandatory Health Programs and Services Guidelines.

Funding of public health and in particular the activities of the Boards of Health is critical to the success of a public health food safety program. As set out earlier in this report, foodborne illness remains a significant problem in Ontario. Compelling arguments can be made that the province should provide 100% funding for all mandatory programs and services to ensure their consistent delivery to all people in Ontario. A Board of Health should not be thwarted in providing mandatory health programs and services because local municipalities refuse to contribute. As identified in the Walker Report and others, there needs to be a new cost sharing agreement which will provide stable funding to the public health system in Ontario.

I recommend that the provincial government address the deficiencies in the current funding system to ensure Boards of Health have sufficient funding to provide the mandatory food safety programs and services.

9.5.4 Food Premises Inspection Results

A compliance and consumer confidence tool used by some Boards of Health is the posting of food premises inspection results. Some Boards of Health only provide the results of inspections to the public upon request, but others post the results on their websites or post them on a pass/fail or colour coded basis at the premises.

Some food service stakeholders oppose mandatory posting of inspections on the grounds that it sets up a confrontational relationship which can inhibit

cooperation. They also suggest that the meaning of some ratings is poorly understood and can be misinterpreted by consumers. Opposition to the posting of inspection results without a full explanation has prompted some heath units to provide full explanations.[47] In my view, this is a responsible practice that should be adopted whenever inspection results are posted.

The MOHLTC, in consultation with the Boards of Health, should investigate whether the posting or availability of inspection results to the public is an effective means to improve compliance with food safety standards in the *Food Premises* regulation and to improve consumer confidence. If the investigation indicates it is effective, then the MOHLTC should design a standardized system as part of the Mandatory Programs.

9.5.5 Evaluation of Food Safety Programs

It is difficult to measure the effectiveness of inspection and other food safety initiatives at each stage of the farm to fork continuum due to the complex interaction of factors that can affect the number of foodborne illnesses contracted and the number which are reported. In addition, the results of testing food are not always helpful as testing for certain pathogens is not practicable and for others, it is not possible.

Judging from preliminary work done in Ontario, one of the best methods of assessment for food premises may be the number of critical infractions per establishment. However, this method will only be reliable if the inspections are conducted in a standardized manner, there is a consistent definition of critical infractions, and there is a comparable record of critical infractions to permit comparison.[48] Unfortunately, not all Boards of Health in Ontario use the standardized inspection report forms developed and distributed by

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[47] Canadian Restaurant and Foodservices Association, *When Simple Isn't Better: Mandatory Posting of Restaurant Inspections* , available from http://www.crfa.ca/foodsafety/foodsafety_policyandregs_mandatoryposting.htm [accessed 3 March 2004]. This concern may have some validity as the evaluation report of the Toronto Public Health Inspection Disclosure system commented that there was a perception that the public did not fully understand the conditional pass notices (yellow) and believed them to be similar to fail notices (red) in terms of risk, which may cause a negative impact on restaurants. *Food Premises Inspection and Disclosure System Evaluation Report*, Toronto Public Health Healthy Environments Services, December 17, 2002. Currently, the website of the Toronto Public Health Inspection Disclosure system explains the meaning of the green/yellow/red system and provides further details of inspection results.

[48] Ontario Public Health Research, Education & Development Program, *Benchmarking and Public Health: The Results of 3 Pilot Projects* (Revised November 1999).

MOHLTC[49] and not all Boards of Health are recording and defining critical infractions in the same manner.

I recommend that the public health inspectors at Boards of Health be required to utilize standard inspection reports for food safety inspections of food premises to ensure that critical infractions are consistently recorded and that data is collected and shared with the Ministry of Health and Long-Term Care.

The MOHLTC should use such data to evaluate the effectiveness of the food safety standards of the Mandatory Programs on an ongoing basis.

9.6 Food Safety Investigations, Outbreaks and Responses

Notwithstanding the strength of the system of food safety in Ontario, there will still be a need, from time to time, to determine whether some meat or meat product has caused foodborne illness. If a number of persons from different households report a foodborne illness which may have a common genesis, the occurrence will likely be labelled a foodborne illness outbreak. It is a complicated process to determine whether there is a single or related source causing multiple foodborne illnesses, since it is often impossible to obtain a sample of the suspect meat or meat product that was consumed. It is also difficult to test for some foodborne illnesses because those stricken usually associate the illness with the last item they ate even though some foodborne illnesses incubate for a number of days before symptoms appear.

In circumstances where there appears to be a common cause of a number of foodborne illnesses, steps must be taken to prevent others from contracting the illness. Responses will vary depending on the extent of the distribution of the suspected product. One possible response is a public recall which the MOHLTC, medical officers of health and the federal authorities have the jurisdiction to do.[50]

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[49] MOHLTC, *Food Premises Inspection Report – Items Critical to Food Safety and Food Premises Inspection Report – Establishments Sanitation, Design and Maintenance Items* (99/09).

[50] The authority for food recalls in the federal government is shared amongst the Minister of Agriculture and Agri-Food Canada, Health Canada and the CFIA. Legislative authority for food

In our society, where there is substantial travel by individuals in and out of Ontario, a prompt response to a potential foodborne outbreak or food safety risk is essential to prevent the spread of illness. The longer a response takes, the more likely other people will contract the illness. In light of the overlapping jurisdictions, it is important that the various government agencies involved respond quickly and in a coordinated fashion.

9.6.1 Roles and Responsibilities

Although there are no agreements between the MOHLTC and Health Canada, Agriculture and Agri-Food Canada or CFIA regarding food recalls, a memorandum of understanding regarding food safety investigations and recall roles, responsibilities, protocols, notification and information disclosure is presently being negotiated. It is very important that this agreement be completed and implemented as soon as possible to ensure that there is a clear understanding and coordination, on an ongoing basis, of the roles and responsibilities of all parties involved in food recalls and food hazard and foodborne illness investigations.

The investigation and response cannot be effective if all agencies with a role in the issue are not notified and given essential information. The draft memorandum of understanding referred to above provides for the formation of a committee for each outbreak or significant investigation, with members on the committee from each involved agency, called the Ontario Outbreak Investigation Coordination Committee. The committee is designed to ensure notification and provision of ongoing information to all involved.

There is also an agreement between OMAF and the MOHLTC addressing communication about food safety risks.[51] This agreement requires that any "food safety concerns" which come to the attention of one ministry be brought to the attention of the other. A "food safety concern" is defined as follows:

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recalls is found in the *HPPA*, *supra* note 1, s. 13(4) and the *Canadian Food Inspection Agency Act*, S.C. 1997, c. 6, s. 19.

[51] The *Memorandum of Understanding between the OMAFRA and the OMH (Ministry of Health) Respecting Inspection of Meat in Provincially Licensed Meat Plants, Free Standing Meat Processing Plants and Food Premises* sets out the areas of responsibility as between OMAF and MOHLTC and the communication between the ministries regarding food safety risks. It was signed in 1994 and has not been amended.

> *… a situation where there is a reasonable probability that the use of, or exposure to, a food product will cause serious adverse health consequences or may cause temporary adverse consequences where the probability of a serious adverse health consequence is low.*

In addition to the agreement, provincial legislation also requires notification. A medical officer of health is required to notify any Ontario ministry with primary responsibility in the matter when a complaint is made to a Board of Health that a health hazard relating to environmental health exists in the jurisdiction.[52] A "health hazard" is broadly defined and includes a substance, thing, or any condition of a premises that has, or is likely to have, an adverse effect on the health of any person.

There is currently no legislative requirement for OMAF to notify the MOHLTC or other ministry with respect to any food safety issue. The *Food Safety and Quality Act, 2001* will, once proclaimed, require the director to notify the local medical officer of health or Chief Medical Officer of Health of any significant food safety risk.[53] This is a necessary and important provision in food safety legislation.

The agreement and legislation are lacking in that they do not specify what information must be shared with the other ministries. Obviously, any ministry or agency with a role to play in an emergency situation must be given the information needed for them to fulfill their responsibilities. Consideration should, therefore, be given to identifying and specifying the information that must accompany such notifications.

9.6.2 Food Recalls

Most food recalls in Ontario (including meat) are undertaken by the CFIA. The Office of Food Safety Recall (OFSR) of the CFIA decides whether a recall will be conducted or other response taken in respect of a potential food safety risk or foodborne illness outbreak after it reviews the data from

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[52] *HPPA*, *supra* note 1, s. 11.

[53] The director must notify if, in the director's opinion, there is or may be a food safety risk that constitutes a significant risk to public health and safety. "Food safety risk" includes anything that has or may have an adverse effect on the health or safety of a person who consumes a food or agricultural or aquatic commodity that is designated in the regulations. *Food Safety and Quality Act, 2001*, S.O. 2001, c. 20, s. 13.

the investigations conducted by the CFIA or public health inspectors. There are three classes of recalls that can be issued, depending on the risk involved. Only one class involves a public announcement.[54] Once the class is determined, most recalls are carried out voluntarily with the cooperation of the producers and retailers although the Minister of Agriculture and Agri-Food Canada can issue a mandatory recall order, if necessary.[55]

The responsibilities of federal government agencies are clearly defined as amongst them in a federal food emergency response plan. The CFIA is responsible for enforcing mandatory recalls and verifying compliance with a voluntary recall. The OFSR tracks recall trends and provides program recommendations. Health Canada is involved in the investigations of foodborne illness outbreaks occurring in multiple provinces and territories and communicates with the CFIA about any epidemiological links that are found.

The federal government typically leaves the lead role in a foodborne illness outbreak or investigation to the Boards of Health or Public Health Branch of the MOHLTC unless the outbreak spreads beyond the borders of the local Board of Health or province or the local agency requests federal assistance.

The recall power is an important one in preventing or minimizing health risks. However, a recall may be ordered when it is not warranted and cause substantial economic loss to affected businesses. In such circumstances, those who have suffered an unjustifiable loss should have access to compensation. Such a provision would not only redress an unjust result, but would also encourage prompt and full compliance with recalls.

There are no agreements or protocols currently in place with the federal government agencies and the MOHLTC or between Boards of Health.

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[54] A Class I recall involves a Class I health risk which is the potential for serious adverse health consequences which could be fatal. Public announcements are usually issued for Class I recall unless the product is no longer available to the public. A Class II food recall involves temporary adverse health consequences. A Class III food recall involves a health risk which is very remote and usually arise from violations of food safety legislation or regulation. The public is not normally notified about Class II and III recalls.

[55] On occasion, a recall will be made mandatory by an Order of the Minister of Agriculture and Agri-Food Canada under s. 19, *CFIA Act*, *supra* note 50. A recent example of such a recall involving meat and meat products from a provincially inspected abattoir was the recall issued in August 2003 in respect of products from Aylmer Meat Packers Inc.

There is a website available to the Boards of Health from across the country on which authorized public health personnel can post updates of foodborne illness investigations and recalls to provide notification and information to other agencies, however, it is not consistently used or accessed. Typically, Boards of Health and the Public Health Branch communicate by email, fax and telephone conference calls during emergencies or significant food recalls or food safety risk investigations. One of the concerns expressed by certain Boards of Health is that, too often, recall information is passed from agency to agency without any direction.

I also heard, during the course of this Review, concerns expressed with respect to the lack of coordination in communication with the public and the media. The Boards of Health are the agencies that the public and media usually contact for information regarding potential food safety risks, however, they are not always sufficiently informed to enable them to respond. It is important that clear communication strategies, responsibilities and roles be agreed to and followed as between the various agencies involved in food recalls, foodborne illness outbreaks and food hazard investigations and that one agency assume responsibility in each incident for all public communication.

Most of the communications between federal agencies, OMAF, MOHLTC, and the Boards of Health are only informal and as such, subject to the availability and cooperation of the personnel dealing with the incidents. The arrangements need to be formalized and specific protocols promulgated.

I adopt the recommendation of the Expert Advisory Panel to this Review and recommend that the provincial government enter into an agreement involving the Ministry of Agriculture and Food, the Ministry of Health and Long-Term Care, the Ministry of the Environment, the Ministry of Agriculture and Agri-Food, Health Canada and the Canadian Food Inspection Agency regarding foodborne illness and food safety risk investigations and responses. I recommend that the agreement assign one government agency to take the lead on all communication to the media and public in foodborne illness and food safety risk investigations and responses. I recommend that the

agreement provide for the establishment of a committee to coordinate each foodborne illness and food safety risk investigation and response which requires a multi-agency response with membership on the committee from each involved agency and the affected Board(s) of Health to maximize cooperation, efficiency and the effectiveness of the investigation and response.