



November 26, 2004

Ms. Bonnie Brown, M.P.
Chair, Standing Committee on Health
House of Commons
6th Floor, Wellington Building
180 Wellington Street
Ottawa ON K1A 0A6

Dear Ms. Brown:

Re: Bill C-12 — *Quarantine Act*

The National Health Law Section of the Canadian Bar Association (the CBA Section) welcomes the opportunity to comment on Bill C-12, which would replace the current Quarantine Act. The CBA Section agrees that the Quarantine Act should be updated expeditiously, in view of the greater mobility of people around the world, and increased risks posed by communicable disease, since Parliament adopted the first Quarantine Act in 1872.

Our comments on Bill C-12 are largely of a technical nature.

SECTION 2: DEFINITION OF “CONVEYANCE”

The expanded definition of conveyance includes any sort of vehicle “. . . that arrives in Canada or is in the process of departing from Canada.” We question whether the intent is also to include conveyances **bound for Canada** (although not yet in Canadian territory), as well as those **bound from Canada** elsewhere (and perhaps outside territorial Canada but in international waters or airspace, or in an area where it is uncertain whether the conveyance is in Canadian territory). If this Bill is intended to have as wide an application as possible (in view of its object of public protection), we suggest that these matters be addressed specifically.

In the same light, we suggest that the definition of conveyance include Canadian conveyances **no matter where they are located** (for example, ships and aircraft registered in Canada and carrying Canadians, no matter where they are).

SECTION 2: DEFINITION OF “HEALTH ASSESSMENT”

We sense some uncertainty with the breadth of a permissible “health assessment”. The definition refers to a “physical examination”, including an examination of the traveller’s head, neck and extremities and measurement of vital signs. While section 62(a) would give regulatory authority “. . . respecting physical examinations carried out for the purposes of a health assessment”, the statutory definition seems to exclude invasive investigations, and does not deal clearly with radiological screening.

Section 14(1) of the Bill states that any person authorized by the Minister may use “. . . any screening technology that does not involve the entry into the traveller’s body of any instrument or other foreign body”, to determine whether a traveller has a communicable disease or symptoms of one. However, where a quarantine officer has established reasonable grounds to believe that a traveller has a communicable disease or is infested with vectors, the officer may by section 22(1) require a traveller to undergo “a medical examination”, which is an undefined term.

Looking at the extent of medical investigations contemplated by the Bill, we also note that a quarantine officer or environmental health officer may, in at least some circumstances, “conduct or cause to be conducted any test or analysis or take or cause to be taken any sample” (see section 47(1)(e)). However, a screening officer would not have the same power (see section 47(3)).

These are very practical questions, depending on the nature of the medical crisis, and rapidly developing technology. We suggest that the definitions of “health assessment”, “physical examination” and “medical examination” be made clear in the Bill.

SECTION 2: DEFINITION OF “TRAVELLER”

This definition gives rise to the same uncertainty in its reference to a person who “. . . arrives in Canada or is in the process of departing from Canada”. Again, the definition of “traveller” seems not to include Canadians or persons on a Canadian-registered conveyance, wherever it may be outside of Canada. This should be clarified.

SECTION 8: DUTY TO PROVIDE TEMPORARY QUARANTINE FACILITY

This seems to be envisioned as an emergency provision. We question whether the mechanism is rigorous enough. Instead of the Minister having to make a “request” to a person “in charge of a place”, perhaps the Minister should be able, by order, to declare any place to be a quarantine facility where temporary use is necessary to protect public health. We suggest further that, in this situation, the Minister have the power to take necessary measures to secure the place, and control or restrict access to it.

Section 8(3) states that the Minister “may” compensate any person for the Minister’s use of such a place. We suggest that compensation be mandatory, so that section 8(3) read that the Minister “shall” provide reasonable compensation for the use of such a place, and for any reasonable remedial costs following the Minister’s use of the place.

SECTION 15(3): DUTY OF TRAVELLER TO COMPLY WITH REASONABLE MEASURES

We question how compliance can be enforced. If by undertakings, this should be stated explicitly in the Bill, particularly as section 68 would make failure to comply with an obligation imposed under section 15(3) an offence, giving rise to a fine or imprisonment.

SECTION 18: ARREST FOR REFUSAL TO COMPLY WITH SECTION 15(3)

In our view, this section should be expanded to permit arrest of a traveller for refusal to comply with section **15(1)** as well as section 15(3). We note, however, that under section 19(1), the quarantine officer may require a traveller to undergo a health assessment if the traveller has contravened section 15(1).

SECTION 22(1): TRAVELLER TO UNDERGO A MEDICAL EXAMINATION

See our comments on the definition of “health assessment” in section 2.

SECTION 22(2): SCOPE OF MEDICAL EXAMINATION

This section appears to contemplate one medical examination conducted by “a medical practitioner”. We suggest expanding this to include medical examinations [plural] by medical practitioners [plural], so the quarantine officer could seek additional examinations by specialists as required.

We further suggest that the section be amended to confirm that medical examinations shall be at the expense of the Minister.

SECTION 23(3): SUPPLEMENTARY EXAM AT TRAVELLER’S REQUEST

This section should be amended to clarify that it refers to the supplementary examination requested by the traveller, and that the examination is to be **arranged** by the traveller, or by the quarantine officer at the traveller’s request.

SECTION 24: USE OF INTERPRETER

This section provides for use of an interpreter only if the traveller “does not have an adequate understanding of at least one of Canada’s official languages or has a speech or hearing disability.” It is possible, however, that the traveller may understand one official language, but the physician available may understand only the other. An interpreter should be provided (if reasonably possible), for any communication difficulty between the traveller and the physician.

This section should be expanded so that an interpreter is provided:

. . . if the traveller or the medical practitioner indicates an interpreter would assist their ability to communicate with each other.

SECTION 28(1)(b) DETENTION OF TRAVELLER REQUIRED TO UNDERGO A MEDICAL EXAMINATION

See our comments on section 22(2) above. We suggest that paragraph (b) be reworded as follows:

has been required to undergo a medical examination or examinations or any diagnostic test recommended under subsection 22(1)

SECTION 31(1): REFUSAL TO UNDERGO MEDICAL EXAMINATION

We repeat our concern that the breadth of the medical examination is unclear. We suggest that this wording be revised in the same fashion as section 28(1)(b) above.

SECTION 31(4): TECHNOLOGICAL MEANS FOR APPEARANCE

We suggest that the Court be permitted to order an appearance of the traveller by technological means, not only where it is satisfied that the use of the technology is “necessary”, but also where it would be “prudent”.

SECTION 43: COMPENSATION TO OWNERS OF CONVEYANCES

We suggest that the concluding words of this section be clarified as follows:

. . . less any amount that the owner received **or is entitled to receive** in respect of it, **from salvage, insurance, or any other source.**

SECTION 47(1)(e): OFFICER MAY CONDUCT TEST OR ANALYSIS

As noted above, this provision should be better harmonized with sections 22-24.

SECTION 53: EXERCISE OF POWERS OUTSIDE CANADA

See our comments on the definition of “conveyance” in section 2. We suggest that this provision be revised as follows:

. . . respecting a traveller or conveyance **on a Canadian conveyance outside Canada or** at an entry point in another country if doing so does not conflict with the laws of that country.

SECTION 77: VENUE

This section provides for a trial in summary conviction court if the defendant is resident or carrying on business within the territorial division of the Court. In our view, jurisdiction should be expanded to a defendant **found in** the territorial division of the Court, as well as those resident or carrying on business.

CONCLUSION

We trust that our comments are of value to the Committee in reviewing this legislation, which will result in the greater safety and security of the citizens of this country, and indeed, the world.

Yours very truly,

(Original signed by Tamra L. Thomson on behalf of David G. O'Brien)

David G. O'Brien
Chair
National Health Law Section