

Conclusion and Summary of Recommendations

For the reasons above, noted in the executive summary, the Commission recommends⁴⁷⁸ that:

Medical Independence and Leadership

- **The *Health Protection and Promotion Act* be amended to transfer the powers in ss. 82 through 85 (power over assessors) to the Chief Medical Officer of Health.**
- **The Minister's power under s. 79 of the *Health Protection and Promotion Act*, to establish and direct public health laboratory centres be transferred from the Minister to the Chief Medical Officer of Health, until such time as the establishment of the Ontario Health Protection and Promotion Agency and the transfer of power over the laboratories in accordance with the recommendations of the Walker Report.**
- **The *Health Protection and Promotion Act* be amended to transfer the power in s. 102(2) (enforcement powers) to the Chief Medical Officer of Health.**
- **The *Health Protection and Promotion Act* be amended to remove from s. 102(1) the Minister as a listed person who may exercise that power.**
- **The *Health Protection and Promotion Act* be amended to transfer the powers in s. 80 (power over inspectors) to the Chief Medical Officer of Health.**

478. The Commission's recommendations, if accepted, will have to be put into statutory language by Legislative Counsel, an officer of the Legislative Assembly, with the assistance of departmental lawyers. Although the recommendations sometimes use statutory language they are not offered as statutory amendments but only as a basis for the drafting language chosen by Legislative Counsel to achieve their intent and purpose.

- **The powers in s. 78 (appointment of inquiry) and in s. 87 (commandeering buildings for use as temporary isolation facilities) remain as they are, to be exercised by the Minister of Health and Long-Term Care.**
- **The *Health Protection and Promotion Act* be amended to provide for every local medical officer of health a degree of independence parallel to that of the Chief Medical Officer of Health. This would include:**
 - **Giving the local medical officers of health the same reporting duties and authority as the Chief Medical Officer of Health:**
 - **To report every year publicly on the state of public health in the unit. This report must be provided to the local board of health and the Chief Medical Officer of Health 30 days prior to it being made public; and**
 - **To make any other reports respecting the public's health as he or she considers appropriate, and to present such a report to the public or any other person, at any time he or she considers appropriate.**
 - **Protecting the independence of the local medical officer of health by providing that no adverse employment action may be taken against any medical officer of health in respect of the good faith exercise of those reporting powers and duties.**
- **The powers now assigned by law to the medical officer of health are assigned concurrently to the Chief Medical Officer of Health.**
- **These concurrent powers shall be exercised by the medical officer of health in the local region, subject to the direction of the Chief Medical Officer of Health.**
- **Public health emergency planning, preparedness, mitigation, management, recovery, coordination and public health risk communication at the provincial level be put under the direct authority of the Chief Medical Officer of Health under the *Health Protection and Promotion Act*.**
- **Public health emergency planning, preparedness, mitigation, management, recovery, coordination and public health risk communication under the direction of the local medical officer of health be added to the list of manda-**

tory public health programmes and services required by s. 5 of the *Health Protection and Promotion Act*.

- **The Emergency Management Unit of the Ministry of Health and Long-Term Care be moved to the Public Health Division with its Director reporting directly to the Chief Medical Officer of Health.**
- **The *Health Protection and Promotion Act* be amended to require that each local board of health and each medical officer of health provide to the Chief Medical Officer of Health a copy of their general public health emergency plan and any incident specific plans and ensure that the Chief Medical Officer of Health has, at any time, the most current version of those plans.**
- **Section 95 (protection from personal liability) of the *Health Protection and Promotion Act* should be amended to extend its protection to everyone employed by or providing services to a public health board or the provincial Public Health Division, everyone from the Chief Medical Officer of Health, to its expert advisors, to public health employees in the field.**

Local Governance

- **The province, by the end of the year 2007, after the implementation of the recommendations of the pending public health capacity review, decide whether the present system can be fixed with a reasonable outlay of resources. If not, funding and control of public health should be uploaded 100 per cent to the province.**
- **The Ministry of Health and Long-Term Care enforce the *Health Protection and Promotion Act* to ensure the protection of the medical officer of health from bureaucratic and political encroachment in the administration of public health resources and to ensure the administrative integrity of public health machinery under the executive direction of the medical officers of health. In particular, the Ministry of Health and Long-Term Care should:**
 - **Amend and strengthen s. 67 of the *Health Protection and Promotion Act* to ensure that those whose duties relate to the delivery of public health services are directly accountable to, and under the authority of, the medical officers of health, and that their management cannot be delegated to municipal officials;**

- **Take enforcement actions in respect of violations of s. 67;**
- **Amend the *Health Protection and Promotion Act* to clearly state that the medical officer of health is the chief executive officer of the board of health; and**
- **Amend the *Health Protection and Promotion Act* to provide local medical officers of health a degree of independence parallel to that of the Chief Medical Officer of Health, as set out in Chapter 1 of this Report.**
- **Section 7 of the *Health Protection and Promotion Act* be amended to provide that the Minister, on the advice of the Chief Medical Officer of Health shall publish standards for the provision of mandatory health programmes and services, and every board of health shall comply with the published standards that shall have the force of regulations.**
- **The *Health Protection and Promotion Act* be amended to require by law the regular monitoring and auditing, including random spot auditing, of local health units to ensure compliance with provincial standards. The results of any such audits should be made public so citizens can keep abreast of the level of performance of their local health unit.**
- **The *Health Protection and Promotion Act* be amended to ensure that the greater funding and influence of the province in health protection and promotion is reflected in provincial appointments to local boards of health. Also to ensure that the qualifications required of members of boards of health include experience or interest in the goals of public health. In particular, the Ministry of Health and Long-Term Care should:**
 - **appoint a majority of the members of each local board, to reflect the greater proportion of provincial public health funding and influence;**
 - **amend the *Health Protection and Promotion Act* to provide that where cabinet has not by Order in Council, the vacancy shall be filled by an appointment made directly by the Chief Medical Officer of Health;**
 - **amend the *Health Protection and Promotion Act* to require that those appointed to boards of health possess a demonstrated experience or interest in the goals of public health – to prevent the spread of disease and protect the health of the people of Ontario – and that they be**

broadly representative of the community to be served; and

- **consider an amendment to the *Health Protection and Promotion Act* to clarify the roles and priorities of health board members, the first priority being compliance with the *Health Protection and Promotion Act* and the mandatory public health standards.**
- **The Ministry of Health and Long-Term Care introduce a package of governance standards for local boards of health with reference to those sources referred to above, such as the Scott and Quigley governance framework.**

HPPA Tuneup

- **The four present categories of disease: infectious, communicable, reportable, and virulent, be simplified and reduced to two categories with clear boundaries and clear legal consequences.**
- **The *Health Protection and Promotion Act* be amended to clarify whether the powers contained in the various parts of the Act apply outside of the Part of the Act in which the power is contained. For example, does s. 13 apply in the case of a communicable disease?**
- **The Ministry of Health and Long-Term Care consider whether the definition of “health hazard” needs to be updated or expanded.**
- **The Ministry of Health and Long-Term Care review the numerous standards of intervention contained in the Act, examples of which are noted above, with a view to amending the Act to simplify and rationalize the apparently haphazard and overlapping standards for intervention, and to ensure that whether there is a hard trigger or a soft trigger, it should be rationally connected to the power being wielded.**
- **Section 22 of the *Health Protection and Promotion Act* be amended to adjust the standard of intervention to provide that the medical officer of health can take necessary action without the criminal or quasi-criminal standard of objective proof on reasonable and probable grounds.**
- **The Ministry of Health and Long-Term Care, in consultation with the public health community, examine the issue of any practical difficulties of**

administering s. 22, with a view to make it more effective for those who rely on its powers.

- **The *Health Protection and Promotion Act* be amended to provide that an order made under s. 22, in respect of a person infected with a communicable disease, is valid in any health unit in Ontario.**

Stronger Health Protection Powers

- **The role and authority of public health officials in relation to hospitals be clearly defined in the *Health Protection and Promotion Act* in accordance with the following principles:**
 - **The requirement that each public health unit have a presence in hospital infection control committees should be entrenched in the Act; and**
 - **The authority of the local medical officers of health and the Chief Medical Officer of Health in relation to institutional infectious disease surveillance and control should be enacted to include, without being limited to, the power to monitor, advise, investigate, require investigation by the hospital or an independent investigator, and intervene where necessary.**
- **The Ministry of Health and Long-Term Care, in consultation with the Provincial Infectious Diseases Advisory Committee, and the wider health care and public health communities, define a broad reporting trigger that would require reporting to public health where there is an infection control problem or an unexplained illness or cluster of illness.**
- **Whether or not a workable trigger can be defined for compulsory reporting, a provision be added to the *Health Protection and Promotion Act*, to provide that a physician, infection control practitioner or hospital administrator may voluntarily report to public health officials the presence of any threat to the health of the population.**
- **The *Health Protection and Promotion Act* be amended to include powers similar to those set out in Quebec's *Public Health Act*, to allow for early intervention and investigation of situations, not limited to reportable or communicable diseases, that may pose a threat to the health of the public.**

- **The *Health Protection and Promotion Act* be amended to clarify and regularize in a transparent system authorized by law, the respective roles of the Chief Medical Officer of Health and the medical officer of health, in deciding how a particular case should be classified.**
- **The *Health Protection and Promotion Act* be amended to authorize the Chief Medical Officer of Health to issue directives to hospitals, medical clinics, long-term care facilities, and all other health care providers, private or public, in respect of precautions and procedures necessary to protect the public's health. All directives should be issued under the signature of the Chief Medical Officer of Health alone.**
- **The Ministry of Health and Long-Term Care appoint a working group of health care professionals from various institutions who are tasked, and paid, to translate the directives into a form that can be understood and applied by staff, without altering the content of the message. The Commission recommends further the development of an educational programme to ensure that everyone affected by the directives knows how they work, what they mean and how they should be applied.**
- **The Ministry of Health and Long-Term Care, in consultation with the affected health care communities, develop feedback machinery driven by health care workers in the field, to ensure the directives are clear and manageable from a practical point of view in the field.**
- **The *Health Protection and Promotion Act* and the directives provide explicitly that they in no way diminish the procedures and precautions required by the circumstances that prevail in any particular institution, that they represent the floor, not the ceiling, of medical precaution, and do not relieve any institution of the obligation to take further precautions where medically indicated.**
- **The *Health Protection and Promotion Act* be amended to authorize the Chief Medical Officer of Health or a medical officer of health to order temporarily detained for identification any person who refuses to provide their name, address and telephone contact information when required to do so for the purpose of identifying those who are leaving, or have been in a place of infection. The detained person unless immediately released, must be brought before a justice as soon as possible and in any event within 24 hours for a court hearing. This power is to be backed up by the ultimate power of**

arrest with police assistance if necessary in the case of non-cooperation.

- **The *Health Protection and Promotion Act* be amended to authorize the Chief Medical Officer of Health or a medical officer of health to order the temporary detention of, for the purpose of a court hearing, any person suspected of having been exposed to a health hazard, and who refuses to consent to decontamination. The detained person must be brought before a justice as soon as possible and in any event within 24 hours. This power is to be backed up by the ultimate power of arrest with police assistance if necessary in the case of non-cooperation.**
- **The *Health Protection and Promotion Act* be amended to authorize the Chief Medical Officer of Health or a medical officer of health to order the temporary detention of anyone who there is reason to suspect is infected with an agent of a virulent disease, for the purposes of obtaining a judicial order authorizing the isolation, examination or treatment of the person, pursuant to s. 35 of the *Health Protection and Promotion Act*. The detained person must be brought before a justice as soon as possible and in any event within 24 hours. This power is to be backed up by the ultimate power of arrest with police assistance if necessary in the case of non-cooperation.**
- **The *Health Protection and Promotion Act* be amended to provide for a court to authorize, by warrant, entry into a private dwelling, by a medical officer of health or specially designated public health official with police assistance, for the purpose of enforcing an order under s. 35 of the Act.**
- **The *Health Protection and Promotion Act* be amended to provide that a medical officer of health or specially designated public health official with police assistance may under exigent circumstances enter a dwelling-house for the purpose of apprehending a person where there are reasonable and probable grounds to believe that a basis for a s. 35 warrant exists and reasonable grounds to believe that the delay required to obtain such a warrant might endanger the public's health. The detention must be the subject of a court hearing as soon as possible and in any event within 24 hours.**

Reporting Infectious Disease

- The *Health Protection and Promotion Act* be amended to repeal, in the duty of a physician to report to the medical officer of health, the distinction between hospital patients and non-hospital patients. This may be achieved by deleting from s. 25(1) the words “who is not a patient in or an out-patient of a hospital.”
- The Ministry of Health and Long-Term Care require each hospital, long-term care facility, nursing home, home for the aged, community care access centre, private medical or health services clinic, and any health care institution, to establish an internal system to ensure compliance with the reporting obligations set out in the *Health Protection and Promotion Act*.
- The definition of “practitioner” in the *Health Protection and Promotion Act* be amended to coincide with that set out in the *Personal Health Information Protection Act*.
- The list of “institutions” as defined in s. 21(1) of the *Health Protection and Promotion Act*, be amended to coincide with that set out in the *Personal Health Information Protection Act*.
- The *Health Protection and Promotion Act* be amended to ensure consistency between those who are defined as “health information custodians” under the *Personal Health Information Protection Act* and those who have reporting obligations under the *Health Protection and Promotion Act*.
- The *Health Protection and Promotion Act* be amended to authorize the Minister of Health and Long-Term Care to amend the definition of “practitioner” or “institution” by regulation.
- The *Health Protection and Promotion Act* be amended to include a provision similar to the provisions in Quebec’s *Public Health Act*, by which the Quebec public health director may order any person, any government department or any body to immediately communicate to the public health director or give the public health director immediate access to any document or any information in their possession, even if the information is personal information or the document or information is confidential.

- **This power should be broadly defined, to enable the Chief Medical Officer of Health to require any person, organization, institution, government department or other entity, to provide information, including personal health information, to the Chief Medical Officer of Health, for the purposes of investigating and preventing the spread of infectious disease.⁴⁷⁹**
- **The *Health Protection and Promotion Act* be amended to authorize the Chief Medical Officer of Health to order the collection, analysis and retention of any laboratory specimen from any person, animal, plant or anything the Chief Medical Officer of Health specifies, and to acquire previously collected specimens and test analysis from anyone, and to disclose the results of test analysis as the Chief Medical Officer of Health considers appropriate for the purpose of investigating and preventing the spread of infectious disease.⁴⁸⁰ This power, however, should be subject to the following restrictions:**
 - **It should not include the power to take a bodily sample or specimen directly from a person without their consent or, absent consent, without court order. The power should only apply to specimens already taken;**
 - **The collection should be limited to the purpose of investigating and preventing the spread of infectious disease. The specimen should be used only for this express purpose; and**
 - **The power should not override any other provisions of the Act, which set out a specific process for the obtaining of samples.**
- **The *Health Protection and Promotion Act* be amended to require that in the case of specific diseases, designated by regulation, information be reported “immediately” by telephone to the local medical officer of health, and that such report be followed up in writing within 24 hours;**
- **The *Health Protection and Promotion Act* be amended to require that as in the case of those diseases not designated for immediate reporting, a written**

479. As noted above, this is not drafting language. The use of the term “infectious disease” is intended to include but not be restricted to diseases already designated as communicable, reportable or virulent under the *Health Protection and Promotion Act*. The provision should be defined broadly enough to cover bioterrorism risks. It should not, however, extend to every health risk, such as obesity or other lifestyle problems.

480. *Ibid.*

report must be provided to the local medical officer of health within 24 hours.

- Subsection 1(2) of Regulation 569 be expanded to apply to any person who makes a report under the *Health Protection and Promotion Act*. Thus any person who gives information in accordance with a duty under the *Health Protection and Promotion Act*, shall, upon the request of the medical officer of health, give to the medical officer of health such additional information respecting the reportable disease or communicable disease, as the medical officer of health considers necessary.
- This portion of Regulation 569 (s. 1(2), additional information) be moved to the Act itself, to form an integral part of the reporting obligations set out in the Act and to ensure that the power is protected, absent legislative debate, from subsequent amendment.
- Amendments to the *Health Protection and Promotion Act* and Regulations be preceded by consultation with the public health community who have to apply them in the field.
- Local public health officials and the Public Health Division, in collaboration and consultation with hospitals, other health care institutions and professional organizations, develop a standardized form and means for reporting under the *Health Protection and Promotion Act*.
- The standardized reporting include clarity around to whom the report must be made, and to clearly confirm that the chain of transmission goes from the hospital and health care facilities, to the local health units, to the province, so as to avoid multiple requests for information.
- The Ministry of Health and Long-Term Care, Public Health Division, in collaboration with local medical officers of health, health care facilities and professional organizations, engage in broad-based education of reporting requirements under the *Health Protection and Promotion Act* and that such education be maintained on a regular basis.
- The *Health Protection and Promotion Act* be amended to require public health authorities to report to a hospital or any other health care facility, including family medical clinics, any information in the hands of public health that suggests a reportable disease may have been acquired through

exposure at that site.

- **Section 39(2) of the *Health Protection and Promotion Act* be amended to include an exception permitting public health officials to provide hospitals and other health care facilities, with the personal health information of persons about whom a report is made, where they are of the opinion that the information may reduce the risk of exposure or transmission to staff, patients or visitors.**

Privacy and Disclosure

- **Section 39 of the *Personal Health Information Protection Act* be amended to include:**
 - **A health information custodian shall disclose personal health information about an individual, to the Chief Medical Officer of Health or a medical officer of health if the disclosure is required under the *Health Protection and Promotion Act*.**
- **Subsection 39(2) of the *Health Protection and Promotion Act* be amended to allow an exception to s. 39(1) to permit the disclosure of the name of or any information that will or is likely to identify a person in respect of whom an application, order, certificate or report is made in respect of a communicable disease, by the Chief Medical Officer of Health or a medical officer of health to any person where it is necessary to investigate or prevent the spread of a communicable disease.**
- **Subsection 39(2) of the *Health Protection and Promotion Act* be amended to allow an exception to s. 39(1) to permit the disclosure of the name of or any information that will or is likely to identify a person in respect of whom an application, order, certificate or report is made in respect of a communicable disease, by the Chief Medical Officer of Health or a medical officer of health to a public health authority as described in s. 39(2)(b) of the *Personal Health Information Protection Act*.**
- **The *Personal Health Information Protection Act* be amended to provide that nothing in the Act prevents a health information custodian from providing personal health information to the Chief Medical Officer of Health or a medical officer of health, pursuant to the *Health Protection and Promotion Act*.**

- **The *Health Protection and Promotion Act* and the *Personal Health Information Protection Act* be amended to state that in the event of any conflict between the two statutes, the duties in the *Health Protection and Promotion Act* prevail.**
- **The *Personal Health Information Protection Act* be amended to provide that where a good faith disclosure is made to the Chief Medical Officer of Health or a medical officer of health, in reliance on the *Health Protection and Promotion Act*, the health information custodian will be exempt from liability.**
- **The Ministry of Health and Long-Term Care, in consultation with the appropriate community, establish procedures for the fast-tracking of approval of access to personal health information for the purposes of urgently required research, to enable health care custodians to provide access to data in a timely manner, without fear of violating privacy legislation.**
- **The Chief Medical Officer of Health review, and if necessary strengthen, the internal protocols and procedures now in place to ensure effective privacy safeguards for personal health information received by public health authorities.**

Whistleblower Protection

- **The *Health Protection and Promotion Act* be amended to provide health care workers whistleblower protection in accordance with the following principles:**
 - **It applies to every health care worker in Ontario and to everyone in Ontario who employs or engages the services of a health care worker;**
 - **It enables disclosure to a medical officer of health (including the Chief Medical Officer of Health);**
 - **It includes disclosure to the medical officer of health (including the Chief Medical Officer of Health) of confidential personal health information;**

- **It applies to the risk of spread of an infectious disease and to failures to conform to the *Health Protection and Promotion Act*;**
- **It prohibits any form of reprisal, retaliation or adverse employment consequences direct or indirect;⁴⁸¹**
- **It requires only good faith on the part of the employee; and**
- **It not only punishes the violating employer but also provides a remedy for the employee.⁴⁸²**

Quarantine

- **Emergency legislation require that every government emergency plan provide a basic blueprint for the most predictable types of compensation packages and that they be ready for use, with appropriate tailoring, immediately following any declaration of emergency.**
- **The *Health Protection and Promotion Act* be amended to provide that it is a mandatory public health standard for each local medical officer of health to develop under the guidance of the Chief Medical Officer of Health a local plan in consultation with employers, educators, community groups, businesses, emergency responders, and health care facilities to ensure that plans are in place to ensure that those quarantined in the future have timely and adequate information, and the support necessary to encourage and enable them to comply with quarantine.**
- **The *Health Protection and Promotion Act* be amended to add a provision similar to s. 6(1) of the *SARS Assistance and Recovery Strategy Act*, to apply to infectious diseases as identified by the Chief Medical Officer of Health. The amendment should provide, in respect of such a disease, that a person is entitled to a leave of absence without pay where he or she is unable to work**

481. Although specific types of reprisal could be listed, as in Ontario's workplace legislation, the listing of specific examples can shift the focus from the strong general prohibition to any gaps in the examples that can be found by an ingenious lawyer or administrator. It is therefore recommended that the prohibition remain general.

482. As noted above, the punishment recommended for an employer who violates the protection is a fine of up to \$50,000.00 where the employer is a natural person and \$250,000.00 where the employer is not a natural person.

as a result of investigation or treatment related to the disease, or because he or she is subject to quarantine or isolation.⁴⁸³ The amendment should also protect those who are unable to work because they are needed to provide care or assistance to a spouse, child, grandparent, sibling or relative who is dependent on the employee for care and assistance.

- **Section 22(5.0.1) be amended to provide that the power to order and enforce the isolation of a group must, wherever practicable, be preceded by such degree of consultation with the group as is feasible in the circumstances.**
- **Section 106 of the *Health Protection and Promotion Act* be amended to provide that in the case of a class order made under s. 5.0.2, service is effective when notice of the class order is posted and the order may be enforced as soon as it is brought to the actual attention of the person affected.**
- **The word “quarantine” be introduced to the *Health Protection and Promotion***

483. Section 6 (1) provides:

During the period beginning March 26, 2003 and ending on a day specified by proclamation of the Lieutenant Governor under subsection 1(2), an employee is entitled to a leave of absence without pay for any day or part of a day during which he or she falls into one or more of the following categories:

1. The employee is unable to work because he or she is under individual medical investigation, supervision or treatment related to SARS.
2. The employee is unable to work because he or she is acting in accordance with a SARS related order under section 22 or 35 of the *Health Protection and Promotion Act*.
3. Subject to subsections (2) to (4), the employee is unable to work because he or she is in quarantine or isolation or is subject to a control measure in accordance with SARS related information or directions issued to the public, a part of the public or one or more individuals, by the Commissioner of Public Security, a public health official, a physician or a nurse or by Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means.
4. The employee is unable to work because of a direction given by his or her employer in response to a concern of the employer that the employee may expose other individuals in the workplace to SARS.
5. The employee is unable to work because he or she is needed to provide care or assistance to an individual referred to in subsection (5) because of a SARS related matter that concerns that individual. 2003, c. 1, s. 6 (1).

***Act* as a defined legal term to correspond to the universal popular understanding of that word as used during SARS.**

Legal Access And Preparedness

- **The *Health Protection and Promotion Act* be amended to eliminate the complex appeal process, rife with delay, in respect of an appeal by the subject of an order from a decision of the Health Services Appeal and Review Board, and provide an appeal as of right directly to the Court of Appeal with no prior requirement to secure leave to appeal.**
- **The Ministry of Health and Long-Term Care consider whether the Health Services Appeal and Review Board is a necessary step in the complex hearing and review process in the *Health Protection and Promotion Act* or whether some other system should be enacted.**
- **The *Health Protection and Promotion Act* be amended to simplify the complex and restrictive appeal process in respect of appeals from provincial court to the Superior Court and then to the Court of Appeal but only if a judge of the Court of Appeal grants leave to appeal on special grounds on a question of law alone. This process could be simplified by eliminating the intermediate appeal to the Superior court and the restricted leave to appeal to the Court of Appeal or both.**
- **The multiplicity of procedures in respect of the enforcement of Orders made under Part IV (communicable diseases) and Part VII (administration) of the *Health Protection and Promotion Act*, be replaced by a single, simple, codified procedure in the Superior Court.**
- **The *Health Protection and Promotion Act* be amended to provide the Superior Court, when ordering compliance with a public health obligation, with a full range of remedial power, including the power to make mandatory orders.**
- **The *Health Protection and Promotion Act* be amended to consolidate and codify all provisions in respect of court enforcement and access to judicial remedies in respect of communicable diseases into one seamless system or powers and procedures.**

- **The *Health Protection and Promotion Act* be amended to include special procedures such as *ex parte* procedures for interim and temporary orders, video and audio hearings, and other measures to prevent the court process from becoming a vector of infection.**
- **The *Rules of Civil Procedure* be amended to include a clear, self-contained and complete code of procedure for public health enforcement and remedies in respect of communicable diseases.**
- **A consequential amendment to the *Courts of Justice Act* provide that proceedings in respect of the *Health Protection and Promotion Act* enforcement and remedies in respect of communicable diseases shall be heard at the earliest opportunity.**
- **The *Health Protection and Promotion Act* be amended to provide that an order under s. 35 may be directed to any police service in Ontario where the person may be found, and the police service shall do all things reasonably able to be done to locate, apprehend, and deliver the person in accordance with the order.**
- **The judiciary be asked to establish court access protocols in consultation with the public health legal community.**
- **The *Health Protection and Promotion Act* be amended to provide that an order under s. 35 may be directed to any police service in Ontario where the person may be found, and the police service shall do all things reasonably able to be done to locate, apprehend, and deliver the person in accordance with the order.**
- **The Ministry of Community Safety and Correctional Services and the Ministry of the Attorney General, together with public health officials, establish protocols and plans for the enforcement of orders under the *Health Protection and Promotion Act* and the involvement of police officers in that process.**
- **Legal preparedness be an integral component of all public health emergency plans.**

Emergency Legislation

- **Emergency legislation require that every government emergency plan provide a basic blueprint for the most predictable types of compensation packages and that they be ready for use, with appropriate tailoring, immediately following any declaration of emergency.**
- **Bill 138 provide explicitly for a process to ensure the integration of all emergency plans and the requirement that every emergency plan specify clearly who is in charge and who does what.**
- **Bill 138 be examined to determine and clarify whether the supply chain powers in s. 7.0.2(4) 7, 8, and 9 are intended to authorize compulsory seizure and expropriation of property and, if explicitly compulsory, what provisions should be made for compensation, administrative procedures, or other safeguards.**
- **All powers proposed in Bill 138 be examined to remove ambiguity of the sort that appears in s. 7.0.2(4) 7, 8 and 9 to ensure there is no lack of clarity as to the intended purpose and legal effect of any proposed power.**
- **For the reasons set out above and the reasons advanced by the Minister, the Commission recommends against the enactment of separate public health emergency legislation. For the same reasons the Commission recommends that Bill 138 make it clear that the special powers available in an emergency are in addition to the powers in the *Health Protection and Promotion Act* and the declaration of an emergency does not prevent the continuing use of the *Health Protection and Promotion Act* health protection powers.**
- **Emergency legislation provide that the Chief Medical Officer of Health has clear primary authority in respect of the public health aspects of every provincial emergency including:**
 - **Public health emergency planning;**
 - **Public communication of health risk, necessary precautions, regular situation updates;**
 - **Advice to the government as to whether an emergency should be**

declared, if the emergency presents at first as a public health problem;

- **Strategic advice to the government in the management of the emergency;**
 - **Advice to the government as to whether an emergency should be declared to be over, and emergency orders lifted, in respect of the public health measures taken to fight the emergency;**
 - **Advice to the government in respect of emergency orders of a public health nature and emergency orders that affect public health e.g. ensuring that gasoline rationing does not deprive hospitals of emergency supplies;**
 - **Delegated authority in respect of emergency orders of a public health nature; and**
 - **Such further and other authority, of a nature consistent with the authority referred to above, in respect of the public health aspects of any emergency.**
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- **Emergency legislation provide that the Chief Medical Officer of Health shall exercise his or her authority, so far as reasonably possible, in consultation with the Commissioner of Emergency Management and other necessary agencies. Conversely, the Commission recommends that emergency legislation provide that the Commissioner of Emergency Management, on any matter affecting public health, shall exercise his or her authority so far as reasonably possible in consultation with the Chief Medical Officer of Health.**
 - **Bill 138 be subjected to a fundamental legal and constitutional overhaul by the Attorney General who has indicated he is fully engaged in reviewing Bill 138 to ensure that it meets necessary legal and constitutional requirements.**
 - **The government in its review of Bill 138 consider whether it adequately addresses the public health emergency powers referred to above.**
 - **The power of mass compulsory immunization not be enacted as a permanent feature of Ontario's law until the evidence has been presented in a comprehensive fashion.**

- Every proposed emergency power, before its enactment, be thoroughly subjected to the legal, practical, and policy analysis exemplified by the above analysis of compulsory mass immunization and that the evidence in support of each power be presented in a comprehensive fashion before enactment.
- If the government decides it is necessary to enact any emergency power before there is time to subject it thoroughly to the legal, practical, and policy analysis exemplified by this analysis of compulsory mass immunization, that the government sunset any such provision for a period not to exceed two years in order to provide time for the required scrutiny.
- The Attorney General in the review of Bill 138 clarify whether the override power in s. 7.0.6(1) affects collective agreements.
- The Attorney General undertake a thorough scrutiny and amendment of the override provision to protect our foundational legal statutes such as the *Habeas Corpus Act*,⁴⁸⁴ the *Legislative Assembly Act*,⁴⁸⁵ the *Human Rights Code*,⁴⁸⁶ the *Elections Act*,⁴⁸⁷ and the *Courts of Justice Act*⁴⁸⁸ against emergency override.
- It be made clear whether a journalist or lawyer who refuses to disclose confidential information or the identity of its source is liable to the penalty provided by Bill 138, a fine of up to \$100,000 and a term of imprisonment for up to a year for every day on which the refusal continues.
- The override power be given a more prominent place in the statute by putting it right after the enumerated powers.
- The Attorney General review Bill 138 to ensure that the extent of the override, combined with the vague and open ended nature of the powers including the basket clause, does not constitute a constitutionally impermissible delegation of legislative power to public officials.⁴⁸⁹

484. R.S.O. 1990, c. H-1.

485. R.S.O. 1990, c. L-10.

486. R.S.O. 1990, c. H-19.

487. R.S.O. 1990, c. E-6.

488. R.S.O. 1990, c. C-43.

489. For vagueness, see for instance Gonthier J. in *R. v. Nova Scotia Pharmaceutical Society* [1992] 2 S.C.R. 606 at para 69. For delegation of plenary discretion, see for instance *Irwin Toy Ltd. v. Quebec (A.G.)* [1989] 1 S.C.R. 927 at para 63.

- **The structure and content of the limitations and criteria for the declaration of emergency and the exercise of emergency powers be reviewed with a view to the development of a standard based on the decision-maker's reasonable apprehension that the exercise of the power is necessary in the circumstances;**
- **The power to implement emergency plans be amended to ensure that it confers no powers other than those explicitly set out in Bill 138.**
- **Bill 138 be amended to provide that every emergency plan requires protocols for safe and speedy court access developed in consultation with the judiciary, and that the Courts of Justice Act be amended to ensure an early hearing for any proceeding under or in respect of emergency legislation or any action taken under it.**
- **The Attorney General's Department scrutinize Bill 138 intensely for transparency to ensure that it confers no hidden powers and that all powers conferred are clearly set out on the face of the statute.**
- **The basket clause s. 7.0.2(4)12 be reviewed on the same basis as that recommended above for the trigger and criteria and limitations, the basis of reasonable apprehension.**
- **Every emergency plan provide for a process to facilitate advance planning to address potential workplace health and safety issues and to work out those issues when they arise.**
- **Bill 138 be amended to provide:**
 - **That Bill 138 does not derogate from the powers authorized by any Ontario Statute or any ancillary or inherent authority.**
 - **That no order made or action purportedly taken under Bill 138 shall be set aside on grounds it is not authorized by the Act if the order or action is authorized by some other Ontario statute or inherent or ancillary power.**
 - **That no order made or action taken in response to a declared emergency under the purported authority of any Ontario statute or inherent or ancillary power shall be set aside for lack of legal authority if the order or action is authorized under Bill 138.**

