

Health

Professions

Council \_\_\_\_\_

SUPPLEMENTARY REPORT  
ON ENVIRONMENTAL/  
PUBLIC HEALTH INSPECTION

---

Irvine Epstein, Q.C., Chair

Arminée Kazanjian, Member

David MacAulay, Member

Application by the

Canadian Institute of

Public Health Inspectors, B.C. Branch

May 1998

## CONTENTS

I.	BACKGROUND .....	1
II.	INTRODUCTION .....	2
III.	THE THREE ISSUES RAISED BY THE MINISTER .....	4
	1. RESULTS OF THE CONSULTATION PROCESS.....	4
	2. COMPARATIVE INFORMATION FROM OTHER JURISDICTIONS.....	7
	3. THE RATIONALE FOR THE COUNCIL'S CONCLUSION .....	8
IV.	CONCLUSION.....	12

## I. BACKGROUND

In November, 1997, the Health Professions Council (the Council) submitted to the Minister its report on an application for designation from the B.C. Branch of the Canadian Institute of Public Health Inspectors (the Applicant). In the report, the Council determined that a self-regulatory college for environmental/public health inspection was unnecessary and would not be in the public interest. The primary reason for the Council's decision was that there was very little risk of harm in the practice of the profession, and that such harm is adequately addressed through the current supervisory and regulatory controls on the practice of the profession.

The Minister recently requested further information from the Council regarding its investigation of environmental/public health inspection. Specifically, on January 28, 1998 the Minister requested the following:

- i. A comprehensive discussion of the results of the consultation process for this investigation and the Council's rationale for accepting or rejecting the views of the key stakeholders;
- ii. Comparative information regarding the regulation of environmental/public health inspection in other jurisdictions; and
- iii. A detailed rationale for the conclusions which were made with respect to whether the profession met the public interest criteria in the Health Professions Regulation (the Regulation).

Each of these issues is addressed in turn but first the Council wishes to make some introductory remarks about the nature of its mandate in respect of applications for designation under the Health Professions Act (the HPA).

## II. INTRODUCTION

The Regulation makes it clear that the most important factor the Council must address is whether there is a risk of harm in the practice of the profession. In the Council's view, unless there is a significant risk of harm arising from the practice of the profession, self-regulating status need not be granted under the HPA in the public interest. The Regulation also makes it clear that an important part of assessing risk of harm is the degree to which a profession is already regulated or practised in a supervised environment. This is because the safeguards provided by the current regulatory and supervisory environment may address the risks associated with the practice of the profession.

These are important considerations as they underscore the fact that the primary purpose of professional regulation is protection of the public. A profession's desire to be self-regulating is not, in itself, sufficient justification for regulation. Rather, self-regulation is a privilege not a right and it ought only be granted when it is clearly in the public interest to do so.

Further, these concepts underscore the fact that self-regulation is not the only regulatory instrument at government's disposal to achieve the purpose of protecting the public. There is a wide range of mechanisms which can ensure this goal. In this regard, the Council refers to the following excerpt from the report of the Manitoba Law Reform Commission, *Regulating Professions and Occupations*:

*However, there may be other forms of regulation which protect the public as well or better than either licensing or certification. Because the reference from the Minister of Justice and Attorney General made clear that the Commission was to consider forms of occupational regulation which are administered by self-governing bodies, we have not discussed forms of regulation other than licensing and certification. However, this does not mean that, in a particular situation, another form of regulation might not adequately protect the public and cost less than either certification or licensing. If the option which best serves the public interest is to be implemented, decision-makers . . . should be aware that there are less restrictive alternatives to licensing . . . and in many cases these may be more appropriate forms of intervention in the market."*

***Depending on the circumstances, any number of alternative regulatory regimes may be more appropriate and cost-effective than either licensing or certification.*** [Emphasis added] *For example, the provincial government has the power to deter incompetent or unethical behaviour by making changes to laws concerning civil liability or by creating new offences. It can also discourage dangerous practices by taxing them or it can subsidize behaviours and practices which provide greater safety for the public. Governments can engage in programs designed to educate the public or offer subsidies to organizations which provide information to consumers and thereby address a lack of consumer knowledge about the service; in some cases, this may prove even more effective than certification. In order to adequately address harm resulting from a lack of consumer information or from the effect of poor consumer choices on third parties, government could require that practitioners of a service obtain a minimum level of liability insurance, thereby enabling victims to recover for harm caused by practitioners. A government inspection system may also be effective in deterring practitioners from acting improperly.*

*If they come to the conclusion that an alternative form of government action can adequately protect the public at a lower cost than either licensing or certification, decision-makers ought not to be bound by the scope of this Report; they should refer the matter to an appropriate department or agency of government for regulatory action.*

The Council agrees with these comments, and in its view it is generally in the public interest to pursue the least restrictive regulatory option.

### III. THE THREE ISSUES RAISED BY THE MINISTER

#### 1. RESULTS OF THE CONSULTATION PROCESS

In preparing its original report the Council sent a consultation letter dated October 28, 1996, to 76 bodies, including all currently regulated health professions, other interested parties, and other Canadian jurisdictions. The letter set out in detail the nature of the application, and requested submissions on the public interest criteria in section 5 of the Regulation.

The Council received 28 responses, a summary of which was included as Appendix B to the Report.

One half (14) of the respondents did not take a specific position on the issue of designation. Several of these were responses from other jurisdictions which simply described the current regulatory regime for public health inspection. **As noted in the report, these responses indicated that environmental/public health inspection is not currently self-regulating in any province.** Other responses, such as from the Coast Garibaldi Regional Health Board, indicated a lack of familiarity with the field. Some responses, such as the submission from the Office of the Provincial Health Officer, provided useful background information but took no specific position.

Of the 14 responses which took a position on the issue, 11 supported designation while 3 did not. The Council wishes to emphasize, however, that designation does not immediately follow upon demonstration of support from respondents to the consultation, nor is designation refused based on opposition to the application. Rather, the Council carefully considers the substance of the responses, and uses the information in its analysis of the public interest criteria set out in the HPA.

Some of the responses which supported designation, such as from the B.C. Society of Medical Technologists and the Associated Boards of Health of B.C. simply indicated their support with little or no comment.

Most of the respondents that supported designation based their position on the risk of harm associated with the practice of the profession. Typical of the comments received are the following:

*... these practitioners have a responsibility for our healthy water supply, our food supply and containment of communicable diseases outbreaks, all of which, if incorrectly managed, could have a significant damaging effect on the general public. (British Columbia Medical Association)*

*... PHI duties relating to water supplies, sewage management, food contamination and disease outbreaks have the potential for resulting in large scale public health risks if performed inadequately. (College of Dental Hygienists of BC)*

*Mental anguish, financial loss, communicable diseases, illness and potentially even death may result from incompetent, impaired, unethical or incorrect action by an E.H.O./P.H.I. (Capital Regional District)*

*... the consequences of unethical or incompetent practice can result in significant harm to the public. Such practice will result in failure to prevent food and water borne illness. (North Okanagan Regional Health Board)*

As noted above, one of the factors the Council must consider in determining whether there is a risk of harm in the practice of the profession is the present regulatory and supervisory environment. Very few of the respondents addressed this issue and those that did had different point of views. Some contended that EHO/PHIs work in a relatively independent environment. Typical of the submissions are the following:

*EHO's/PHI's working in government operate in a relatively independent setting necessitating continuous professional judgement. (BC Dieticians' and Nutritionists' Association)*

*E.H.O./P.H.I.s working in government function independently while working in the community.* (Capital Regional District)

However, other respondents submitted that EHO/PHI's currently work in a supervised environment:

*In all situations where EHO/PHI presently practice, it is under the supervision of a senior professional who is responsible to ensure public safety.* (Vancouver/Richmond Health Board)

*... because most EHO/PHI's do not function as independent practitioners (like many other professions), the incompetent/impaired/unethical practitioner is monitored and may be appropriately disciplined by their employer.*  
(Office of the Provincial Health Officer)

*Provincial, Municipal and Federal Environmental Health Offices, who are the major employers and practitioners also provide effective networks, support, training and management of professional conduct.* (Health Canada)

The College of Dental Hygienists of BC submitted:

*While PHIs are generally public sector employees and therefore subject to employer-established standards, it is possible to envision situations where the employer's interests could conflict with the public's interests. In a regulated environment, PHIs would be primarily subject to their own professional standards where such a conflict occurs, and we believe this to be in the public interest.*

Very few of the responses commented on any of the factors set out in section 5(2) of the Regulation. The Capital Regional District provided brief comments on each of the factors, noting for example that there is support for the application, there is a required degree program for practitioners, there is leadership within the profession and designation would not affect availability of services. The Health Protection and Safety Division of the Ministry of Health noted that the profession is based on the application of scientifically definable concepts.

Of the three respondents that opposed designation, one (the College of Psychologists) offered little comment while the other two, Raymond King, a certified public health inspector, and the Nurse Administrators Association of B.C., were more expansive. The Nurse Administrator's Association stated:

*Although we recognize that EHOs have an important role in environmental health, it is our understanding that they essentially assess environments against detailed regulations for which interpretation is reasonable minimal. We understand that they are not independent practitioners, rather they practice under the supervision of the Medical Officer of Health. As they predominantly advise and report deviations from regulations, the potential "harm" is not usually the result of actions or inactions of another party notwithstanding the fact that as employees the EHOs must adhere to a standard of performance. It is, therefore, our view that there is not sufficient risk of harm.*

Mr. King's primary submission is that EHO/PHI's treat situations, not patients and that therefore there is an insufficient risk of harm in the practice of the profession. Mr. King acknowledges the Applicant's position that wrong advice can lead to illness, but notes that this is true of any number of endeavours such as a pesticide salesman giving a farmer improper advice.

The Applicant responded to those submissions which did not support designation. Regarding the submission of the Nurse Administrators Association, it stated that medical health officers do not provide day to day supervision but they do provide limited direction and act as administrative supervisors. Regarding Mr. King's submission, the Applicant stated that although EHO/PHIs do not treat patients, they have a significant role in preventative health.

The Council notes that of the several respondents quoted which did support the application for designation, none of them provided any analysis of the existing regulatory regime, and none provided any evidence of problems attributable to the current lack of designation. Furthermore, none of them indicated in what way designation would more adequately address whatever risks exist with the present system. Each of these issues was considered by the Council in the process of reaching its decision.

## 2. COMPARATIVE INFORMATION FROM OTHER JURISDICTIONS

In its report the Council noted that environmental/public health inspection is not recognized as a self-regulating profession in any Canadian jurisdiction. The Council received information from nine provinces and the two territories confirming that this is still the case.

In Quebec, the Office des professions du Québec received an application for self-regulating status from l'Association des inspecteurs en hygiène publique in 1979. That application was denied. According to information received from Ontario, the government undertook a review of the health professions in the 1980's which led to an updating of the regulatory system and the legislation governing the health professions. However, environmental/public health inspection was not included as a separate self-governing profession.

Based on the information received by the Council, virtually all Canadian jurisdictions regulate environmental/public health inspection in a manner similar to the present B.C. system. All of the jurisdictions contacted by the Council report that persons wishing to practice in this area must be registered under provincial public health legislation, similar to the B.C. Health Act. Like B.C., virtually all jurisdictions require that practitioners be certified by the Board of Certification of Public Health Inspectors which is administered by the Canadian Institute of Public Health Inspection.

## 3. THE RATIONALE FOR THE COUNCIL'S CONCLUSION

As noted above, the primary factor in determining whether a health profession should be designated under the HPA is whether there is a risk of harm in the practice of the profession. Included in the risk of harm analysis is a consideration of the current regulatory and supervisory environment.

The Council's rationale for its conclusion that designation was not in the public interest was based on this issue. As stated in the original report:

*After carefully considering the factors set out in sections 5(1) and (2) of the Regulation the Council concluded that a self regulatory college for environmental/public health inspection was unnecessary and would not be in the public interest.*

*The primary reason for the Council's decision was that there is very little risk of harm associated with the practice of the profession, and such harm is adequately addressed through the current regulatory and supervisory controls on the practice of environmental/public health inspection.*

The Council's conclusion was supported by the information it reviewed.

In its report, the Council outlined the Applicant's submission regarding the types of harm that could arise from the practice of the profession:

- *people may suffer a serious illness or injury if they are not given correct and timely advice regarding a suspected communicable or enteric disease;*
- *people may die if incorrect advice is given in response to a rabies incident or the consumption of contaminated foods or beverages;*
- *people may be unnecessarily exposed to a serious illness, injury or death if the EHO/PHI fails to act or acts in an inadequate or untimely fashion in response to the existence of a health hazard such as the sale of unpasteurized milk or the deliberate adulteration of food.*

As noted above, those respondents to the consultation that addressed this issue made similar statements about the risk of harm. It is important to emphasize that the Council does not disagree that these risks exist. Even though neither the Applicant nor the respondents to the consultation provided evidence that such harm had ever actually occurred, the Council concluded that there was some risk of harm in the practice of the profession.

The Council's task, once it has concluded that there is some risk of harm, is to determine whether self-regulation should be granted. In other words, the Council must determine whether self-regulation is the best means to address the identified harm. An important factor in this consideration, as set out in section 5(1)(d) of the Regulation, is the extent to which the risks are already addressed through the present regulatory and supervisory environment.

In regard to regulation the Council noted in its report that the effect of the provisions of the Health Act is that the practice of the profession is restricted to persons who are certified by the Board of Certification of Public Health Inspectors. Certification by this Board in turn means that all practitioners have met the stringent requirements for certification including meeting the necessary academic qualifications, completing the required practicum and passing the National Certification Examination. This system ensures that all practitioners are highly trained and qualified professionals.

In regard to supervision, the Council noted in its report that the vast majority of practitioners work in supervised environments. In its initial application, the Applicant stated the following:

*Two types of supervision exist: administrative and professional. In public health units, the EHO/PHI reports to the Medical Health Officer. In this capacity, the MHO is an administrative supervisor. In other settings, EHO/PHIs receive professional supervision only from other EHO/PHIs. Some EHO/PHIs work without any form of administrative or professional supervision and are called upon to take immediate and independent action. When there is a major food poisoning or toxic spill, the EHO/PHI may be directly supervised by a physician, such as the Medical Health Officer, an epidemiologist or a toxicologist. In a similar fashion, a physician may directly supervise an EHO/PHI who is investigating an allegation of abuse of a patient at a care facility.*

After considering this submission, the Council requested further information from the Applicant regarding the supervisory environment for EHO/PHIs. The Applicant responded as follows:

*The vast majority of practitioners (97%) work for agencies (chiefly government) where an administrative chain of command exists. There are generally two types of supervision within these structures. Medical Health Officers normally provide administrative supervision, with the Chief or Senior EHOs providing the ongoing supervision of the EHO/PHIs in the field. This should not be interpreted as direct day-to-day supervision as might occur in an institution or health facility since most of the work carried out by an EHO/PHI occurs in the "field". They are often far from either their direct supervisor (usually a senior or Chief EHO/PHI) or the Medical Health Officer when called upon to make independent decisions. Only in the most serious situations will the Medical Health Officer become directly involved in*

*supervising the investigation or response (e.g. a communicable disease outbreak response). The work of the Chief EHO might be reviewed for accuracy and completeness by the MHO but the work of the district-based EHOs is almost exclusively reviewed by senior or Chief EHOs.*

As noted above, several of the respondents to the consultation also made the point that the profession is already practised in a regulated and supervised environment.

In the Council's view, the level of supervision and regulation is a significant point, and perhaps is the reason why there was no evidence of the types of harm described by the Applicant. The Council took note of the information provided by the Applicant that 97% of practitioners in this field work for agencies (chiefly government). As such, the vast majority of practitioners are already subject to administrative and/or supervisory regulation through their employers. There appears to be significant team practise within the profession, as well as, in many cases, day to day supervision. In these circumstances, the Council believes there is very little risk of incompetent practice.

The Applicant was at pains to emphasize the degree of independence exercised by environmental/public health inspectors. For example, it stated that:

*EHOs/PHIs exercise a high degree of independent decision-making and judgment on a daily basis practising their profession under "limited direction" of the Medical Health Officer.*

The Council does not doubt that EHO/PHIs practice independently, or that very few of the decisions they make are subject to review by supervisory personnel. But the current level of supervision to which EHO/PHIs are subject substantially alleviates the risk of incompetent practice. The Council does not believe that self-regulation would enhance the public interest.

It is important to recognize that no regulatory system will ever completely eliminate the risk of harm associated with a given service. That is simply not possible. The real issue in the Council's view is how best to address the risk and ensure that it is minimized. As the excerpts from the Manitoba report above indicate, the government has a host of policy options available to it to accomplish this objective, one of which is self-regulation by the profession. Self-regulation is also the only option which falls within the mandate of the Council. In the case of environmental/public health inspection, the Council determined that self-regulation was not a better means of addressing the risks associated with this profession, and a key part of this finding was that the current system of regulation seems to be working very well. Indeed, the absence of any actual evidence of harm is a testament to its effectiveness.

#### IV. CONCLUSION

The Council reiterates its conclusion that at the present time designation of EHO/PHIs under the HPA is not in the public interest.

However, the Council is aware that the Ministry's regionalization initiative may have some impact on the practice of the profession. It may be the case that practice will be conducted more independently, and that the accountability and supervisory mechanisms established for the profession through the various health boards may at some point in the future be viewed as an insufficient means of addressing the risks associated with the practice of the profession. At this time, the Council has no evidence that this has occurred. Indeed, the Applicant itself notes that even with regionalization, supervision may remain the same, though it notes that it is too early to evaluate the implications of regionalization.

Therefore, the Council recommends that the Minister monitor the situation, and if at some point it becomes apparent that the current regulatory and supervisory environment is not adequately addressing the risks associated with the profession, re-evaluate the need for further regulatory controls.