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c 80 The Public Health Amendment Act, 1972

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CHAPTER 80

An Act to amend
The Public Health Act

Assented to June 23rd, 1972
Session Prorogued December 15th, 1972

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Paragraphs 32 and 33 of section 6 of The Public Health Act, being chapter 377 of the Revised Statutes of Ontario, 1970, are repealed.

(2) Paragraph 43 of the said section 6 is repealed and the following substituted therefor:

43. governing, regulating and restricting the storage, collection and disposal of garbage and refuse in private premises and households.

2. Section 35 of the said Act is amended by adding thereto the following subsection:

(2a) The council of every municipality that is not included in a health unit shall, subject to the approval of the Minister, appoint a legally qualified medical practitioner to be medical officer of health for the municipality.

3. Subsection 5 of section 37 of the said Act is repealed and the following substituted therefor:

(5) With the consent of the municipalities forming a separated health unit as provided for in the agreement and, where no such provision is made in the agreement, with the consent of a majority of such municipalities, the separated local board may acquire and hold real and personal property for its purposes, and may sell, exchange, lease, mortgage or otherwise charge or dispose of any such property.

4. Section 45 of the said Act is repealed and the following substituted therefor:
45. In this section and in sections 45a to 45n,

(a) "Director" means the Director of Laboratory Licences appointed under section 45a;

(b) "inspector" means an inspector appointed under section 45b;

(c) "laboratory" means an institution, building, or place in which operations and procedures for the microbiological, serological, chemical, hematological, biophysical, immunohematological, cytological or pathological examination of specimens taken from the human body are performed to obtain information for diagnosis, prophylaxis or treatment, but not including simple procedures prescribed by the regulations that are carried out by legally qualified medical practitioners exclusively for the purpose of the diagnosis and treatment of their patients;

(d) "operator" means a person having charge or control of a laboratory;

(e) "regulations" means the regulations made under section 45n;

(f) "Review Board" means the Laboratory Review Board established under section 45b;

(g) "test" means a procedure for carrying out an examination referred to in clause c in a laboratory.

45a. The Minister shall appoint an officer of the Ministry to be the Director of Laboratory Licences for purposes of sections 45 to 45n.

45b. -(1) There shall be a Laboratory Review Board, which shall be composed of not more than five members, appointed by the Lieutenant Governor in Council who may designate one member as chairman.

(2) Three members of the Review Board constitute a quorum.

45c.-(1) The members of the Review Board who are not employed in the public service of Ontario shall be paid such remuneration and allowances as may be fixed by the Lieutenant Governor in Council in the appointment.

(2) No action or other proceeding for damages shall be instituted against the Director, any member of the
Review Board, or anyone acting under the authority of such Director or member of the Review Board for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty.

45d.—(1) No person shall establish, operate or maintain a laboratory except under the authority of a licence issued by the Director under this Act and the Director may issue a licence for a laboratory to perform such classes of tests and subject to such conditions as the Director may specify in the licence.

(2) Subject to subsection 3, any person who applies in accordance with this Act and the regulations for a licence to establish, operate or maintain a laboratory and who meets the requirements of this Act and the regulations and who pays the prescribed fee is entitled to be issued the licence.

(3) Subject to section 45f, the Director may refuse to issue a licence where in his opinion,

(a) there is no public need for the laboratory in the area where it is proposed to establish, operate or maintain the laboratory;

(b) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors affords reasonable grounds for belief that the laboratory will not be operated in accordance with the law and with honesty and integrity;

(c) the proposed laboratory or its operation would contravene this Act or the regulations or any other Act or regulation or any municipal by-law respecting its establishment or location;

(d) the applicant is not competent to operate a laboratory in accordance with this Act and the regulations;

(e) the equipment and premises are not suitable for the performance of the tests for which the licence is sought.

(4) The Director shall not refuse to issue a licence in respect of a laboratory in operation immediately
before this Act comes into force for the reason only that it does not qualify under clause a of subsection 3.

Provisional licence

(5) Where the applicant for a licence does not meet all the requirements for issuance of the licence and requires time to meet such requirements, the Director may issue a provisional licence for the laboratory.

Expiration and renewal of provisional licence

(6) A provisional licence expires six months after the date of its issue but may be renewed by the Director for two further six-month periods where in the opinion of the Director, sufficient progress in complying with the requirements for issuance of a licence has been made.

Expiration and renewal of licence

(7) A licence that is not a provisional licence expires twelve months from the date of its issue or renewal and a renewal shall be issued where the applicant is not disqualified under subsection 11.

Stay of refusal to renew

(8) Where the Director refuses to renew a licence, the laboratory shall be deemed to continue to be licensed until an order is made by the Review Board or until the time for requiring a hearing by the Review Board expires, whichever occurs first.

Operator to be named in licence

(9) It is a condition of a licence that the operation of the laboratory be under the charge and control of the operator named in the licence as operator and that the ownership of the laboratory be only in the persons named in the licence as owners.

Notice of changes

(10) Where the operator or the owner named in the licence is a corporation, the corporation shall notify the Director in writing within fifteen days of any change in the officers or directors of the corporation.

Revocation or suspension of licence

(11) The Director may revoke or refuse to renew a licence where,

(a) any person has made a false statement in the application for the licence or a renewal thereof or in any report, document or other information required to be furnished by this Act or the regulations or any other Act or regulation that applies to the laboratory;

(b) any test authorized by the licence is incompetently performed;
(c) there is a breach of a condition of the licence;

(d) the owner or the operator does not comply with this Act or the regulations;

(e) the services that can be provided by the laboratory are misrepresented; or

(f) a change in the officers or directors of any corporation which is an operator or owner of a laboratory named in the licence would afford grounds for refusing to issue a licence under clause 6 of subsection 3.

45e.—(1) Where the Director issues a licence under this Act and any party to the proceeding is dissatisfied with the terms and conditions thereof prescribed by the Director, he may by written notice given to the Director and the Review Board require a hearing by the Review Board, and the Review Board shall appoint a time for and hold a hearing.

(2) Pursuant to a hearing under subsection 1, the Review Board may affirm the terms and conditions prescribed for the licence by the Director or may cancel such terms and conditions or may prescribe such other terms and conditions for the licence in the place of those prescribed by the Director as it considers proper and such terms and conditions shall be terms and conditions of the licence.

45f.—(1) Where the Director proposes to revoke or to refuse to issue or renew a licence under this Act, the Director shall serve notice of his proposal, together with written reasons therefor, on the applicant in the case of a proposal to refuse to issue or renew and on the owner and operator in the case of a proposal to revoke.

(2) A notice under subsection 1 shall inform the applicant or the owner and operator that he is entitled to a hearing by the Review Board if he mails or delivers, within fifteen days after the notice under subsection 1 is served on him, notice in writing requiring a hearing by the Review Board and he may so require such a hearing.

(3) Where the applicant or the owner and operator do not require a hearing by the Review Board in
accordance with subsection 2, the Director may carry out the proposal stated in the notice under subsection 1.

(4) Where an applicant or an owner or operator requires a hearing by the Review Board in accordance with subsection 2, the Review Board shall appoint a time for and shall hold the hearing and, on the application of the Director at the hearing, may by order direct the Director to carry out his proposal or refrain from carrying out his proposal and to take such action as the Review Board considers the Director ought to take in accordance with this Act and the regulations, and for such purposes the Review Board may substitute its opinion for that of the Director.

(5) The Review Board may extend the time for the giving of notice requiring a hearing by an applicant or an owner or operator under this section either before or after the expiration of such time where it is satisfied that there are prima facie grounds for granting relief to the applicant or the owner or operator pursuant to a hearing and that there are reasonable grounds for applying for the extension, and the Review Board may give such directions as it considers proper consequent upon the extension.

(6) Where, within the time prescribed therefor or, if no time is prescribed, before the expiry of the licence, the owner or operator has applied for renewal of the licence and paid the prescribed fee, the licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) where he is served with notice that the Director proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing by the Review Board has expired and, where a hearing is required, until the Review Board has made its decision.

45g.—(1) The Director, the applicant or the owner or operator who has required the hearing and such other persons as the Review Board may specify are parties to proceedings before the Review Board under this Act.

(2) Notice of a hearing under section 45f shall afford the applicant or the owner or operator a reasonable
opportunity to show or to achieve compliance before
the hearing with all lawful requirements for the issue
or retention of the licence.

(3) Any party to proceedings under section 45f shall be afforded an opportunity to examine before the hearing
any written or documentary evidence that will be
produced or any report the contents of which will be
given in evidence at the hearing.

(4) Members of the Review Board holding a hearing
shall not have taken part before the hearing in any
investigation or consideration of the subject-matter of the hearing and shall not communicate directly
or indirectly in relation to the subject-matter of the hearing with any person or with any party or his
representative except upon notice to and opportunity
for all parties to participate, but the Review Board
may seek legal advice from an adviser independent
from the parties and in such case the nature of the advice should be made known to the parties in order
that they may make submissions as to the law.

(5) The oral evidence taken before the Review Board at a hearing shall be recorded and, if so required,
copies of a transcript thereof shall be furnished upon
the same terms as in the Supreme Court.

(6) The findings of fact of the Review Board pursuant to a hearing shall be based exclusively on evidence
admissible or matters that may be noticed under

(7) No member of the Review Board shall participate in a decision of the Review Board pursuant to a
hearing unless he was present throughout the hearing and heard the evidence and argument of the parties
and, except with the consent of the parties, no
decision of the Review Board shall be given unless all members so present participate in the decision.

(8) Documents and things put in evidence at a hearing shall, upon the request of the person who pro-
duced them, be released to him by the Review Board within a reasonable time after the matter in
issue has been finally determined.

45k.—(1) Any party to the proceedings before the Review Board may appeal from its decision or order to the
Supreme Court in accordance with the rules of court.
(2) Where any party appeals from a decision or order of the Review Board, the Review Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Review Board's record, shall constitute the record in the appeal.

(3) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

(4) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Review Board and may exercise all powers of the Review Board to direct the Director to take any action which the Review Board may direct him to take and as the court considers proper and for such purposes the court may substitute its opinion for that of the Director or of the Review Board, or the court may refer the matter back to the Review Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

45i. Except where otherwise provided, any notice required by sections 45 to 45n to be served may be served personally or by registered mail addressed to the person to whom notice is to be given at his latest known address and, where notice is served by registered mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice until a later date.

45j. Every owner and operator shall ensure that no tests are performed in the laboratory other than tests authorized by the licence, and no person employed in the laboratory shall knowingly participate in such tests.

45k. No person shall advertise or cause to be advertised the services of the laboratory, but any person may notify such classes of persons as are specified by the regulations respecting,

(a) the name and address of the laboratory;
(b) laboratory employees and the tests that are authorized to be performed under the laboratory licence;

(c) the laboratory equipment and premises and list of procedures and tariff;

(d) information as to new tests provided.

45/. (1) The Minister may appoint one or more persons as inspectors for the purposes of sections 45 to 45n and the regulations and such appointments shall be in writing.

(2) The Minister shall issue every inspector appointed under subsection 1 a certificate of his appointment and every inspector, in the execution of his duties under this section and the regulations, shall produce his certificate of appointment upon request.

(3) An inspector may at all reasonable times inspect the premises, operations, all records and test samples of all laboratories to ensure that the provisions of sections 45 to 45n and the regulations are complied with.

(4) Upon an inspection under this section, the inspector may upon giving a receipt therefor remove any material referred to in subsection 3 that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person being inspected.

(5) Any copy made as provided in subsection 4 and purporting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as prima facie proof of the original.

(6) No person shall obstruct the inspector or withhold or destroy, conceal or refuse to furnish any information or thing required by the inspector for the purposes of the inspection.

45m.—(1) Any person who contravenes any provision of sections 45 to 45l or the regulations made under section 45n is guilty of an offence and on summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.
(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is $5,000 and not as provided therein.

45n. The Lieutenant Governor in Council may make regulations,

(a) providing for the issuance and renewal of licences and provisional licences and prescribing terms and conditions thereof;

(b) prescribing simple laboratory procedures for the purpose of clause (c) of section 45;

(c) prescribing classes of tests for the purposes of this Act and the regulations;

(d) respecting the officers, staff and employees of laboratories and prescribing their duties, responsibilities and qualifications;

(e) prescribing the classes of persons who may perform tests in a laboratory;

(f) prescribing classes of persons who shall not be owners of laboratories or of any interest therein;

(g) respecting the management and operation of laboratories and requiring laboratories to keep such records and make such reports as are prescribed;

(h) specifying classes of persons whom laboratories may notify respecting their services;

(i) prescribing forms and providing for their use;

(j) prescribing fees for licences, provisional licences and renewals and for laboratory services performed by the Ministry;

(k) exempting laboratories or any class thereof or any class of persons from any provisions of this Act or the regulations;

(l) prescribing tests to which this Act does not apply;
(m) prescribing other duties and powers of the Director and the Review Board, including the approval of educational qualifications of officers, staff and employees of laboratories;

(n) instituting a system for the payment by the Province of all or any part of the annual expenditures of laboratories in lieu of amounts payable under The Health Insurance Act, 1972. 1972, c.91.

5. Section 125 of the said Act is amended by adding thereto the following subsection:

(4) Sections 14 to 17 of the by-law in Schedule B do not apply in areas in which Part VII of The Environmental Protection Act, 1971 is made applicable under section 103 of the said Act.

6.-(1) This Act, except subsection 1 of section 1 and sections 2 and 4, comes into force on the day it receives Royal Assent.

(2) Section 2 shall be deemed to have come into force on the 1st day of April, 1972.

(3) Subsection 1 of section 1 and section 4 come into force on a day to be named by the Lieutenant Governor by his proclamation.

7. This Act may be cited as The Public Health Amendment Act, 1972.