

## **Plenary Session 1: Public Health Legal Preparedness—Are We Ready?**

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**Dr. Ron St. John**

*Director General, Centre for Emergency Preparedness and Response, PHAC*

Dr. Ron St. John, Director General of the Centre for Emergency Preparedness and Response, PHAC, thanked the organizers for this opportunity to discuss public health law.

Dr. St. John read the panellists a fictitious but biologically possible scenario involving pandemic influenza, which has been the subject of much thought and preparation.

On Day 1 of Dr. St. John's scenario, there have been reports of clusters of human-to-human transmission of an avian, influenza-like illness in Southeast Asia for two weeks.

The captain of Flight No. 346 to Vancouver radios ahead to warn of a passenger with a high fever, cough, and difficulty breathing. The World Health Organization (WHO) sends a team to investigate. Because the flight is full, the sick woman cannot be isolated. Public health officials meet the plane upon landing and perform a health assessment. The woman is taken to hospital.

**Jane Allain**

*General Counsel, Justice Canada and PHAC*

Jane Allain, General Counsel, Justice Canada and the PHAC, noted that the *Quarantine Act* is triggered by a suspicion or diagnosis of a communicable disease that is significant to public health. She clarified that the quarantine officer had the authority to do an external health evaluation, including vital signs, temperature, and heart rate, and to determine the need for quarantine on that basis. This would be followed by a more thorough medical exam, which could include taking blood samples. The pilot was fulfilling the airline's duty to inform officials of a sick or dead passenger on-board.

**Allison Stuart**

*Director, Emergency Management Unit, Ontario Ministry of Health and Long-Term Care*

Allison Stuart, Director, the Emergency Management Unit, Ontario Ministry of Health and Long-Term Care (MHLTC), began with a disclaimer, informing those present that she is not a lawyer and was not delivering legal advice. She said that officials in Ontario,

having received word of the situation, would have been monitoring new developments and ensuring that provincial and local surveillance activities and response systems were in place. They would have been in contact with the Ministry of Agriculture, Food and Rural Affairs (MOAFRA) to ensure the elaboration of inter-ministry measures.

**Dan Stier**

***Public Health Analyst, Public Health Law Program, US Centres for Disease Control and Prevention***

Dan Stier, Public Health Analyst, the Public Health Law Program, US Centres for Disease Control and Prevention (CDC), said that powers similar to those under the *Quarantine Act* exist in the US. He echoed Ms. Stuart's legal disclaimer.

Ms. Allain said that if, after the medical assessment, the passenger had refused to go to the hospital, this would have triggered her right to counsel, and the officer would have had to obtain a court order to force her to undergo the medical exam. An order would require proof that there was a risk to public health and that there was no other means to control that risk. The passenger had a right to an examination by the medical practitioner of her choice if this did not cause significant delays.

Dr. St. John continued the scenario. The quarantine officer determines that the passenger originated from one of the South Asian countries classified as high-risk by the WHO. Her flight was en route to Vancouver via Los Angeles, where some passengers disembarked and some new ones embarked. Health officials find no signs of illness among the other passengers. Of 174 passengers, 134 are Canadian with residency in several different provinces, and 40 are non-residents including tourists, business travellers, and new immigrants.

The rapid flu test performed at the hospital reveals that the sick woman is infected with Influenza A, but lab results indicating the exact strain will take four days. The Canadian passengers are told to return to their provinces of residence and report to their provincial health authorities. The non-Canadians are told to remain in their hotels for the next five days. Twenty-five people from Los Angeles return to the US.

Ms. Allain confirmed that officers have the authority to collect information, including medical and travel history, and that refusal to provide this information is an offence. The act also provides explicit authority to command people to report to their local public health departments. People so directed remain under federal control. The public health department is notified of the order, and if the person fails to appear at the designated time, the department alerts federal authorities, who serve the person with a warrant.

Ms. Allain pointed out that officers would make the same assessment for Canadians as for non-Canadians; if Canadians are allowed to return home, non-Canadians are permitted to do so as well. The quarantine officer can share information with provincial and US authorities once the person concerned has been alerted that this information is being disclosed.

Dr. St. John explained why the other passengers were released: if this were the first indication of the arrival of H5N1, authorities would consider that more infected persons might arrive on incoming flights as well. With 3000–4000 people per day arriving in Vancouver from Asia, a quarantine policy for all co-passengers of an infected person would quickly overwhelm local resources.

Mr. Stier described the US response at this point. At the federal level, there is a proposed Communicable Diseases Regulation, which updates, strengthens and clarifies the older regulation. Though it is not technically in effect, the CDC would adopt it as an interim final regulation in an emergency situation. The CDC would communicate closely with health departments, including those in California, regarding the state of returning passengers. As in Canada, state and local health departments are very involved in contacting and tracing identified persons. State and federal bodies have similar authority to issue a detention order, and the CDC can order a quarantine of up to three days without a hearing.

Ms. Stuart said Ontario would be using its *Health Promotion and Protection Act* (HPPA), which allows public health units to take steps appropriate to the management of any possible public health outbreak. The province would pass information about returning passengers to its local public health departments. The first priority would be to get a case definition.

On Day 4 of Dr. St. John's scenario, lab results confirm that the sick woman is infected with an H5N1 strain that has developed the capacity for rapid human-to-human transmission. The passenger dies.

Ms. Allain stated that the WHO and provincial and US public health authorities would be notified.

Mr. Stier reiterated the significance of activities at the state level. Ongoing cooperation between states and provinces is as critically important as communication at the federal level. The Great Lakes Border Health Initiative (GLBHI), for example, enables Ontario to share health data and lab information with Michigan, New York, Minnesota, and Wisconsin.

Dr. St. John said the incubation period of this infection is two to seven days. On Day 4, an emergency room doctor informs Toronto Public Health that 10 patients with flu-like symptoms have been seen, three of whom have been hospitalized. Lab tests are pending. All three hospitalized patients report travelling to the same country the infected woman originated from. All three were on her flight, and all three returned to Toronto from Vancouver on Flight No. 003. The doctor says the emergency room (ER) has been crowded all day, and it's impossible to know how many people have been exposed.

Ms. Stuart stated that the HPPA, not Ontario's emergency measures, still would be in force at this stage, because the legislation for emergency powers is not intended for anticipated emergencies. The local public health unit would initiate contact tracing, and other units would be called in for support when needed. Officials would ask people who

had been in the ER that day to go into self-imposed quarantine at home. Efforts would be made to obtain the flight manifest for Flight No. 003, probably without success (health officials are still waiting for some of the manifests from SARS). The Ministry would ensure the availability of antivirals on the ground, and provincial officials would discuss whether to use them for prophylaxis as well as treatment.

Communication would continue to be of utmost importance. Contiguous states would be informed of the developments, a health notice would be issued to the local health care sector, and daily press conferences would be initiated, with careful attention paid to who delivers what information to the public. Ms. Stuart noted that officials still would be trying to develop a good case definition with solid information and numbers to provide to the media, while also briefing the media about how case definitions shift in these situations.

Mr. Stier said that, at this stage, there would be increased coordination between state and federal authorities in the US and especially between Ontario and Michigan. The GLBHI is funded by health authorities to develop early-warning infectious disease surveillance systems and that Michigan receives most of this funding because it records the highest number of legal border crossings.

Ms. Allain stated that the provinces would have no mandatory obligation to report to the federal government at this point, though there is a long history of cooperation between levels of government in such situations. The *Quarantine Act* would not yet be applicable, and the federal government would have no power to compel the release of the flight manifest for the Toronto flight. Dr. St. John clarified that this is because the *Quarantine Act* applies only to ports of entry, not to domestic travel. Ms. Stuart said that Ontario would have the power to request the flight manifest under HPPA and would be using the provincial emergency operation centre to get it. Airlines usually cooperate with these requests, but flight manifests are only kept on the database for 48 hours, after which they become very difficult to locate.

In contrast to Canada, Mr. Stier said, US law gives the CDC authority over travel between states. In addition, regulations for the availability of flight manifests are much stronger, though this adds substantial costs to the already struggling airline industry.

On Day 12, clusters of influenza-like cases are reported in Sudbury, Windsor, and Montreal, but none are reported in the US or by any other G8 countries. The WHO asks Canada to institute exit screening at departure points, a measure agreed upon by the global public health community as a way to delay the spread of infectious disease. What constitutes exit screening in this case, however, has yet to be defined, and officials expect the WHO to make specific recommendations to Canada.

Ms. Allain said federal powers, including the authority, then would come into play to give interim orders about how passengers are to embark and disembark. The Minister would need to consider whether to bring in new emergency orders. The authority prevents or bars certain classes of persons from designated areas, but the threshold is that

there are no other means to prevent the spread of this disease. An alternative might be to restrict travel only from particular areas. When a sick person is identified at a point of departure, the powers of detention are the same as those for entry. Airport officials would refer the sick person to the local health authority.

Ms. Stuart noted that this line of communication would present a challenge to the province, because the airport authority would inform only the local health unit, and the province might not get the information until the local public health authority provided it.

Mr. Stier said that under the proposed CDC regulations, airports are required to set aside facilities for quarantine. Ms. Allain added that the Minister can request that owners of private property, such as hotels, set aside space for quarantine. In these cases, the Ministry is obligated to pay reasonable compensation for losses such as loss of revenue and decontamination costs.

On Day 30, multiple outbreaks are reported in five provinces, and it is apparent that public education on prevention measures and requests for voluntary quarantine are not sufficient to contain the spread of the virus. This new strain of H5N1 has retained its virulence while acquiring a new ability for sustained, efficient, human-to-human transmission. Forty-five percent of infected persons have died, Ontario and Quebec have declared provincial emergencies, the Prime Minister is growing concerned, and Cabinet has met.

Ms. Stuart said an emergency declaration would enable a province to make available all needed resources to reduce the impact of the outbreak. Ministry and provincial emergency operations centres would be fully activated. Communications with health care providers would emphasize their role in managing infection and prevention. Officials would consider prophylaxis for health care providers as well as safety equipment such as NIOSH 95 respirators instead of face masks. Flu centres, as described in the pandemic plan, would be operational.

The province would work closely with suppliers, because after four weeks the province would assume the duty to provide supplies from health organizations. Because antivirals are stored centrally, the Ministry would initiate distribution throughout the province. Authorities might stop contact tracing—at a certain point, it ceases to reveal new, useful information and uses too many resources.

Ms. Stuart noted the importance of communication between Ontario officials and their counterparts in other provincial, territorial, federal, and contiguous levels. Such communication would ensure that all parties employ similar measures, because the public would be looking for a coordinated response.

Ms. Allain stated that Cabinet would consider declaring a public welfare emergency under the federal *Emergencies Act*. She said the threshold for such a declaration is very stringent. It requires a situation which

- Involves a real disease in humans that may result in danger to life or property;

- Is urgent and critical, and of a temporary nature;
- Endangers the lives and health of Canadians;
- Exceeds the capacity and authority of the provinces;
- Can be effectively addressed by no other Canadian law.

In addition, Cabinet would have to consult with the provinces, because it could not take any action that would unduly hamper the provinces' ability to deal with the situation. Most of the powers in the act exist only in war emergencies, and the powers in a public welfare emergency are limited to very precise and regulated actions such as regulating travel, setting up emergency hospitals and making emergency payments.

Mr. Stier said that similar powers exist in the US. An emergency may be declared by the President, the Secretary of Public Health, or state governors. Depending on the type of emergency, such a declaration triggers a flow of assets into affected states. He added that the US would hope for cooperation between states and provinces and for the development of agreements to share lab information, equipment, and supplies for mutual benefit.

Dr. St. John concluded that in the end, Canadian public health would triumph over the pandemic.

## **Questions and Discussion**

A public health physician commented that Ontario still has two weak links when it comes to containing pandemic influenza: institutional reporting to public health authorities and voluntary quarantine. Post-SARS surveys reveal that fewer than 50 percent of people complied with voluntary quarantine. Also, the legal process for dealing with breaches of quarantine orders is too time-consuming.

A second participant asked about the liability of public health workers when using or misusing these instruments. Because Influenza A incubates for days, a sick passenger who is identified might be only one of many infected persons to have entered Canada. In this case, is quarantining the sick passenger a misuse of the instrument and open to liability?

Ms. Stuart replied that Ontario does not see the use of quarantine as a significant plank in any response. Mr. Stier added that public health lawyers advise authorities to use the law only if it is effective and to know the facts upon which they are basing their exercise of authority, because inappropriate use will open authorities to liability. Ms. Allain concluded that use is appropriate only if all other powers and measures have been considered.

A participant from Peel Region Public Health remarked that her region is home to Canada's largest airport. She asked panellists whether the quarantine officer would have an obligation to notify the hospital and the transport provider of the suspected risk when transferring an identified person to the hospital. She also requested a more detailed

explanation of how the quarantine officer would notify local and provincial public health offices.

Ms. Allain responded that the officer would alert provincial public health authorities and local health authorities—including the public health department and the hospital—when transferring the patient. Dr. St. John added that preparations for the *Quarantine Act* have included work with six airports across Canada to map out protocol.

Another participant asked what would have happened if the sick woman had arrived with a partner and four children. Also, once lab results were received, would Tamiflu have been considered for co-passengers?

Dr. St. John answered that the use of prophylaxis in other passengers would have been the subject of a teleconference, because the national influenza medication stockpile is distributed throughout the provinces, taking into account high-risk groups.

Ms. Allain said the woman's children and partner would have been treated in the same way as any other traveller: if a health assessment revealed no illness, they would have been allowed to proceed to their destination but required to report to the local public health authority. Even if a person is coming from a Level 4 area and has been living closely with someone who is symptomatic, the Medical Health Officer would have to consider whether there is any other option before quarantining. Dr. St. John said home care is seen as the best standard.