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March 29, 2004

The Honourable Pierre Pettigrew
Health Protection Legislative Renewal
Health Canada
Address Locator: 0700A, Tunney's Pasture
Ottawa, Ontario K1A 0L2

To: The Honourable Pierre Pettigrew

**Re: Canada Health Protection Act - A Proposal to Renew Federal
Health Protection Legislation**

Dear Minister:

The Ontario Public Health Association (OPHA) is a volunteer, non-profit organization that does research, education and advocacy on issues that impact on the health of the public. Our members, who are public health nurses and nutritionists, health promoters, health inspectors, epidemiologists, toxicologists, researchers, policy analysts and doctors who work in public health departments and community health centres across Ontario, are very interested in Health Canada's proposal to renew Canada's Health Protection Legislation.

Our Board-endorsed comments reflect the views of approximately 40 public health professionals representing five provincial Health Units who participated in a series of workshops and meetings that were jointly organized by the OPHA and Toronto Public Health on Health Canada's proposal. This submission includes an attachment that builds on the points of mutual agreement between the OPHA and Toronto Public Health as identified through a collaborative consultation process on the proposed changes as outlined in *Health and Safety First! A Proposal to Renew Federal Health Protection Legislation* and its companion document *Health Protection Legislation Renewal - Detailed Legislative Proposal*.

OPHA participated in the initial stages of this legislative review process in 1998/1999, has invested significant time and resources into this stage of the process and has encouraged individual members to respond directly to the proposal via the Health Canada website. This level of involvement together with our collaboration with Toronto Public Health has resulted in an extensive response to Health Canada's request for comments on the draft proposal. However, the breadth, scope and complexity of the issues involved in the proposed

legislative changes are such that our thinking continues to evolve.

Canada's existing health protection legislation is old, somewhat fragmented and has gaps. Its renewal is long overdue and presents a valuable opportunity to reflect and make use of developments in health protection strategies, technology, the law, thinking on the role of governments, and increasing globalization of the world in which we live. We agree with the purpose and intent of the proposed Act, and to varying degrees with its content ([see attachments](#)). However, our membership continues to debate whether this particular framework sufficiently incorporates some public health principles that are fundamental to the protection of Canadians. We would also like to ensure that the Canadian Standards System develops so that opportunities for new standards can be fully realized and developed.

Some concerns that lie at the heart of this debate are outlined below.

The Term "Health" Must be Defined

While the difficulty in defining health and the limitations of operating with a specific, set definition are appreciated, many OPHA members commented on a need for a definition. Reasons cited were:

- the potential for of inconsistent application of the legislation;
- an open door for interest groups to promote the definition that suits their purposes;
- difficulty in understanding the full implications of the current proposal; and
- a lack of consistency with respect to what constitutes health both within this legislation and across all Canadian legislation that pertains to health.

The Protection of Health Requires a Proactive Approach

A proactive approach to health protection incorporates the Precautionary Principle, which stipulates that where there is the threat of harm, the absence of full scientific certainty should not be used to postpone decision-making. As an emerging and evolving policy approach, the intention and purpose of this principle has been clearly articulated. However there exists no clear, commonly accepted structure for its application in public health decision-making. The renewal of Canada's health protection legislation is a valuable opportunity to clarify the application of this principle to health protection and its relationship to existing risk assessment and risk management tools. While the proposed Act endorses the use of a precautionary approach, it is not specific or universal in its definition and application of that approach. Specific concerns are:

- the lack of an explicit plan as to how the precautionary approach will be implemented;
- the use of vague and potentially limiting language with respect to public participation in risk assessment and management (e.g., the use of sound scientific and objective observation "solely" to assess risk and consideration of the desires of individual Canadians when they are in a "reasonable position" to make an informed choice - in sections A2.3.1 & A2.3.2.3 of the proposal); and
- the omission of precautionary considerations in the risk assessment process as outlined in the proposal.

Regulatory Control Over Issues of Product Safety is Essential

It could be very useful to add a General Safety Requirement to the product safety regulations, but this requirement should not be used as an alternative to proactive regulatory action. The use of the phrase "undue risk" is of great concern as it is both vague and, in the current proposal, not explicitly linked to the concept of the precautionary principle in the risk assessment and risk management

processes. The assumption by Health Canada that most manufacturers are responsible and that government oversight is necessary only for producers deemed "irresponsible" is troubling also. The proposed Act appears to open the door for the adoption of industry standards as substitutes for regulation, something that appears to reflect a de-regulatory tendency. We are concerned about the use of industry standards and practices because they may not originate in Canada, are often developed without active government and public participation, and can be inherently biased toward the promotion of economic interests. In addition to the confusion that would result about which standard applies where, it creates a situation in which the federal government cannot be held accountable. This is inappropriate in legislation designed to protect human health.

The OPHA will continue to reflect on Health Canada's proposal and hopes to remain actively involved in this process as it progresses. We want to thank you for giving us the opportunity to comment. If you have any questions about these comments, please feel free to contact us.

Yours sincerely,

David MacKinnon
Executive Director, OPHA

cc Federal Minister of the Environment