

Quarantine

Introduction

Quarantine and isolation are essential defences against infectious disease outbreaks. Public health officials must have the power to isolate those who are infected and to quarantine those who may have been exposed to infection and may be infectious to others.²⁴²

It is a great tribute to health care workers and the public that virtually all the quarantine and isolation during SARS took place voluntarily. Many thousands of people were quarantined in the greater Toronto area, enduring 10 days or more of home isolation.

It was necessary in only a handful of cases to resort to formal orders under the *Health Protection and Promotion Act*. Only 27 orders were issued in Toronto. It is a heartening demonstration of public cooperation, and a remarkable tribute to the public spirit of so many people, that so few formal orders were necessary.

The remarkable story of those who suffered quarantine without complaint will be told in the Commission's final report which will also address a number of concerns expressed about the administration of the quarantine powers. This interim report on legislative change will examine the legal machinery of quarantine in light of SARS and recommend some amendments to the *Health Protection and Promotion Act*.

Public Cooperation

Before turning to legal powers it must be emphasized that any fight against infectious disease depends above all on public cooperation. Without public cooperation, laws are little help.

242. The word "quarantine" has a technical legal meaning quite different from the ordinary meaning understood by everyone during SARS. This is discussed below.

SARS revealed an enormous spirit of public cooperation that has drawn the attention of foreign researchers. Of note are the findings of a major U.S. study of quarantine in Toronto that drew on a comprehensive series of interviews, telephone polls and focus groups. It concluded that civic duty, not fear of legal consequences, was the main motivator for those who observed quarantine:

Overall, 94% of the 195 quarantined health care workers in our Health Care Workers Survey said that the most important reason for complying was to reduce the risk of transmission to others. This was the principal motivation among non-health care workers as well; “protection of the health of the community” was cited by 50 of 68 general population poll respondents who were directly affected by quarantine, and the majority of interviewees and focus group participants cast this motivation as “civic duty.”

In general, fear of running afoul of the law played little role in compliance. None of the 68 General Population Survey respondents who were directly affected by quarantine said that their most important reason for complying was to avoid enforcement measures and penalties, and 24 of 30 respondents who had been quarantined and were aware of the penalties said that their knowledge of these penalties did not affect their decision to comply.²⁴³

What generated this remarkable level of civic duty? According to this U.S. study, some distinctive elements of Canadian society, including publicly funded health care, likely helped to promote high levels of quarantine compliance:

With the bulk of the Toronto SARS outbreak contained primarily in its health care facilities and among its health care workers, a centralized health care system (including employee pay and benefits) offered some advantages. These unifying aspects will not be in place in societies that rely heavily on private health care. Finally, while the overall quarantine compliance rate among residents of the GTA appears to have been high, the influence of “civic duty” and social responsibility may not be as significant in other countries and cultures.²⁴⁴

243. Published in *Biosecurity and Bioterrorism: Biodefense Strategy, Practice and Science*, Volume 2, Number 4, 2004, p. 267.

244. *Ibid.*, p. 271.

Added one expert from the Centers for Disease Control and Prevention in an interview with the Commission:

I really believe you were the model. It may not feel that way inside your silo, but you really did move boldly and swiftly. We are all forever grateful for that fact that when you did this, you treated your Canadian citizens with dignity and respect and a lot of people are starting to write on this in academia . . . The way you proceeded appeared to be transparent. It appeared to be open and I think it worked. The data is stunning. The data that the Toronto health people, Dr. Barbara Yaffe and Jane Speakman, present . . . We all know about civil liberties and the aggressive advocacy-driven U.S. civil liability system and the civil liberties ship that launched itself in 1954 in this country, we believed that there would be a much more hostile perception to quarantine. And so seeing your data is stunning. Why did it go so well?

Laws are only the last resort. Legal procedures are useless without overwhelming public cooperation of the kind demonstrated in SARS. While it is important to strengthen the legal machinery available to public health officials, it is even more important to strengthen the things that encourage public cooperation. It is essential to ensure that the spirit of cooperation shown during SARS is not taken for granted. It must be nurtured and promoted using the lessons learned from SARS as a guide.

Public cooperation depends on public confidence that public health decisions are made on an independent medical basis with the single-minded goal of protecting the public from infectious disease. Any perception that decisions are made for political or economic reasons will sap public confidence and diminish public cooperation. That is why it is so important to have the Chief Medical Officer of Health, with the assistance where necessary of other public officials, actually and visibly in charge of any public health emergency.

Public cooperation depends on public understanding of what is necessary and on public trust that the authorities are keeping everyone informed of what is happening. Dr. Garry Humphreys, Medical Officer of Health for Peterborough County and City, said at the Commission's public hearings:

It is important to have a willing cooperation of the community with regards to disease control through voluntary quarantine. This can only be achieved when the community is continuously kept informed.²⁴⁵

245. SARS Public Hearings, October 1, 2003, p. 17.

To that end, as recommended in the Commission's first interim report and repeated here, it is vital that an independent Chief Medical Officer of Health be front and centre in informing the public about important health issues like SARS. This avoids the perception of political interference and bureaucratic turmoil, fosters the trust between the public and those managing, and strengthens the community confidence so vital to the effective management of a public health emergency.

It is also vital that the public trust the judgment and expertise of the Chief Medical Officer of Health. The public will not follow an expert, no matter how much power he or she has, unless they trust both their motives and their abilities. This reinforces the need to enhance the Public Health Division to provide the Chief Medical Officer of Health with the best expert support and resources to make the right decisions, at the right times.

Compensation

In any emergency it is essential to compensate those who suffer an unfair burden of personal cost by reason of their cooperation with public health measures like quarantine.

While Ontario enjoyed high levels of quarantine compliance, it is vital that this not lead to complacency. SARS also revealed obstacles to compliance that may, if not adequately addressed, hamper the response to a future public health emergency, an influenza pandemic. In its interviews, telephone polls and focus groups, the U.S. study identified the following impediments to observance:

- Fear of loss of income;
- Poor logistical support;
- Psychological stress;
- Spotty monitoring of compliance;
- Inconsistencies in the application of quarantine measures between various jurisdictions; and
- Problems with public communications.²⁴⁶

246. Published in *Biosecurity and Bioterrorism: Biodefense Strategy, Practice and Science*, Volume 2, Number 4, 2004, pp. 267-70.

Fear of loss of income topped the list of concerns:

Fear of loss of income was of paramount importance. It was especially significant, according to our interviews, focus groups, and Health Care Workers Survey, for people who were unconvinced that their quarantine was necessary. This fear was the most common reason given to us for noncompliance or non-self-quarantine among people who were advised that they met quarantine criteria. And the fear was justified. Although some employers assured their employees at the outset that their pay would continue while they were in quarantine, others said it would not. The situation was even more disconcerting for those whose income came from part-time work, casual work, or self-employment.²⁴⁷

The federal and provincial governments provided a number of SARS compensation programmes.

On April 4, 2003, the federal government amended Employment Insurance regulations to make it easier for eligible workers to access EI benefits. A government news release stated:

The amendments remove the usual two-week waiting period for SARS-related cases. The requirement for a medical certificate will also be removed when the period involved is the SARS-related quarantine (currently 10 days).

The amended regulations apply to any SARS-related claims for EI sickness benefits where the period of quarantine has been imposed or recommended on the claimant by a public health official and the claimant was asked by the employer, a medical doctor, a nurse or another person in authority to quarantine himself/herself.²⁴⁸

On May 2, 2003, the federal government announced an income relief programme for health care workers who were not eligible for Employment Insurance but who suffered a loss of employment income because of being quarantined, isolated or contracting SARS. A government news release said:

247. *Ibid*, pp. 267-68.

248. HRDC, "Changes to EI Regulations related to Severe Acute Respiratory Syndrome (SARS)," April 4, 2003.

Weekly payments will be \$400 per week for full-time workers, and \$200 per week for part-time workers. A full-time worker is defined as a person who works the number of hours, days or shifts normally worked in a calendar week by a full-time worker in the same or similar occupation, and at the same or similar premises. A part-time worker is defined as a person who does not work full-time as described above. Eligible recipients will be able to receive a maximum of \$6,000 for a maximum period of 15 weeks. The program is retroactive to March 30, 2003.²⁴⁹

On May 28, 2003, the Government of Ontario announced financial aid for health care workers for income lost due to SARS. A government news release stated:

Eligible health care employees and physicians will be reimbursed for income lost due to SARS. This financial aid is expected to total up to \$190 million.²⁵⁰

On June 13, 2003, the Ontario government announced a compensation programme for individuals who were sick, isolated or gave care to someone directly affected by SARS, but who did not receive full pay from their workplace or from other sources. The programme provided an isolation payment of \$500 for full-time employees and \$250 for part-time employees. Those whose losses were greater could apply for more compensation. So could those who received partial payments from other sources. The maximum amount was \$6,000. A government news release said:

This program is open to employed and self-employed Ontario residents who lost income because they were isolated, sick with SARS, or gave care to someone directly affected by SARS for at least five days between March 14 and June 30, 2003. Individuals who received full pay from their workplace or from other sources for the time they were off work are not eligible for this program.

Individuals who received no income or benefits from their employer or other sources may be eligible for an isolation payment of \$500 (part-timers are eligible for a \$250 isolation payment.) Those whose losses

249. HRDC, "Government of Canada provides income relief to SARS affected health care workers," May 2, 2003.

250. Canada News Wire, "Eves government provides \$720 million in SARS assistance for health care workers, facilities and emergency services," May 28, 2003.

were greater than the isolation payment can apply for more assistance. Applicants will be required to submit appropriate documentation to support their claim and consent to the verification of information.

Those who received partial payment for the time they were in isolation may also be eligible. Any financial assistance provided by other sources will be deducted from the total claim e.g. Employment Insurance payment etc. Full documentation of losses is required with every claim. If any of the information is found to be untrue, appropriate action will be taken to recover any amounts already paid through the program.

The maximum amount of assistance under this programme is \$6,000. Full programme details are available with the application forms. For those who were ill or isolated and are in extreme, immediate financial hardship, help is available.²⁵¹

The Ontario SARS compensation programme was designed, as one government official put it,

... for people who had been quarantined and so have lost wages; they could come forward and claim two thousand dollars I think and five thousand dollars for health care workers ... It was a recognition that these people had obeyed a request and had suffered a loss because of it. We wanted to recognize ... and thank them for fulfilling their obligations as citizens, because these were people who were not even under a court order. It was just a request ... to stay home for 10 days.

Compensation packages, were not implemented until well into the outbreak. The impression also may have been created, whether intended or not, on April 16, 2003, that provincial compensation efforts would be limited.²⁵² Less than a week later, the government announced that workers would be reimbursed for any lost income as a

251. Canada News Wire, "Eves government acts to compensate people affected by SARS," June 13, 2003.

252. An April 16, 2003, report on the CBC stated: "Ontario Premier Ernie Eves says governments can't afford to compensate every person or business affected by SARS ... [Eves] warned that governments can't afford widespread compensation for the economic impact of SARS. 'If we start to write cheques to every single individual that has any economic impact as a result of SARS you can see what the result would be. The bill would be tens of billions, perhaps even more than that,' said Eves." (Source: CBC, "Eves considers tax relief for SARS losses," 16 April 2003).

result of being in quarantine. Premier Ernie Eves said:

“I am giving you my word that any Ontarian who has lost wages because they’ve been asked to go into quarantine by public health officials will be fully compensated,” Eves said as he took the unusual step of attending the daily SARS briefing held by health officials.

“People will not have to choose between doing the right thing and putting food on their table.”²⁵³

As noted in the U.S. study referred to above:

The provincial government’s initial approach did not assuage these concerns. There were no plans in place that could provide assistance to those in quarantine, and when the issue was raised, the provincial premier dismissed compensation packages as being unfeasible. In addition, the province’s Workplace Safety and Insurance Board, which administers the workers’ compensation system, announced that only those who developed symptoms of SARS and were infected at work would be eligible for compensation. This meant that the vast majority of those in quarantine would not receive workers’ compensation for their time away from work. On April 24, the premier reversed his position on compensation and said, “People will not have to choose between doing the right thing and putting food on the table.” This new position, however, was not accompanied by any immediate, concrete action.

Compensation was not addressed until May 27, when the province announced a C\$190 million compensation package for health care workers who had lost wages due to SARS. It was not until June 13 that a similar “compensation allowance” was announced for non-health care workers who had missed work due to quarantine or caring for someone else in quarantine.²⁵⁴

Despite criticism that it took too long to bring forward an appropriate compensation package, some observers suggest that the compensation system, once in place, was

253. Canadian Press, “Ontario to compensate those quarantined by SARS,” April 25, 2003.

254. Published in *Biosecurity and Bioterrorism: Biodefense Strategy, Practice and Science*, Volume 2, Number 4, 2004, p. 268.

largely responsible for the success of the voluntary quarantine programme. Dr. James Young has said that compensation for those quarantined was a vital element of Ontario's response to SARS:

During SARS, we were using quarantine for the first time in 50 years. One of the important things in using quarantine was getting people to abide by it. One of the important ways of getting people to abide by it was by offering financial compensation so they would in fact abide by it and stay in quarantine if and when they were ordered by the medical officer of health. We got approval from the Ontario government to institute a quarantine program and to pay people for that. That resulted in us being able to manage the quarantine in an effective manner.²⁵⁵

The message is that it is important to plan in advance for the compensation of those whose cooperation in the emergency effort is so vital. It is impossible to predict in advance exactly what form and level of compensation is necessary and affordable for every conceivable emergency. But it is possible to require by legislation that every government emergency plan include a basic blueprint for the most predictable types of compensation packages. And it is possible to legislate that compensation, in a form and amount to be decided by the government.

Recommendation

The Commission therefore recommends that:

- **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.**

Adequate Support Systems

Public confidence also requires that those who make personal sacrifices by isolating themselves from their friends and family get adequate support from the system that

255. Justice Policy Committee, Public Hearings, August 3, 2004, p. 10.

restricts their freedom. Whatever legal authority there is for quarantine, it will only work if emergency response plans provide adequate and timely information and support.

The U.S. study noted:

Communications to the public from the government regarding quarantine's concept, rationale, and rules received mixed reviews in our polls, focus groups, and interviews and in the government's own assessment. Challenges arose from the lack of information about the new disease of SARS and the uncertainties of its future course. Another source of confusion was inconsistency in the definitions of "probable cases," "suspect cases," and "cases under investigation" employed by public health officials and the World Health Organization. For example, on May 28, 2003, at the beginning of the second SARS outbreak in Toronto, an official reported the total number of probable SARS cases in the Toronto area as 11; but, under questioning, another senior public health official revealed that the real number was somewhere between 23 and 48. In addition, the tendency of the media to report cumulative cases of SARS rather than changes in the number of new cases gave the appearance that the outbreak was spiraling higher when in fact it was ebbing. Another major problem involved the government's use of the term "voluntary quarantine," because it suggested that compliance was at the discretion of each person. Officials told us they initially believed that people would be more willing to comply and less likely to "panic" with use of the adjective "voluntary," but, in retrospect, they realized they should have avoided that word.²⁵⁶

Many of those interviewed by the Commission who were placed in quarantine raised concerns about the lack of information and support. Hawryluck²⁵⁷ made similar findings in their survey of 129 quarantined individuals²⁵⁸:

256. Published in *Biosecurity and Bioterrorism: Biodefense Strategy, Practice and Science*, Volume 2, Number 4, 2004, p. 269.

257. Hawryluck L, Gold WL, Robinson S, Pogorski S, Galea S, and Styra R. SARS control and psychological effects of quarantine, Toronto, Canada. *Emerg Infect Dis* [serial on the Internet]. 2004 Jul [date cited]. Available from: <http://www.cdc.gov/ncidod/EID/vol10no7/03-0703.html>.

258. Similar findings were cited by researchers in Toronto and New York, who conducted a web-based survey open to anyone who was quarantined during SARS in Toronto. A total of 129 individuals volunteered to participate.

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During the outbreak, nearly 30% of respondents thought that they had received inadequate information about SARS. With respect to information regarding home infection control measures, 20% were not told with whom they could have contact; 29% did not receive specific instructions on the use and disinfection of personal items, including toothbrushes and cutlery, 77% were not given instructions regarding the use and disinfection of the telephone.²⁵⁹

The Hawryluck study also found:

Those who did not think that they had been well-informed were angry that information on infection control measures and quarantine was inconsistent and incomplete, frustrated that employers (health care institutions) and public health officials were difficult to contact, disappointed that they did not receive the support they expected, and anxious about the lack of information on the modes of transmission and prognosis of SARS.

This is not to criticize the remarkable work done by overworked public health workers struggling to cope without a plan, without preparation, and without adequate resources. The problems were systemic, not personal or professional.

The U.S. study found that the stigma of quarantine persisted for many people long after they had left quarantine:

Being the target of stigma was reported by 17 of the 43 quarantined persons in our General Population Survey, and 68% of the 195 quarantined health care workers reported that stigma affected them or someone close to them. Focus group participants who were quarantined reported that they and their families often felt stigmatized, even after the 10-day period of quarantine ended. They reported unwanted attention, ridicule, avoidance, and withdrawn invitations from such social events as children's birthday parties and family reunions. Their children were unwelcome in some daycare centers, and some spouses of quarantined health care workers were sent home from work. Because of this treatment,

259. Hawryluck L, Gold WL, Robinson S, Pogorski S, Galea S, and Styra R. SARS control and psychological effects of quarantine, Toronto, Canada. *Emerg Infect Dis* [serial on the Internet]. 2004 Jul [date cited]. Available from: <http://www.cdc.gov/ncidod/EID/vol10no7/03-0703.html>.

participants said they became reluctant to tell others that they had been in quarantine.²⁶⁰

Whatever legal authority there is for quarantine, it will only work if emergency response plans provide the resources and machinery to help those who must go into quarantine.

The Commission heard countless stories of family members and neighbours providing the support necessary to enable those under quarantine to be compliant. As one woman under quarantine described the experience:

Nobody worked. Nobody went to work, nobody went to the grocery store, nobody did anything. We had neighbours that were delivering groceries.

For those individuals with children at home, the hardship and stress of quarantine proved to be even more overwhelming. One health care worker with small children at home, described the hardship of quarantine:

... you are completely detached from everybody, okay? I'm a single parent. I don't have anybody to get my groceries for me ... So to be locked up 10 days in the house for me, with my kids. I have nobody to take care of them. I have nobody to bring me my groceries, I relied on the kindness of my friends time after time after time.

In one story told to the Commission, the need to ensure the well-being of a child clashed with the need to comply with quarantine. The woman's young child became ill while the mother was under quarantine. An ambulance was called and the child was taken to hospital. The mother, quarantined because of her previous exposure to SARS, was not allowed to go in the ambulance. Desperate with concern for her child she broke quarantine and followed the ambulance to hospital where she tried to gain admission, which was denied. While one can appreciate her concern and fear for her child, it might have had disastrous consequences had she entered the hospital and spread the infection there. This demonstrates the human problems that arise during quarantine and the need for sensitive yet firm enforcement of quarantine.

260. Published in *Biosecurity and Bioterrorism: Biodefense Strategy, Practice and Science*, Volume 2, Number 4, 2004, p. 269.

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In another case a public health unit was placed in the difficult position of trying to find caregivers for two young children who exhibited no symptoms but whose father was in hospital with SARS. Although the mother was at home, she had a fever and her condition worsened. There was no one else to look after the children. By the time the mother had to be admitted to hospital the children were showing symptoms and all three were taken to hospital. This shows again the human problems that arise in the administration of quarantine.

Prior to SARS, widespread quarantine measures had not been used in more than 50 years.²⁶¹ For myriad reasons outlined in the Commission's first interim report, public health workers, by reason of systemic failure and no fault of their own, were ill-equipped and unprepared to deal with the vast number of individuals who were quarantined.

Despite these handicaps, public health officials rose to the occasion and deserve praise for their commendable efforts to address the problems caused by quarantine. In the case involving the two young children, for example, a public health physician, despite her other overwhelming duties, went to extraordinary lengths to find alternate caregivers. In another noteworthy instance, a public health unit went to great trouble to establish a contingency facility in case homeless individuals had to be quarantined. As noted in the Commission's first interim report, the problems in the administration of quarantine reflect a lack of planning and preparedness, not a lack of dedication or effort on the part of public health officials. As one expert from the Centers for Disease Control and Prevention remarked:

I had seen those people from Canada and Toronto, Ontario and Health Canada speak at health forums in this country. And they all get a lump in their throat when they describe it. And it puts a lump in mine. They did a heroic job. And they're to be commended and this process that unfolds afterwards is something to be expected but they know, they know how we

261. Severe acute respiratory syndrome (SARS) was contained globally by widespread quarantine measures, measures that had not been invoked to contain an infectious disease in North America for more than 50 years. Although quarantine has periodically been used for centuries to contain and control the spread of infectious diseases such as cholera and the plague with some success, the history of invoking quarantine measures is tarnished by threats, generalized fear, lack of understanding, discrimination, economic hardships, and rebellion. Hawryluck L, Gold WL, Robinson S, Pogorski S, Galea S, and Styra R. SARS control and psychological effects of quarantine, Toronto, Canada. *Emerg Infect Dis* [serial on the Internet]. 2004 Jul [date cited]. Available from: <http://www.cdc.gov/ncidod/EID/vol10no7/03-0703.html>.

feel about them. They are our heroes and we all hope that when our number gets called, that we can do as good a job as they did. And we're trying to learn from those lessons.

The studies and stories of quarantine during SARS show above all that the legal power to quarantine comes with a concurrent responsibility to ensure that those in quarantine are given adequate support to enable and encourage them to comply with quarantine. This duty applies with particular force to the most vulnerable in our community including the homeless.

Necessary support may require a wide range of assistance including:

- delivery of groceries;
- refill and delivery of medication;
- ensuring that children are safely transported to and from daycare or school;
- taking care of children, people with special needs and the elderly whose primary caregivers have been quarantined;
- special quarantine contingencies for vulnerable populations, such as the homeless;
- ensuring that those under quarantine have an adequate supply of personal protective equipment.

As the U.S. study stated:

Logistical support of those in quarantine was mostly handled privately, not through the government. Non-health care workers whom we interviewed or who participated in our focus groups praised public health authorities for delivering kits of medical supplies at the beginning of their quarantine periods. These kits contained thermometers (for twice-daily monitoring of body temperature), surgical masks, wipes, and similar items; health care workers obtained these supplies on their own or through their employers. It was a different story, however, for groceries and other routine supplies needed for daily living. With no prior planning for such large-scale deliveries and difficulties in coordination between local health departments and volunteer and service organiza-

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tions, the government was unable to meet these needs. Internet grocery delivery services were widely used and well rated by those with access to computers at home, and some medical facilities established small grocery stores in their cafeterias for the benefit of their employees who were on “work quarantine.” However, 83% of the quarantined health care workers in our survey said they relied on friends, relatives, or neighbors for groceries and supplies, and 4% said they broke quarantine to get them for themselves. Of 47 health care workers who said they needed to arrange for the transportation of someone in their household who normally would rely on them for transportation, such as children or a disabled or elderly relative, 39 relied on family or friends, but 6 had to leave quarantine to provide this service themselves. From our interviews and focus groups, it seemed that single people and students had greater difficulty in relying on or obtaining the assistance of others.²⁶²

It is not suggested that government programmes should be designed to replace or supplant the great outpouring of private family and community support that helped so many people get through quarantine during SARS. It is suggested that the crucial nature of this support be publicly recognized and encouraged in every way possible.

There is also a need to secure access to support systems for those under quarantine who experience unusual stress. Many interviewed by the Commission spoke of the psychological stress of quarantine. One person, who lived alone, experienced weeks of agony during quarantine. She described to the Commission how she became increasingly depressed during quarantine, and how there was no support available for her to talk to or to ensure that she was mentally coping during her quarantine:

... not once did they ask me if I had any thoughts of hurting myself; I threw out my Tylenol because I was afraid that I was going to take it ... Could you image what [that many] days is like with no human contact with anyone? I understand that this is a contagious disease and you want to control it and they needed to control it but they also needed to understand that there is a mental health issue here with these people and I know that I am not the only one that got upset and depressed.

262. Published in *Biosecurity and Bioterrorism: Biodefense Strategy, Practice and Science*, Volume 2, Number 4, 2004, pp. 268-9.

The Hawryluck quarantine study found that a substantial portion of the 129 respondents displayed symptoms of post-traumatic stress disorder.²⁶³

SARS made us aware not only of the need for quarantine to prevent the transmission of infectious diseases, but of the real human hardship caused by quarantine, and of the need for programmes to provide direct support and encourage private family and community support.

This conclusion is endorsed by Hawryluck:

Public health officials, infectious disease physicians, and psychiatrists need to be aware of this issue [the psychological distress caused by quarantine]. They must work to define the factors that influence the success of quarantine and infection control practices for both disease containment and community recovery and must be prepared to offer additional support to persons who are at increased risk for the adverse psychological and social consequences of quarantine.²⁶⁴

Public health staff alone cannot bear the responsibility for meeting these demands. Employers, educators, community groups, businesses, emergency responders, hospitals and public health must plan together 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.

Recommendation

The Commission therefore recommends that:

- **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.**

263. *Ibid.*

264. *Ibid.*

Job Security

By the same token, those who are ordered into quarantine should not have to worry about job security. This concern was raised by a number of those who spoke to the Commission, and was also discussed during the Standing Committee on Justice Policy hearings:

Ms. Broten: One very quick, last question. We also heard that during SARS one of the barriers of keeping individuals safe and in their homes or under quarantine was the concern they would lose their jobs because there was no job-protected quarantine leave or what have you—I see everyone nodding. If someone just wanted to comment as to whether that was a reality you faced out on the front lines.

Dr. Henry: Early on, it was a very difficult problem. Businesses were reluctant to let their people stay home. We wrote a number of very stern letters suggesting to them that the risk to their business if this person became ill in the workplace might outweigh their reluctance to let this person stay home for the period of time we prescribed. I think being able to enact emergency financial assistance to people in a crisis is extremely important, and I don't believe there was the legislative ability to do that at the time.²⁶⁵

On April 30, 2003, the *SARS Assistance and Recovery Strategy Act* was introduced in the Ontario legislature. It received first, second and third reading that day and received Royal Assent on May 5, 2003. The Act addressed a number of issues, including the problem outlined above of people who feared losing their employment as a consequence of quarantine or illness during SARS. Section 6(1) provides that a person was entitled to a leave of absence without pay where he or she was unable to work as a result of investigation or treatment related to SARS or because they were subject to quarantine or isolation.²⁶⁶ The section also protects those who were unable to work

265. Justice Policy Committee, Public Hearings, August 18, 2004, p. 159.

266. 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.

because they were needed to provide care or assistance to a spouse, child, grandparent, sibling or relative who was dependent on the employee for care and assistance.

The Act, while important, did little to alleviate the stress and uncertainty for those whose employment was threatened due to quarantine or illness prior to its enactment.

This is an important consideration in preparing for future health emergencies. Focus groups conducted for the above-noted U.S. study suggested that an important impediment to compliance is not knowing the precise details of compensation packages:

Participants in our focus groups were asked the level of detail they would require about the compensation package as a condition for complying with “voluntary” quarantine. The general consensus was that a significant level of detail would be required, including the level of compensation, whether benefits would be included in the calculation of compensation, and the length of time that an individual would have to wait to receive compensation. When asked in our Health care Workers Survey, 60% of doctors, 76% of nurses, and 70% of other health care workers said that they would want “fairly detailed information about when, how, and how much compensation” they would receive as encouragement to comply with quarantine.²⁶⁷

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.

267. Published in *Biosecurity and Bioterrorism: Biodefense Strategy, Practice and Science*, Volume 2, Number 4, 2004, pp. 267-68.

8. Quarantine

One problem during SARS was that people worked while ill, a tendency exhibited by many hardworking Canadians. It is necessary to discourage anyone from attending work who displays symptoms of an infectious disease or who is required to be in quarantine as a result of contact with an infectious person. One only need consider the case of the Hewlett-Packard factory, where nearly 200 employees and visitors went into quarantine because an employee attended work while ill and under quarantine.²⁶⁸ It is essential that educational, compensation, and enforcement programmes be planned in advance and put in place immediately to prevent this kind of problem.

Recommendation

The Commission therefore recommends that:

- **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 as a result of investigation or treatment related to the disease, or because he or she is subject to quarantine or isolation. 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.**

Monitoring of Compliance

It is hard to suffer the pangs of quarantine only to see a neighbour thumb his or her nose at a quarantine order. The perception that others are cheating can easily erode the commitment to voluntary compliance. The U.S. study found:

Spotty monitoring of compliance produced incomplete rates of compliance and invited cheating. Public health authorities announced

268. CBC News, "Man Who Broke Quarantine May Face Charges," April 11, 2003; CBS, May 29 2003. A Hewlett-Packard employee near Toronto has died. The 62-year-old HP employee broke quarantine to go to work at the company's information processing plant in Markham, north of the Toronto, despite showing symptoms of SARS. Health authorities called for a quarantine of the HP plant last month when they learned the man could have knowingly placed nearly 200 co-workers in danger.

that they would telephone people in quarantine at home twice a day, at varying times, to monitor their compliance. That monitoring played “an important role in terms of establishing the credibility of quarantine in general,” said 75% of the physicians in our Health care Workers Survey, 81% of the nurses, and 85% of the other health care workers. Yet, 58% of the physicians, 37% of the nurses, and 40% of the other workers rated the monitoring of their compliance while in quarantine as bad. When people wanted or needed to break quarantine—for example, to get groceries—they said they did so with little fear of getting caught. The problem was that the large number of people in quarantine swamped the information technology capabilities, staff, and phone lines of the public health systems. Regions in the GTA with fewer people in quarantine were generally better able to increase their capabilities to carry out this monitoring, but the city of Toronto’s public health department was overwhelmed.²⁶⁹

For these reasons it is important that the legal machinery be adequate to ensure the fair and uniform application of the quarantine system, including the ability to enforce quarantine orders against those few people who are disinclined to obey them. The very existence of quarantine laws, and the fairness of their application, reinforces the individual and community sense that voluntary compliance is the reasonable thing to do.

The present system under the *Health Protection and Promotion Act* has two basic elements.

1. A medical officer of health may make a written order requiring the isolation of someone who may have a communicable disease. This order is called a s. 22 order.²⁷⁰

269. Published in *Biosecurity and Bioterrorism: Biodefense Strategy, Practice and Science*, Volume 2, Number 4, 2004, p. 268.

270. Subsection 22(1) provides:

Order by MOH re: recommunicable disease

A medical officer of health, in the circumstances mentioned in subsection (2), by a written order may require a person to take or to refrain from taking any action that is specified in the order in respect of a communicable disease

Subsection 22(4) provides:

What may be included in order,

8. *Quarantine*

2. If a person refuses to comply with the order of the medical officer of health in respect of a virulent disease²⁷¹ a judge of the Ontario Court of Justice may order the person to be taken into custody and detained in a hospital or other facility. This order is called a s. 35 order.²⁷²

(4) An order under this section may include, but is not limited to,

- (a) requiring the owner or occupier of premises to close the premises or a specific part of the premises;
- (b) requiring the placarding of premises to give notice of an order requiring the closing of the premises;
- (c) requiring any person that the order states has or may have a communicable disease or is or may be infected with an agent of a communicable disease to isolate himself or herself and remain in isolation from other persons;
- (d) requiring the cleaning or disinfecting, or both, of the premises or the thing specified in the order;
- (e) requiring the destruction of the matter or thing specified in the order;
- (f) requiring the person to whom the order is directed to submit to an examination by a physician and to deliver to the medical officer of health a report by the physician as to whether or not the person has a communicable disease or is or is not infected with an agent of a communicable disease;
- (g) requiring the person to whom the order is directed in respect of a communicable disease that is a virulent disease to place himself or herself forthwith under the care and treatment of a physician;
- (h) requiring the person to whom the order is directed to conduct himself or herself in such a manner as not to expose another person to infection.

271. A virulent disease is a particularly hazardous communicable disease. Virulent diseases, as set out in regulations to the HPPA, include: (a) Cholera, (b) Diphtheria, (c) Ebola virus disease, (d) Gonorrhoea, (e) Hemorrhagic fever, (f) Lassa fever, (g) Leprosy, (h) Marburg virus disease, (i) Plague, (j) Syphilis, and (l) Tuberculosis. On March 25, 2003, SARS was specified as a virulent disease by an amendment to Ontario Regulation 95/03.

Severe Acute Respiratory Syndrome (SARS) is specified as a virulent disease for the purposes of the Act. O. Reg. 95/03, s. 1.

272. Subsection 35(1) provides:

Order by Ontario Court of Justice

Dr. Bonnie Henry provided the Justice Policy Committee with this explanation of how these two types of orders worked during SARS:

The Acting Chair: We heard during SARS that there were certain people who were restricted and were given isolation orders to stay in their homes.

Dr. Henry: There were orders under section 22 of the *Health Protection and Promotion Act*, which basically required them to do what we said they needed to do to prevent the transmission of a disease.

The Acting Chair: And what if they didn't?

Dr. Henry: Then we had the potential to issue an order under section 35 in which we could detain them. We had the ability to go before a judge, but section 35 at the time said they must be detained in a hospital. That has since been changed so that we could, under section 35, require someone to stay in their home. Then we could work with our local police forces to enforce that.²⁷³

Upon application by a medical officer of health, a judge of the Ontario Court of Justice, in the circumstances specified in subsection (2), may make an order in the terms specified in subsection (3).

Paragraph (a) of s. 35(2) provides:

When court may make order

An order may be made under subsection (3) where a person has failed to comply with an order by a medical officer of health in respect of a communicable disease that is a virulent disease,

(a) that the person isolate himself or herself and remain in isolation from other persons;

Paragraph (a) of s. 35(3) provides:

Contents of order

In an order under this section, the judge may order that the person who has failed to comply with the order of the medical officer of health;

(a) be taken into custody and be admitted to and detained in a hospital or other appropriate facility named in the order;

273. Justice Policy Committee, Public Hearings, August 18, 2004, p. 159.

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During SARS it was necessary to amend the *Health Protection and Promotion Act* when concerns arose about the possible community spread of SARS within a religious community. The story of this concern, and the notable cooperation of the religious group, BLD, will be told in the final report. The concern led to an amendment to the *Health Protection and Promotion Act* to provide that a s. 22 quarantine order (the original order by the medical officer of health described above) could be directed not only towards an individual but also to a named group of people.²⁷⁴ The specific reason for the amendment was explained by Dr. Basrur at the Justice Policy Committee Hearings:

One of the elements that arose during SARS was our inability to issue orders on anything but a person-by-person, one-at-a-time kind of basis. There was an instance wherein we had an entire group of people who needed to be put into quarantine on a weekend. It was physically and logistically impossible to issue orders person to person on a Saturday afternoon for 350 people who happened to live in three or four different health units all at once, each with their own MOH, their own solicitors and so on. So now there is an amendment to the Act. Again, that was processed even between phases one and two of the SARS outbreak. So things can happen fast when the will is there, but also when the need is apparent, such that orders can be issued against a class of persons. In a future pandemic or other wide-scale emergency, that will be a very helpful provision so we can issue mass orders if necessary and if warranted under the circumstances.²⁷⁵

The power to quarantine any group, whether it is a tightly knit religious community or a student body must obviously be exercised with great sensitivity. Toronto Public Health officials, as will be noted in the final report, went out of their way to approach the concerned religious group with tact and understanding. Toronto Public Health sought, and received, a commendable level of cooperation from the leadership of the group. In times of crisis, however, it would be all too easy for officials with lesser

274. Section 22 was amended to include s. 5.0.1 which provides:

Class order

An Order under this section may be directed to a class of persons who reside or are present in the health unit served by the medical officer of health.

275. Justice Policy Committee, Public Hearings, August 18, 2004, p. 140.

sensitivity to act immediately, without consultation, and to think only later of the ensuing stigmatization, disruption, and confrontation.

It is therefore recommended that the proposed amendment be tempered 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.

While the *Health Protection and Promotion Act* now allows public health authorities to issue quarantine orders against both individuals and classes of persons, the lingering question remains of how to enforce these orders. This is particularly so in the case of class orders.²⁷⁶

The enforcement of class orders involves practical problems around the service requirements. Section 5.0.2 provides that if a class order is made, notice of the order shall be given to each member of the class, where practicable to do so.²⁷⁷ However, s. 44(3) provides:

(3) although a hearing is required in accordance with this Part, an order under this Act takes effect:

(a) when it is served on the person to whom it is directed; or

276. During a CBC interview with Michael Enright, Dr. Basrur stated: "In fact the statute was amended towards the end of phase one to give the medical officers of Ontario the powers to quarantine large numbers or classes of people because previously we only had the power to quarantine people one at a time. So if we had an apartment building for example or a community of interest that all needed to be in quarantine, we would have to go find them and serve them with a process server or a police officer one at a time, how ever many thousands of hours that would take. That's not an effective control measure. Now we can do it on a broader basis. The question of enforcement still applies but at least we can initiate it more quickly."

277. If a class of persons is the subject of an order under subsection (5.0.1), notice of the order shall be delivered to each member of the class where it is practicable to do so in a reasonable amount of time. Subsection 5.0.3 provides:

Same, general notice

(5.0.3) If delivery of the notice to each member of a class of persons is likely to cause a delay that could, in the opinion of the medical officer of health, significantly increase the risk to the health of any person, the medical officer of health may deliver a general notice to the class through any communications media that seem appropriate to him or her, and he or she shall post the order at an address or at addresses that is or are most likely to bring the notice to the attention of the members of the class.

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(b) in the case of an oral order or an order directed to a person described but not named in the order, when the person to whom it is directed first knows or ought to know the contents of the order.

Subsection 106(1) provides:

Any notice, order or other document under this Act or the regulation is sufficiently given, served, or delivered if delivered personally or sent by ordinary mail addressed to the person to whom it is to be given, served or delivered at the person's last known address.

The difficulty with class orders is that they may be directed at individuals whose identity or description is unknown. For example, during SARS II, public health officials questioned whether they would issue a class order requiring all visitors and patients who had been inside a particular facility during a specific period to go into quarantine. They did not know the names of the visitors and patients so they would have been unable to “serve” them with notice within the meaning of the Act. The order contemplated would have had no legal effect because it would not have taken effect without service.

To clarify this problem, the Commission recommends a simple amendment to s. 106 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.

A final word is necessary about the unnecessary legal confusion surrounding the words “quarantine” and “isolation”. Although the words are used indiscriminately and interchangeably there are technical legal distinctions between them. “Quarantine” is not a legally defined term in the *Health Protection and Promotion Act*. While, in popular parlance, thousands of people were quarantined during SARS they were actually, in a technical legal sense, isolated rather than quarantined. The problem is that the technical legal definitions are completely out of step with the actual language that everyone uses and understands.

Dr. Basrur pointed out to the Justice Policy Committee:

Dr. Basrur: ... We used the word “quarantine” because it was widely understood as being—

The Acting Chair: But it technically was not.

Dr. Basrur: No. It was an order to isolate yourself or to conduct yourself in such a way as not to expose another person. That would be the legal language under the Act.²⁷⁸

Dr. Henry noted further:

The term “quarantine” just doesn’t appear in any of our legislative wording in Ontario. There’s a Quarantine Act that is a federal act that only applies—the word only applies to people coming into the country ... Right now the word “quarantine” and the action of quarantine actually only applies to the powers the federal government has. In legislation in Ontario we have the ability to isolate someone; we don’t actually have the ability to quarantine someone.²⁷⁹

Because of the gap between what people understand by the word “quarantine” and its technical legal meaning, it is recommended that the word “quarantine” be introduced to the *Health Protection and Promotion Act* as a defined legal term to correspond to the universal popular understanding of that word as used during SARS.²⁸⁰

278. Justice Policy Committee, Public Hearings, August 18, 2004, p. 159.

279. *Ibid.*, p. 160.

280. It is true that s.91. 11 of the *Constitution Act, 1867* assigns legislative authority over “Quarantine and the Establishment and Maintenance of Marine Hospitals” to Parliament. The scope of this power is unclear. It has not been subjected to detailed interpretation of the Supreme Court of Canada. However, the manner in which “quarantine” is conjoined to “marine hospitals”, and the contiguity of the power with other items on the list suggests that its primary focus is control over Canada’s shores and borders. This is arguably the focus of the federal *Quarantine Act*, R.S.C. 1985, c. Q-1. In addition, in his decision for the majority of the S.C.C. in *Schneider v. The Queen* (1982), 139 D.L.R. (3d) 417 (S.C.C.), Dickson J., as he was, quoted a passage from the report of the 1938 Royal Commission on Dominion-Provincial Relations (the Rowell-Sirois Commission) suggesting that the use of the term quarantine in s.91 referred to ship quarantine: “presumably ship quarantine.” By contrast, provincial jurisdiction within the sphere of public health should permit a provincial legislature to legislate a quarantine power so long as the purpose of the latter is the protection of the public’s health. Public health legislation in other provinces already provides for a quarantine power. See for instance British Columbia’s *Health Act*, R.S.B.C. 1996, c. 179, s.11(1); Alberta’s *Public Health Act*, R.S.A. 2000, c. P-37, s. 29(1); *Manitoba’s Public Health Act*, C.C.S.M. c. P210, s.12; and Newfoundland’s *Communicable Diseases Act*, S.N.L. 1990, c. C-26, s.30.

Recommendations

The Commission therefore recommends that:

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

Conclusion

Quarantine and isolation are essential measures in the defence against infectious outbreaks. SARS could not have been so quickly contained in Toronto without the tremendous public cooperation and individual sacrifice of those who were quarantined. While public health officials require the power to isolate those who are infected, and to quarantine those who may have been exposed to infection and may be infectious to others, this power comes with the responsibility to provide information, support, and job protection.

Recommendations

The Commission therefore recommends that:

- 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 as a result of investigation or treatment related to the disease, or because he or she is subject to quarantine or isolation.²⁸¹ 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.**

281. 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).

8. *Quarantine*

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