Bill 36
Say NO to The Health Professions and Occupations Act of British Columbia

Gail Davidson*

Interpretations are solely those of Gail Davidson.

Feedback is welcome on errors, omissions, analyses. This review is a draft and does not examine the scope and consequences of regulations and bylaws to be made by appointees, Cabinet and the Minister, increased practice fees, the use of closure to pass the Act and other issues of concern.

25 October 2023

Background – Passed without Required Democratic Oversight

The Health Professions and Occupations Act (Act)

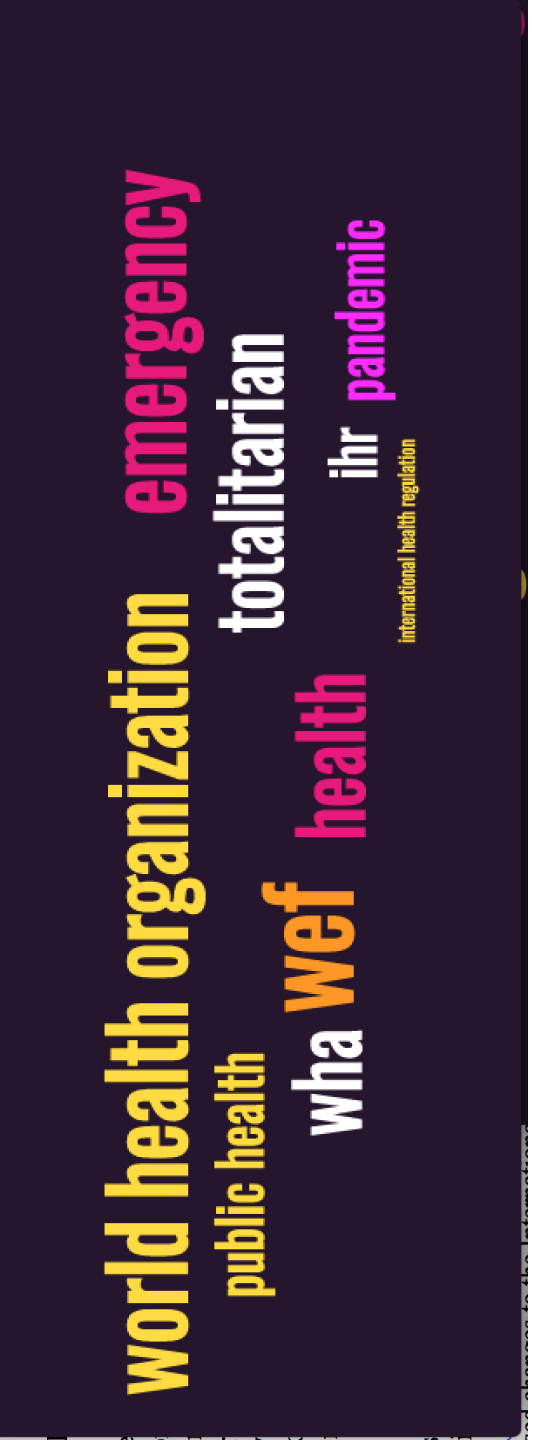
- **Was passed by the improper use of closure that prevented the debate, understanding and opposition required in a democracy.** The ACT was pushed through on 24 November 2022, when only 233 of the 645 sections had been subject to debate, amendment and acceptance or rejection. As a result, the potential dangers of the ACT remain largely unknown to MLAs, health care workers, journalists and the public.

- Perhaps the largest bill ever presented to the BC Legislative Assembly at 645 sections over 276 pages, the Act concerns the governance, licensing, discipline and control of approximately 130,000 health care workers in 25 health professions and occupations in BC.

- **Repeals the Health Professions Act (s. 546) (54 sections over 83 pages) and amends 33 existing statutes (ss 547-644).**

- Has **never been subject to proper disclosure, debate and acceptance or rejection by health care workers, the Legislative Assembly or the 5 million residents of BC** in need of access to ethical personalized medical care.

- Is not yet in force.



The Unstated Purpose of the Act

The Act paves the way for global totalitarian control of health care in BC. The Act

- **allows for adoption as law in BC, regulations, standards, codes or rules enacted in other jurisdictions or set by "any body that may make codes, standards and rules**" (ss. 533, 335), which would allow rules set by the World Health Organization (WHO), World Health Assembly (WHA), World Economic Forum (WEF) to become law in BC;

- **mirrors proposed changes to the International Health Regulations (IHR)** that appear to provide the foundation of a global system of control over all aspects of health care;

- IHR proposed rules grant powers to; (i) change the meaning of words; (ii) mandate or prohibit medical treatment of choice; (iii) collect, use and share personal health information without permission; (iv) mandate treatments; (v) declare international or regional health emergencies in response to actual or *potential* threats to health; (vi) mandate responses to a declared public health emergency; and, (vii) impose punishments for non-compliance. The IHR allow almost anything to qualify as a public health emergency.

The Act authorizes similar measures without a public health emergency. As stated by US law professor Francis Boyle, **the IHR and the Pandemic Treaty** ***"are fatally dangerous. Either one or both would set up a worldwide medical police state under the control of the WHO****, and… WHO Director… will be able to issue orders that will go all the way down the pipe to your primary care physicians."*

Issues of Concern: Impact of the Act

I

Governance

p. 7-9

II

Law Making

p. 10-12

III

Compulsory Vaccination

p. 13

IV

Emergency Orders

p. 14-18

V

Enforcement

p. 19-20

VI

Data Collection

p. 21-22

VII

No Statutory Purpose

p. 23-24

VIII

Immunity & and Limited Review

p. 25-27

I. Governance – Abolishes Democratic Governance

1. **The Act abolishes democratic governance of health care colleges and imposes governance by political appointees.**

   Under s. 17 of the existing *Health Professions Act,* **boards are composed of a majority of directors elected by members** and others appointed by the Minister of Health (minister). Appointees cannot exceed elected board members.

   Under s. 346 of the Act, all members of the board will be appointed by the minister, half licensees and half "representatives of the public." ("A regulatory college is a corporation consisting of the persons appointed as members of the board." (See ss. 343 (1), 344, 345, 346). **Appointees are not required to be independent of the Executive, competent or accountable to members.**

I. Governance – Imposes Governance by Political Appointees

2. **The Act empowers the minister and Cabinet to appoint dozens of people to positions of authority over all aspects of health care without notice to, or consultation with, the public, health care workers or the BC Legislative Assembly.**

    - **The Superintendent of Health Professions and Occupations Oversight** (superintendent) is appointed by Cabinet (s. 436 (2) and reports only to the minister (s. 486).

    - **The Office of the Superintendent** is "an office of the government" and **has significant powers including to make recommendations to the minister on the administration of and amendments to the Act, appointment of board members; improvement of performance of regulators** and , "any other matter the minister requests"; and, to publish any "information and records' deemed by the superintendent to be in the public interest (ss. 345 (1)(2). 345(1)).

    - **The Director of Discipline** is appointed by the minister (s. 444) and then the Director himself appoints the Deputy Director who exercises the same powers of the Director (s. 445). **Their wide powers include to: manage discipline panels, set practice directives, for disciplinary proceedings; issue and cancel disciplinary citations and approve disciplinary orders** (s. 447).

I. Governance – Wide Powers to Appointees

3. The Act empowers appointees to exercise wide powers to make laws and appoint dozens of others with decision making powers under the Act.

Appointed Boards are mandated to:

- **Make bylaws** regarding: monitoring licensees for contraventions of the Act; complaint procedures; production of records; summary protection orders; summary actions by the registrar (s. 118); anti-discrimination measures; sexual misconduct; what constitutes false or misleading information (s. 70(2); mandatory vaccination (ss. 49(1)(b)(v), 49(3)(f)) ;
- **Appoint the registrar, professional standards advisors** and members of the license, investigation and permit committees (s. 359);
- **Seek advice from the professional standards advisors** appointed by the board when making bylaws on eligibility, ethics and practice standards (s. 361).

II. Law Making – Abolishes Democratic Law Making

1. **The Act authorizes adoption as law in BC, regulations, codes, standards or rules, enacted by "another jurisdictions including a foreign jurisdiction, or set by a provincial, national or international body or any body that may make codes, standards or rules." (ss. 533 (1), 335 (2))**

    - **Cabinet and an unspecified number of appointees are authorized to adopt as law in BC any regulations, codes, standards or rules enacted in any other jurisdictions or set by any national or international organizations** (s. 533 (1));

    - **A provincial health officer may**, when making scope of practice orders (emergency orders), **also adopt as law in BC, any regulations, codes, standards or rules enacted in other jurisdictions or set by any national of international body or published by a laboratory** (s. 335(2))).

- **These provisions would allow the adoption as law in BC, any rules set by, for example, the World Health Organization, World Health Assembly or World Economic Forum**.

- This would allow adoption of the International Health Regulations and/or the Pandemic Preparedness, Prevention and Response Treaty, whether or not Canada voted for or otherwise accepted such provisions.

- Adoption can occur without notice, disclosure, justification, consultation, debate or consent and without oversight by the public, health care workers or the Legislative Assembly.

II. Law Making – Violates Freedom from Ex Post Facto Laws

2. **The Act creates acts of misconduct and criminal offences that violate the principle of legality and predictability. The impugned acts are not defined with sufficient specificity to be objectively determined in advance of contravention or hearing and therefore cannot be avoided or defended and contravene the absolute (non-derogable) freedom from ex post facto law.**

   Examples of illegitimate offences and acts of misconduct:

   - **"providing false or misleading information"** is a criminal offence (s. 514 (2) (b)) and could be an act of misconduct (s. 70 (2) (g)) ;

   - **"conduct that may bring the practice… into disrepute**." Section 11 (2) states, "a licensee commits an act of misconduct if the licensee engages in conduct that (a) may bring the practice of a designated health profession into disrepute".

II. Law Making – Violates Informed Consent & Freedom from Experimentation

3. The Act authorizes appointees to:

- **Mandate vaccination for 'transmissible disease' as a condition of licensing and employment** Sections 49 (1) (b) (v) and 49 (3) (f) respectively provide that boards *must* and *may* make bylaws mandating vaccination. It is not clear if boards may make bylaws requiring mandatory vaccination in the absence of "an enactment". Boards have unrestricted authority to make bylaws "in collaboration with other persons"(s. 67). Vaccination and transmissible disease are not defined.;

- **These mandates violate individual rights including rights to: health, informed consent to medical treatment, freedom from coercion to accept a medical treatment not voluntarily chosen, freedom from non-consensual medical experimentation; and the right to work**.

- **Make bylaws regarding: informed consent** (s. 72 (3) (b); **ethical standards** (ss. 70 (2), 361); **what health care services can be provided, by who, to whom** (s. 72 (3), **and in what locations** (s 72 (4) (a). The Act does not require that rules respecting informed consent conform Canadian law or international treaties to which Canada is a State Party (s. 72 (3) (b);

III. Law Making – Mandates & Coerces Vaccination Without Consent

The minister may mandate vaccination: The minister may make regulations requiring vaccination of all applicants and health service providers "against specified transmissible illnesses"(s.200(2) (c)).

Boards *must* mandate vaccination - Boards *must* make bylaws mandating vaccination against transmissible illnesses as a condition of licensing when there is an enactment requiring vaccination (s. 49 (1) (b) (v))).

Boards *may* mandate vaccination. Boards *may* make bylaws mandating vaccination, required under the bylaws, against transmissible illnesses (s. 49 (3) (f)).

The provincial health officer can mandate vaccination by order or by adopting mandatory vaccination requirements set by any state law or the rules of any non-state organization, anywhere (s. 335 (2)).

Cabinet and an unspecified number of appointees in non-emergency times, may adopt as law mandatory vaccination requirements enacted by other states or set by non-state organization anywhere (s. 533 (1)).

IV. Law Making – Emergency Orders Not Required to Comply with Law

1. **The Act (ss. 325-340) authorizes the minister and the provincial health officer to make emergency orders.** Whenever notice of a public health emergency is provided under the Public Health Act, the minister can make administrative orders (ss.330-331: the provincial health officer can make scope of practice orders orders (ss. 333 – 340).

2. **Such Emergency Orders are not required to be lawful, necessary, proportionate, legitimate or temporary. The Act does not require that emergency orders comply with Canadian or international law obligations to maintain rights, democracy or the rule of law.**

IV. Law Making – Emergency Orders: Incompetent, Unnecessary, Unlawful

3. Public health emergency powers

- **Broad Interpretation -The Act allows a broad interpretation of a public health emergency** (see s. 325 and Public Health Act s. 52(2)) and authorizes emergency orders without notice and access to information needed to assess justification and without consultation with health care professionals, emergency specialists or the Legislative Assembly.

- **Competence to make orders not required - Neither the minister or the provincial health officer are required by the Act to have the competence to assess the lawfulness, necessity, legitimacy or proportionality of emergency orders** or to identify measures best capable of delivering benefit, limiting harm and complying with domestic and international law.

- **Lack of Due Process Harm**–Summarily imposed laws, mandates and prohibitions that restrict rights and cause harm and are not subject to timely oversight independent, impartial and competent tribunals to determine rights and remedies for violations.

IV. Law Making – Emergency Orders: Unreviewable, Potentially Dangerous

4. **The Act authorizes the minister and the provincial health officer to summarily make undemocratic, apparently unreviewable and potentially dangerous emergency orders:**

   - **Based on subjective determinations of necessity and harm** (ss. 330, 333) and on subjective opinions of appropriateness (s.335 (2) (a));
   - **Without release or debate of the information needed to assess safety, efficacy, necessity, proportionality or legitimacy** of the emergency orders;
   - Restricted to one or more persons, classes of persons or geographical areas (s. 327(2).
   - **Made without notice to or oversight by, the Legislative Assembly, the public or the affected health service providers or patients** (s. 326 to 329).

IV. Law Making - Emergency Orders: Made Without Adequate Assessment

4. (cont'd) The Act authorizes imposition of emergency orders:

- **Without notice, other than to appointees who lack independence and may lack competence** (ss. 326 to 329) to act in the public interest;
    - Before making an emergency order, the minister and provincial health officer must give notice to and *make reasonable efforts* to consult: the superintendent, the Health Professions Review Board and affected regulators (s. 329(a), all of whom are appointees;
    - The provincial health officer must give notice to the minister and advise of any objections raised by the above named appointees (s. 329(b);
- **Based on any regulation, code, standard or rule, enacted in any other jurisdiction or "set by a provincial, national or international body** or any other body that may make codes, standards or rules, or published by a laboratory…" adopted by the provincial health officer (s. 335(2),

IV. Law Making – Emergency Orders: Laws & Rules from Elsewhere Adopted

5. The Act (s. 335) authorizes the provincial health officer to adopt as law in BC, laws enacted in any other jurisdiction and rules adopted by any state or non-state body anywhere:

- in the sole discretion of the provincial health officer;
- if adoption is "appropriate," in the personal, subjective opinion of the provincial health officer;
- with no requirement that the rules adopted as law serve a public purpose or be consistent with domestic or international law obligations or the rule of law;
- without any notice to, consultation with, debate by or consensus of the Legislative Assembly, the public or health practitioners and without evidence justifying adoption;

➢ **Section 335 would, for example, allow adoption of all or some of the International Health Regulations as law in BC, including measures restricting guaranteed rights.**

V. Enforcement – Severe Punishments with No Public Purpose

1. **Penalties for acts of misconduct include temporary or permanent loss of license and employment. Individuals convicted of a criminal offence under s. 514(2) face fines up to $200,000 or imprisonment up to 6 month. Individuals convicted under s. 514(3) face a fine up to $200,000 or imprisonment up to 2 years. Corporations convicted of any offence face a fine of up to $500,000. Directors or officers authorizing, permitting or acquiescing to the offence face a fine up to $200,000 or up to 2 years in prison.** (s. 518). **Separate penalties may be imposed for each day the offence continues**. (517).

2. **The Act authorizes "the minister, a board or a health occupation director" to establish or adopt all medical and ethical standards along with standards governing eligibility to practice and accreditation** (ss. 7, 23(3), 79, 36, 43(3), 57(1)(b), 58(g), 199(1)(a), 200(1), 201(1), 208(1), 318(1)(b)(III), 361).

3. **The Act imposes a mandatory duty on licensees to report other licensees** believed to be "not fit to practice" or to present "a significant risk of harm to the public" public (s. 85).

V. Enforcement – Summary Suspension of License to Practice

4. **The Act authorizes appointees to suspend the license to practice without notice to the practitioner and before a complaint has been investigated or determined**.

   - **A registrar, on a direction from one or more members of the investigation committee, can make a summary protection order (SPO)**, suspending the right to practice, before a complaint is referred to an investigation committee (ss. 122 (1) and 153 (1));

   - **A health occupation director can make SPOs (s. 225) on receiving a complaint**;

   - **A SPO can be made when, *inter alia*, "a respondent is providing false or misleading information to patients or the public" (s. 259) False or misleading are not defined.**

   The SPO can be issued without notice or hearing (s. 260). Regarding the arbitrariness of the term 'misleading', see US District Court decision of 25/01/23 granting an interim injunction against enforcement of provisions allowing discipline of doctors for spreading misinformation.

VI. Data Collection – Allows Invasion of Patient & Professional Privacy

1. **The Act allows invasion of patient and professional privacy**. Cabinet is authorized to make regulations allowing the collection, use and disclosure of confidential information including protected information and other confidential information, "…for purposes…not covered by the Act" (s. 530 (a)(i)). This section seems to allow for the collection, use and disclosure of personal information excluded from disclosure. See also ss. (s. 242 (1)), 243(1), 491 and 492.

2. **The Act allows the search of premises and seizure of documents including patient records with and without a warrant**. The Act contemplates applying for court orders *exparte* (s. 502(1)) and in secret(s. 503 (1)), authorizes seizure of documents not described in a court order (s. 508 (2)) and authorizes, without a warrant, securement of practitioner's premises, search and seize documents (s. 511) and treatment of items seized as though there had been a court order.

VI. Data Collection – Violation of Privacy Without Notice/Court Order

3. The Act authorizes appointees to order the production, examination and copying of documents and confidential records.

- **An investigator may order production** of information and without a court order, may enter premises and inspect and copy documents (s. 131);
  - **The superintendent may order production** of documents or enter premises without a warrant and inspect and copy documents (s. 469(1)(a) (b);
  - **The Health Occupation Director may make complaints (s. 222) and order production** of information including confidential information (s. 224);
  - **The provincial health officer may make an emergency order for the production** of records to the minister and appointees (s. 338) and such orders last for 90 days after "the order ceases to have effect" (s. 328 (4)).

➢ **These provisions potentially authorize violation of the privacy rights of patients and practitioners without prior notice or hearing**.

VII. No Legitimate Purpose to Ensure Access to Personalized Health Care

1. **The Act appears directed at restricting, not enabling the quality, provision, delivery and receipt of individualized health care ostensibly to prevent harms posed by members of health professions and occupations.**

   - Section 6 defines health professionals as providing services that "**present a risk of harm to the public"**: those practicing health occupations are described as providing health services that "**present a lower risk of harm to the public**", and,

   - States that regulation of health professionals is **necessary** and regulation of health occupations **advisable** in order to protect "the public from harm" and "the public interest" (s.6). Neither harm or public interest is defined.

   Although health professionals must act ethically, safely, and in accordance with applicable ethics and practice standards, the definition of these standards is left to be determined, perhaps arbitrarily and inappropriately, by appointees (see s. 7(2) definition) who may lack competence.

VII. No Legitimate Statutory Purpose to Ensure Quality of Health Care

2. **The Act does not mandate licensees to serve the medical needs of individual patients.**

3. **Instead, the Act mandates licensees to:**

   - to protect the public from harm and discrimination;
   - to take anti-discrimination measures; and,
   - to act in a manner that is respectful of the privacy of patients. (72 (1)):

   The Act does not require licensees to respect the paramount duty of health professionals to ensure patient rights to informed consent to (or refusal of) medical treatment, freedom from coercion or force to accept treatment not voluntarily chosen and freedom from non-consensual medical or scientific experimentation.

VIII. Immunity & Limited Review - Decisions/Orders of Appointees are Final

1. **The Act limits review by any court of some decisions and orders made by appointees.**

   The: health occupation director, director of discipline, discipline panel and Health Professions Review Board have exclusive jurisdiction to inquire into, hear and determine all questions of fact, law and discretion under the Act. Their d**ecisions are "final and conclusive and not open to question or review in any court."(s. 512).**

   The Act authorizes the appointment of these decision makers as follows:

   - **A health occupation director can be appointed by a board or can be a civil servant** (ss. 365, 26(2) (ii) (ii)).
   - **The director of discipline is established by the superintendent's office** (s. 443).
   - **Discipline panel members are appointed by the Director of Discipline** (ss. 169, 449).
   - **The Health Professions Review Board chair and members are appointed by Cabinet** (s. 309).

VIII. Immunity & Limitation of Review - Decisions subject to Review

2. Decisions of appointees that are subject only to limited review include decisions of:

- **A health occupation director to determine misconduct complaints and impose discipline** (ss. 230 to 232), and, to make bylaws or rules "in addition to any imposed under this Act" (s. 530(a) (ii);
- **The Discipline panel to set rules for and conduct disciplinary proceedings** (ss. 173 to 189);
- **The Director of Discipline to issue citations and appoint discipline panels** (ss. 161 to 170);
- **The Health Professions Review Board to conduct reviews** (ss. 310 fllg), make orders (s. 319) and make recommendation to the superintendent on policies, discipline processes and investigations.

An amendment to s. 33 the Pharmacy Operations and Drug Scheduling Act provides immunity from legal proceedings for damages arising from acts done or omitted "(a) in the exercise or intended exercise of a power under this Act, or (b) in the performance or intended performance of a duty under this Act" (s, 629).

VIII. Immunity 7 Limitation of Review

3. The Act grants immunity from legal proceedings for damages against:

- **A regulatory college** for anything done or omitted with respect to an investigative or disciplinary action (s. 89);
- **Appointees designated as "protected persons"** in the exercise or intended exercise of powers or duties under the Act (s.399);
- **A "protected person" for conducting an investigation, talking disciplinary action or participating in a disciplinary proceeding** (s. 400)
  Limited Review - On judicial review, the court:
- **Must consider the decision maker an "expert tribunal in relation to all matters over which it has exclusive jurisdiction**" and,
- **Cannot set aside a finding of fact unless there is *no* evidence** to support the finding or the finding is otherwise unreasonable; and,
- **Cannot set aside a discretionary decision unless it is patently unreasonable** (s. 512), Administrative Tribunals Act s. 58)).

Conclusions – Endangers Rights & Personalized Health Care

The Act is potentially dangerous to health care, rights and democracy and ought to be repealed.

The Act is replete with unlawful provisions that restrict and potentially extinguish many essential rights and signals the end of the rights of health care workers to provide without fear of punishment, and patients to receive, personalized health care.

The Act appears to be a trial statute to bypass democratic processes that protect rights and prevent undemocratic or tyrannical law making and control. The Act allows Cabinet, the minister and dozens of unelected, unaccountable political appointees to adopt, create, change and enforce laws without notice, justification, access to information, consultation, debate, consensus or oversight by the Legislative Assembly or the public and without meaningful access to effective remedies for victims of rights violations.

The Act paves the way for BC to partner with big Pharma and other entities (instead of with health care providers or BC residents), unhampered by what Canada has called "the regulatory irritants and roadblocks" of democracy.

Presently the people of BC use pharma: the Act enables Pharma and other non-state actors--with the aid of state powers--to use the people.

The Act does not serve the public interest in ensuring equal access to competent and timely personalized health care in BC.

Canada Gazette, Part I, Volume 156, Number 51: Regulations Amending Certain Regulations Made Under the Food and Drugs Act (Agile Licensing)
https://canadagazette.gc.ca/rp-pr/p1/2022/2022-12-17/html/reg1-eng.html