

Implementation of Section 54 of Québec's Public Health Act

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Preliminary version – for discussion

Since 2002, the Government of Québec's ministries and agencies proposing laws or regulations must first undertake a health impact assessment (HIA).

This briefing note describes the context of the adoption of this law, the procedures introduced by the Québec government to help in its implementation, and some of the results achieved to date.

Specifically, the paper addresses the following questions:

- 1. How did HIA come to be adopted in Québec?**
 - Its history
 - Its formulation
- 2. How has the measure been implemented?**
 - The role of the Ministère de la Santé et des Services sociaux (MSSS) (Ministry of Health and Social Services)
 - The role of the government ministries and agencies
 - The role of the Institut national de santé publique du Québec (INSPQ)
- 3. What results have been achieved in the past ten years?**

The information presented in this paper is drawn from various studies of section 54 and on the issue of HIA in Québec by the Ministry of Health and Social Services. This review was supplemented by semi-structured interviews with key actors directly involved in the development and implementation of section 54 of the *Public Health Act* (PHA).

At this stage, the review of the first five years of implementation of section 54 of the PHA, produced by the MSSS in 2008, as well as the results of various studies carried out on this subject have mainly focused on procedural aspects.

A mandate to evaluate HIA practices adopted at the central level and, more broadly, to assess how health issues are taken into account in the development of public policies generated by other sectors of the government was given to the École nationale d'administration publique du Québec in 2012. The results are expected in 2013. This study makes it possible to measure the progress of organizational learning within ministries and partner agencies.

Why health impact assessment in the public policy sector?

Public policies, no matter the sector of government in which they are adopted, can directly or indirectly affect the health and well-being of the population.

From a public health perspective, it is therefore important that governments adopt measures to ensure that the potential impacts of policies on the determinants of health are taken into account by all sectors of government.

Health impact assessment is a process that allows policy makers to do this. Internationally, various governments already use this approach to ensure the development of healthy public policies. At present, HIA is not widely practiced in Canada. However, several provincial governments have adopted or plan to adopt HIA provisions.

Similarly, at the regional level, initiatives aimed at ensuring a more systematic use of HIA have been introduced. This is the case, for example, in Montérégie, in Québec, as well as in the Sudbury region of Ontario,

Section 54 of the *Public Health Act*

Section 54 of Québec's 2001 *Public Health Act* was implemented in June 2002. This section obliges government ministries and agencies to ensure that the legislative provisions they adopt



do not adversely affect the health of the population. It also gives the Minister of Health and Social Services the capacity to provide advice promoting health to other government ministries or agencies upon his or her own initiative.

HOW DID SECTION 54 COME TO BE ADOPTED?

In 1992, the policy document *Politique de santé et de bien-être* (MSSS, 1992) recognized that intersectoral initiatives were necessary to improve the health of the population. This idea served as a guiding principle in the public health document, *Priorités nationales de santé publique: 1997-2002* (MSSS, 1997).

In 2000, the *Commission d'étude sur les services de santé et les services sociaux* (Clair Commission) explicitly recommended the systematic assessment of the impacts of public policies on health (*Commission d'étude sur les services de santé et les services sociaux*, 2000).

A further catalyst for change was that, by 2001, the existing law on public health was over 30 years old. It was, therefore, necessary to update it to reflect more recent public health priorities and strategies.

In order to propose guidelines for the amendment of the Act and to formulate new provisions, the Ministry of Health and Social Services created the *Groupe de travail sur l'élaboration de la loi sur la santé publique*, (The public health act working group). The new legislation that this group would recommend had to encompass all of the essential facets of public health: protection, promotion, prevention and monitoring. Section 54 is a measure aimed at establishing a legal basis for the promotion and prevention facets.

For measures relying on intersectoral initiatives (MSSS, 1999), the working group turned to the Ottawa Charter for Health Promotion and the priorities stipulated in the Jakarta Declaration on Leading Health Promotion into the 21st Century.

The working group also reviewed existing legislative provisions at the international level. It found few examples of legislation devoted specifically to prevention and health promotion but discovered an extensive body of literature on HIA initiatives, undertaken by a number of countries, targeting the promotion of healthy public policy.

Some examples used by the working group are British Columbia's experience, as well as initiatives in the environmental health sector which, for several years, has sought to include health impact assessments in environmental impact assessments.

The working group also used the Gothenburg Consensus (European Centre for Health Policy, 1999)¹ as the underlying reference for its proposal, specifically concerning the legal obligation of government ministries to consult the Ministry of Health and Social Services when they draft legislation and regulations.

WHAT DOES SECTION 54 STIPULATE?

Section 54 of the *Public Health Act* stipulates that:

The Minister is by virtue of his or her office the advisor of the Government on any public health issue. The Minister shall give the other ministers any advice he or she considers advisable for health promotion and the adoption of policies capable of fostering the enhancement of the health and welfare of the population.

In the Minister's capacity as government advisor, the Minister shall be consulted in relation to the development of the measures provided for in an Act or regulation that could have significant impact on the health of the population (*Public Health Act*, 2001).

The first subsection of section 54 confirms the Minister of Health and Social Services' role as an advisor to the government. However, it adds an additional dimension by making official the Minister's power of initiative to proactively issue advice to colleagues in all branches of government. He or she may invoke this power with the aim of fostering the development and adoption of healthy public policies (MSSS, 2005a).

Subsection 2 establishes the obligation of all government ministries and agencies to consult the Minister when they develop legislation or regulations that may significantly affect the health and well-being of the population.

¹ The Gothenburg Consensus was established by European countries that shared their experience in the area of health impact assessment, as well as in the more established field of environmental impact assessment of projects or programs.

How has the measure been implemented?

A MULTIFACETED STRATEGY

In order to implement section 54, the MSSS has developed a strategy with two main thrusts:

- The establishment of an intragovernmental health impact assessment (HIA) mechanism; and
- The development and transfer of knowledge about healthy public policies.

Fulfillment of these objectives has required:

- The creation of two full-time positions;
- The establishment and leadership of a network of ministerial representatives;
- The development and dissemination of support tools;
- The implementation of an internal procedure for processing requests for assessments from ministries proposing legislation and regulations;
- The establishment and monitoring of a research program on healthy public policies; and
- The establishment of a collaborative agreement between the MSSS and the Institut national de santé publique du Québec (INSPQ) (MSSS, 2002).

SUPPORT TO THE MINISTRY CONDUCTING THE HIA

According to this model, the ministry or agency responsible for the draft legislation or regulations is obliged to carry out health impact assessments.

The MSSS supports the ministry or agency conducting the HIA and provides the technical support and necessary tools

NETWORK OF DEPARTMENTAL REPRESENTATIVES

To support ministries in this new role, the MSSS established a network of ministerial representatives who promote awareness of the existing impact assessment tools in their respective ministries, and support the use of these tools.

The representatives inform the MSSS of problems encountered in the application of section 54 as it relates to their ministry's set of tools, and recommend adjustments that may be required. The representatives meet approximately twice per year.

More specifically, the representatives are called upon to:

- Act as the resource person for requests for general information regarding the implementation of section 54 of the PHA (legal aspects, documentation, tools, etc.);
- Act as the resource person for the promotion of healthy public policy (HPP) among managers and personnel and promote the health impact assessment of legislation and regulations;
- Collaborate in gathering relevant information within their organization and its affiliated agencies, to guide research on HPP;
- Participate, on a periodic basis, in network meetings and in work on specific projects related to HPP or health impact assessment;
- Ensure the dissemination, within their department, of information on events and knowledge-sharing activities related to healthy public policy (forum of representatives, Journées annuelles de santé publique, etc.).

Ministerial representatives ideally belong to their ministry's administrative secretariat, or strategic planning or policy planning divisions.

TOOLS AND GUIDES

The MSSS produced its own HIA guide based on impact assessment models developed in Europe and adapted to an intragovernmental context (MSSS, 2006a).

This guide describes the five stages of the HIA process:

1. Screening
2. Scoping and summary analysis
3. In-depth analysis
4. Decision-making
5. Evaluation

The first two stages, screening, and scoping & summary analysis, are the responsibility of the government ministries and agencies proposing the legislation or regulation in question.

If the initial screening stage shows that an adverse impact on health is likely, further stages are carried out. If a positive impact on health is anticipated, the ministry or agency may pursue an abridged form of

the analysis, in order to justify or give priority to a measure.

When no impact is anticipated, the process is taken no further.

The second stage, scoping and summary analysis is intended to clarify:

- The potential impact of the proposed measure,
- The groups concerned, and
- The sources of information used in the analysis.

Ministries or agencies carry out this stage, using the tools that the MSSS provides.

They may request assistance from the MSSS or from the health care network. If a broader analysis is required, a request is submitted to the Deputy Minister's office which sends it to the appropriate experts in the MSSS, the INSPQ or other organizations that offer the requisite expertise.

EVOLUTION OF TOOLS AND METHODS

Since its implementation in 2002, the impact assessment guide has been modified, on the basis of consultations with ministerial representatives and of a knowledge synthesis of the various tools developed in Europe (MSSS, 2004a).

In addition, the MSSS has produced a document on the determinants of health, in order to heighten awareness in all government departments and agencies of the non-medical determinants of health and the link between their respective missions and the health of the population (MSSS, 2006b, MSSS, 2012).

A review of the first five years of implementation of section 54 (2002-2007) was also published in 2008. This report assesses the progress of both aspects of the implementation strategy: the establishment of the intragovernmental HIA mechanism and the development and transfer of knowledge about healthy public policy (MSSS, 2008). A new report is expected in 2013 on the 2008-2012 period.

In addition, a synthesis of a conceptual framework of health determinants, developed by the MSSS's health status monitoring division, was published in 2012. This document, intended not only for other sectors, but also for the general public, leads to a

better understanding of the social determinants of health (MSSS, 2012).

RESEARCH PROGRAM

To broaden knowledge with respect to healthy public policy and to the processes involved, the MSSS has allocated funds for research.

In 2002, the MSSS jointly designed a research program with the *Fonds de la recherche en santé du Québec* (FRSQ)² and the *Fonds québécois de la recherche sur la société et la culture* (FQRSC).³

The research program:

- Supports the development of tools to assess the impact of public policy;
- Consolidates and broadens the capacity for interdisciplinary and multidisciplinary research and expertise in Québec;
- Supports applied research to evaluate, *a priori* and *a posteriori*, the impact of policies, legislation and regulations on health and well-being;
- Supports the development of collaboration between researchers, the INSPQ, research program partners and other government ministries and agencies; and
- Fosters the transfer of knowledge to decision-makers.

The MSSS and its partners have selected four areas of research:

1. Public policy and lifestyle habits⁴;
2. An assessment of the impact of government initiatives on health and well-being⁵;

² The *Fonds de la recherche en santé du Québec* (FRSQ) implements government strategies regarding health research as defined by the Québec Research and Innovation Strategy. It plays a key role in the planning and coordination of health research in Québec. Source: <http://www.frsq.gouv.qc.ca/en/index.shtml>.

³ The *Fonds québécois de la recherche sur la société et la culture* (FQRSC) is devoted to the development of research and innovation in Québec, in the humanities, social sciences, arts and literature. To this end, the FQRSC provides funding for research and the training of researchers in these fields and fosters the dissemination and transfer of knowledge. It also establishes the partnerships necessary for the advancement of scientific knowledge focusing on social problems. Source: <http://www.fqrsq.gouv.qc.ca/fr/accueil.php>.

⁴ This area of study comprises three research projects, funding for which began in January 2006 and ended in December 2007.

3. Concepts and methods⁶; and
4. Poverty and social exclusion⁷.

A call for research proposals was launched in each area of research. This stimulated the development of new research capacity through, among other things, the establishment of a research group dedicated to healthy public policy, which received funding for a period of six years. The final report published in 2011 stated that the use of "HIA as a decision-making tool constituted an important step toward the formulation of healthy public policies" [Translation] (Gagnon, Turgeon, Michaud & Dallaire, 2011, p. 15). The report's other conclusions focus on decision making within ministry sub-systems, the pragmatic aspects of implementing this practice and the use of knowledge in a decision-making context.

In addition, it was possible to fund certain projects outside these areas of study, as was the case in 2009 for a specific project on the social inequalities of health, for example.

At the time of publication of this update, the partners in the research program were considering the possibility of developing new areas of study based on an examination of issues, such as the aging problematic.

AGREEMENT WITH THE INSPQ

The INSPQ was established in 1998 to support the MSSS and regional public health authorities in fulfilling their public health mandates.⁸ The INSPQ is a public health expertise and reference centre in Québec with over 500 employees. It offers training and consulting services and provides screening, laboratory and research services.

⁵ This area of study also comprises three research projects, funding for which began in December 2007 and ended in December 2009. A new call for proposals was issued in 2011-2012. The new projects will be launched in 2013.

⁶ Funding for this research team started in December 2004 and ended in November 2010.

⁷ This area of study includes an initial phase comprising 11 research projects, funded from 2007 to 2009, and a second phase, subsequent to a new call for proposals issued in 2010, of eight projects, funding for which began in 2011.

⁸ Legislation stipulates that the mission of the Institut national de santé publique du Québec is to provide support to the MSSS, to regional public health authorities and to other institutions, by making available its expertise and specialized laboratory and screening services. See the INSPQ Website at: <http://www.inspq.qc.ca/english/about/default.asp>.

One facet of the INSPQ's mission focuses specifically on the assessment of the impact of public policy on the health of the population, and the submission of such findings to the Minister of Health and Social Services.

From the outset, the INSPQ has participated in the MSSS' deliberations on section 54 and has participated in reviewing the tools developed by the MSSS. It is a member of the steering and follow-up committee that oversees the research groups that obtain funding, participates in the development of areas of research, and collaborates in the drafting of reports.

The MSSS and the INSPQ have an agreement specifically devoted to the application of section 54. This agreement covers both of its subsections: support for the MSSS' advisory role with respect to other government ministries, and support for the process to evaluate the impact of legislation and regulations on health. More specifically, the agreement focuses on:

- Supporting the role of the MSSS with respect to the intragovernmental impact assessment process and to the research program;
- Developing tools to facilitate access to expertise and knowledge; and
- Monitoring healthy public policy.

In addition, a second agreement between the MSSS and the INSPQ was concluded in 2011, this one specifically tied to the Plan Nord,⁹ and comprising a focus on health and social services. The aim of the agreement, which is to extend over five years is to support the development and implementation of a health impact assessment mechanism applicable to the projects and policies initiated within the context of the Plan Nord.

The INSPQ's mandate centres mainly on work related to:

- Supporting the strengthening and linking of existing impact assessment procedures, namely:

⁹ The **Plan Nord** is an economic development plan for Québec's northern regions put forth by the government of Québec in May 2011. It includes plans to invest approximately 80 billion dollars in public and private funding over a period of 25 years. The plan, purported to be based on sustainable development, includes the opening of mines, the development of renewable energy projects and the construction of transportation infrastructure.

- The environmental impact procedure (EIA)¹⁰; and
- The health impact procedure (HIA);
- Supporting policy makers through the production of specific information (documentation and knowledge specifically relevant to the context of the Plan Nord).

SUPPORT FOR THE MINISTER'S ADVISORY ROLE

One of the INSPQ's key roles is to produce advisory notices and knowledge syntheses on public health problems that can be modified through public policy, and on the policies, themselves. The MSSS chooses the subject of advisory notices and syntheses, and submits them for discussion with the INSPQ through a committee comprised of the directors of both organizations. In addition, for several years now, ministerial representatives have been invited to join these committees, based on the subject of the reports. Moreover, all the ministerial representatives are invited to share their suggestions for advisories and syntheses by means of surveys.

The professional and scientific researchers at the INSPQ are responsible for drafting the notices and an inter-branch body, including the CEO, examines issues related to this mandate. Upon completion, the advisory notices are submitted by the CEO of the INSPQ directly to the Minister of Health and Social Services. The advisory notices are then published after a delay of 90 days.

SUPPORT FOR THE HIA PROCESS

The INSPQ plays a key role with respect to HIA, centred on monitoring and knowledge transfer, to both the MSSS and to ministerial representatives. Funding from the MSSS has supported the establishment and operation of a web portal devoted to public policy, and a newsletter, which produces an environmental scan of healthy public policy initiatives.¹¹

Finally, the INSPQ hosts the National Collaborating Centre for Healthy Public Policy (NCCHPP),¹² a pan-

Canadian knowledge-transfer centre. This centre has developed a work stream focused specifically on HIA, which has led to the production of several documents on the theory and practice of HIA. This work has also made it possible to share Québec's expertise in this area with the other provinces and with the international community and, in so doing, has helped build on the INSPQ's expertise, thus furthering the objectives of section 54.

How has the implementation been achieved?

CERTAIN MINISTRIES INITIALLY EXPRESSED RESERVATIONS

In 2003, one year after section 54 came into effect, the MSSS asked the *Observatoire de l'administration publique* at the École nationale d'administration publique (ENAP) to conduct a study of all of the government ministries and agencies covered by section 54 (*Observatoire de l'administration publique de l'ENAP*, 2003).

The study's objectives were to analyze the extent to which the impact assessment process had been implemented, and to gauge overall receptiveness to this new measure, by means of interviews with senior civil servants in 18 government ministries and agencies.

The study revealed that some ministries and agencies showed limited adherence to the principles covered by section 54, and that they demonstrated a lack of knowledge with respect to both the impact assessment process and to determinants of health and well-being (the main obstacles to implementation). Moreover, in line with the existing literature on the subject, it confirmed that ministries and agencies with a social mission adhered more extensively to the approach than those with an economic mission.

This information enabled the MSSS to adjust its strategies; for example, by producing an awareness and information handbook on health determinants, geared to different government ministries.

¹⁰ A procedure, established in compliance with the *Environment Quality Act*, which allows the impact of development projects on ecosystems, resources and the quality of life of individuals to be measured.

¹¹ See <http://politiquespubliques.inspq.qc.ca/>.

¹² This Centre is one of six public health collaborating centres funded by the Public Health Agency of Canada; it seeks to

support the development of the skills of public health actors in Canada.

The handbook, launched in 2006 by the *Directeur national de santé publique* (Chief Medical Officer of Health), constitutes the first report on health determinants, the *Rapport national sur l'état de santé de la population du Québec: Produire la santé*, that is accessible to a wider audience (MSSS, 2005b).

IMPACT ASSESSMENTS

The MSSS's efforts to heighten awareness within and provide support for government ministries and agencies by means of intragovernmental tools and procedures have facilitated the implementation of the impact assessment process. Thus, between 2002 and 2012, the MSSS recorded 519 requests for consultations from other ministries.¹³

The following characteristics of the above requests are noteworthy:

- A large portion of the requests for consultation focused on draft legislation or draft regulations, as stipulated by section 54 of the PHA. However, other types of projects were also submitted to the MSSS: government policies, action plans, certificates of authorization, etc.
- Government ministries and agencies were asked to amend about 20% of the 528 proposals.
- The vast majority of the requests (over 90%) came directly from the *Conseil exécutif* (Executive Council).
- An internal survey, conducted by the MSSS, of a sampling of projects revealed that half of the requests had been the topic of prior discussion with the ministries and agencies concerned.
- Other HIAs were carried out without the MSSS being formally notified.

A TREND TOWARDS EARLIER, PROACTIVE CONSULTATION

During the first few years in which requests were recorded, it was noted that the majority came from one of the three Cabinet secretariats dealing respectively with social development, education and culture (the Secrétariat du développement social, de l'éducation and de la culture) which, having examined the reports submitted by the ministries and agencies, concluded that health impact assessments were warranted. Today, requests also come from secretariats dealing with economic prosperity,

sustainable development and regulatory streamlining the Secrétariat à la prospérité économique, the Secrétariat au développement durable and the Secrétariat à l'allègement réglementaire et administratif.

In addition, the Direction générale de la santé publique of the MSSS has observed that, with increasing frequency, some ministries are consulting the MSSS earlier on in the policy development process. For example, the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation du Québec (Ministry of Agriculture, Fisheries and Food) consulted the MSSS concerning a document for public consultation within the context of a commission on the future of agriculture and agri-business in Québec, the *Commission sur l'avenir de l'agriculture et de l'agroalimentaire québécois* (2007). And, more recently, the Ministère des Affaires municipales, des Régions et de l'Occupation du territoire (MAMROT) (Ministry of Municipal Affairs, Regions and Land Occupancy) consulted the MSSS on its draft proposal for the [Loi sur l'aménagement durable du territoire et l'urbanisme](#) (2010), an act regulating sustainable development of the land and urban planning.

This suggests a trend towards acceptance and integration of the process.

¹³ A consultation is requested for the purpose of obtaining a formal or informal opinion of draft legislation or regulations.

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The National Collaborating Centre for Healthy Public Policy (NCCHPP) seeks to increase the expertise of public health actors across Canada in healthy public policy through the development, sharing and use of knowledge. The NCCHPP is one of six centres financed by the Public Health Agency of Canada. The six centres form a network across Canada, each hosted by a different institution and each focusing on a specific topic linked to public health. In addition to the Centres' individual contributions, the Collaborating network of Collaborating Centres provides focal points for the exchange and common production of knowledge relating to these topics. The National Collaborating Centre for Healthy Public Policy is hosted by the Institut national de santé publique du Québec (INSPQ), a leading centre in public health in Canada.

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