June 28, 2023

CONSULTATION DRAFT

AN ACT TO AMEND THE OPIOID DAMAGES AND HEALTH CARE COSTS RECOVERY ACT

BILL NO. **2023**

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. (1) Subsection 1(1) of the *Opioid Damages and Health Care Costs Recovery Act* R.S.P.E.I. 1988, Cap. O-5.1, is amended

(a) by renumbering clause (a) as clause (a.2);

(b) by the addition of the following immediately before clause (a.2):

(a) "**active ingredient**" means an active ingredient set out in the Schedule;

(a.1) "**consultant**" means a person who provides advisory services

(i) to a wholesaler in relation to the distribution, sale or offering for sale of opioid products, or

(ii) to a manufacturer in relation to the sale of active ingredients or opioid products;

(c) in clause (d),

(i) in subclause (ix), by the deletion of the word "and**" after the comma;**

(ii) in subclause (x), by the deletion of the semicolon and the substitution of the words ", and**"; and**

(iii) by the addition of the following after subclause (x):

(xi) in relation to an action under subsection 2.1(1), expenditures by the Government of Canada for programs, services, benefits or similar matters associated with disease, injury or illness;

(d) in subclauses (i)(i) and (ii), by addition of the words "or active ingredient**" after the words "**a drug**"; and**

(e) in subclauses (k)(i) and (ii), by the deletion of the words "manufacturer or wholesaler**" and the substitution of the words "**manufacturer, wholesaler or consultant**".**

(2) Subsection 1(6) of the Act is amended

(a) by the deletion of the word "defendant**" wherever it occurs and the substitution of the word "**manufacturer**";**

(b) by the deletion of the word "defendant's**" wherever it occurs and the substitution of the word "**manufacturer's**";**

(c) by the deletion of the words "or promoted**" after the words "**product manufactured**" wherever they occur; and**

(d) by the deletion of the words "or wholesalers**" after the words "**all manufacturers**".**

(3) Section 1 of the Act is amended by the addition of the following after subsection (6):

Formula for determining market share of a wholesaler

(7) For the purposes of determining the market share of a wholesaler for a type of opioid product sold in Prince Edward Island, the court shall calculate the wholesaler's market share for the type of opioid product by the following formula:

wms = (wm / WW) x 100%

where

wms is the wholesaler's market share for the type of opioid product from the date of the earliest opioid-related wrong committed by that defendant to the date of trial;

wm is the quantity of the type of opioid product that is distributed, sold or offered for sale by the wholesaler within Prince Edward Island from the date of the earliest opioid-related wrong committed by that wholesaler to the date of trial;

WW is the quantity of the type of opioid product that is distributed, sold or offered for sale within Prince Edward Island for the purpose of providing health care benefits from the date of the earliest opioid-related wrong committed by the wholesaler to the date of trial.

2. Subsection 2(1) of the Act is amended by the deletion of the words "manufacturer or wholesaler**" and the substitution of the words "**manufacturer, wholesaler or consultant**".**

3. The Act is amended by the addition of the following after section 2:

2.1 Direct action by Government of Canada

(1) The Government of Canada has a direct and distinct cause of action against a manufacturer, wholesaler or consultant to recover the cost of health care benefits caused or contributed to by an opioid-related wrong.

Action not subrogated

(2) An action under subsection (1) is brought by the Government of Canada in its own right and not on the basis of a subrogated claim.

Action independent of recovery by others

(3) In an action under subsection (1), the Government of Canada may recover the cost of health benefits whether or not there has been any recovery by other persons who have suffered damage caused or contributed to by the opioid-related wrong committed by the defendant.

Recovery for individuals or on aggregate basis

(4) In an action under subsection (1), the Government of Canada may recover the cost of health care benefits

(a) for particular individual insured persons; or

(b) on an aggregate basis, for a population of insured persons

who have suffered damage caused or contributed to by the use of or exposure to a type of opioid product.

Evidence and procedure in action brought on aggregate basis

(5) Where the government of Canada seeks in an action under subsection (1) to recover the cost of health care benefits on an aggregate basis,

(a) it is not necessary

(i) to identify particular individual insured persons,

(ii) to prove the cause of opioid-related disease, injury or illness in any particular individual insured person, or

(iii) to prove the cost of health care benefits for any particular individual insured person;

(b) the health care records and documents of particular individual insured persons or the documents relating to the provision of health care benefits for particular individual insured persons are not compellable except as provided under a rule of law, practice or procedure that requires the production of documents relied on by an expert witness;

(c) a person is not compellable to answer questions with respect to the health of, or the provision of health care benefits for, particular individual insured persons;

(d) despite clauses (b) and (c) of this subsection, on application by a defendant, the court may order discovery of a statistically meaningful sample of the documents referred to in clause (b) of this subsection, and the order shall include directions concerning the nature, level of detail and type of information to be disclosed; and

(e) where an order is made under clause (d) of this subsection, the identity of particular individual insured persons must not be disclosed, and all identifiers that disclose or may be used to trace the names or identities of any particular individual insured persons shall be deleted from any documents before the documents are disclosed.

4. The Schedule to the Act is amended by the addition of the words "or active ingredient**" after the words "**A product that contains a drug**".**

EXPLANATORY NOTES

Section 1 amends subsection 1(1) of the *Opioid Damages and Health care Costs Recovery Act* R.S.P.E.I. 1988, Cap. O-5.1, to add new definitions of the terms "active ingredient" and "consultant", and to amend the existing definitions as specified. The section also amends subsection 1(6) of the Act to substitute the term "manufacturer" for "defendant" in the formula set out in that subsection for determining market share for a type of opioid product sold in Prince Edward Island. The section also adds a new subsection 1(7) to the Act in order to establish a separate formula for determining market share of a wholesaler for a type of opioid product sold in Prince Edward Island. These amendments better reflect the separation of the markets for manufacture and distribution of opioid products.

SECTION 2 amends subsection 2(1) of the Act to add a consultant as an entity against which the Government has a right of direct and distinct action to recover costs as specified.

SECTION 3 amends the Act by adding a new section 2.1 that states that the federal Government also has a right of direct and distinct action to recover costs as specified, and clarifies the nature of that right.

SECTION 4 amends the Schedule to the Act to add a reference to a product that contains an "active ingredient", as that term is defined in section 1.