

**Report to
Rapport au:**

**Ottawa Board of Health
Conseil de santé d'Ottawa
15 June 2015 / 15 juin 2015**

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2015-OPH-EHP-0001

**SUBJECT: CONSULTATION PLAN FOR A PROPOSED PERSONAL SERVICE
SETTINGS BY-LAW**

**OBJET: PLAN DE CONSULTATION POUR UN RÈGLEMENT PROPOSÉ
RÉGISSANT LES ÉTABLISSEMENTS DE SERVICES PERSONNELS**

REPORT RECOMMENDATIONS

**That the Board of Health for the City of Ottawa Health Unit approve the
consultation plan for a proposed personal services settings regulatory by-law, as
described in the report.**

RECOMMANDATIONS DU RAPPORT

Que le Conseil de santé de la circonscription sanitaire de la ville d'Ottawa approuve le plan de consultation pour un règlement proposé régissant les établissements de services personnels, comme il est décrit dans le rapport.

EXECUTIVE SUMMARY

In 2013, after reviewing the changing pattern of public use of Personal Services Settings (PSS) and considering emerging public health risks, the Board of Health directed Ottawa Public Health (OPH) to explore strategies to improve promotion of Infection Prevention and Control in PSS. OPH has made progress in the areas of inspection, education, disclosure of information to the public, health promotion and quality assurance.

Challenges remain in efforts to ensure clients of PSS facilities are protected from the risk of infectious diseases. New or existing PSS that require inspection are often discovered by word of mouth by OPH as PSS businesses, such as nail salons and tattoo parlours, do not require a municipal licence to operate. In addition, education alone has not been effective in all cases to prevent practices that could contribute to the spread of infectious diseases such as Hepatitis B (HBV), Hepatitis C (HCV), and Human Immunodeficiency Virus (HIV). While many PSS businesses quickly address health hazards identified during inspections, others are not compliant with infection prevention and control best practices.

OPH plans to consult with operators and clients regarding a proposed Registration by-law applicable to all PSS businesses in Ottawa. Under the proposed by-law, all PSS would be required to register with OPH, at no cost, to allow for identification of all premises for inspection, to “level the playing field”. The proposed by-law would also allow Public Health Inspectors to issue tickets to operators that consistently fail to meet Infection Prevention and Control Standards. The City of Ottawa’s By-Law and Regulatory Services Department is supportive of this proposal and all costs would be absorbed by annual PSS program funding as well as the one-time funding allocated to OPH for PSS in 2015.

OPH is asking the Board of Health to approve a consultation plan, as described in the report, regarding the by-law for registration. As OPH is seeking to support businesses in maintaining infection prevention and control requirements, consultations would ensure that stakeholders have the opportunity to provide input. Feedback from owners,

operators, staff and residents will be communicated to the Board of Health in a subsequent report.

RÉSUMÉ

En 2013, après avoir étudié l'évolution des tendances dans le recours aux établissements de services personnels (ÉSS) et les nouveaux risques pour la santé publique, le Conseil de santé a demandé à Santé publique Ottawa (SPO) d'explorer des stratégies pour améliorer la prévention et le contrôle des infections dans les ÉSS. SPO a réalisé des progrès dans les domaines de l'inspection, de l'éducation, de la transmission d'information au public, de la promotion de la santé et de l'assurance de la qualité.

Le plus grand défi demeure toutefois de protéger les clients des ÉSS contre les risques de maladies infectieuses. Les nouveaux ÉSS et les ÉSS existants qui nécessitent une inspection sont souvent découverts par SPO grâce au bouche-à-oreille, car ces commerces, notamment les salons de manucure et les studios de tatouage, ne nécessitent pas de permis d'exploitation. De plus, la sensibilisation seule n'a pas toujours été efficace pour prévenir les pratiques susceptibles d'entraîner la transmission de maladies infectieuses comme l'hépatite B (VHB), l'hépatite C (VHC) et le virus de l'immunodéficience humaine (VIH). Si de nombreux ÉSS font rapidement le nécessaire pour éliminer les risques relevés lors de l'inspection, d'autres omettent de se conformer aux pratiques exemplaires en matière de prévention et de contrôle des infections.

SPO entend consulter des exploitants et des clients concernant une proposition de règlement municipal obligeant l'ensemble des ÉSS d'Ottawa à s'enregistrer. Aux termes de ce règlement, tous les ÉSS seraient tenus de s'inscrire sans frais auprès de SPO afin qu'il puisse répertorier tous les commerces à inspecter et que tous soient soumis aux mêmes normes. Le règlement municipal proposé permettrait également aux inspecteurs de la santé publique d'imposer des amendes aux établissements qui contreviennent régulièrement aux normes en matière de prévention et de contrôle des infections. Les Services des règlements municipaux de la Ville d'Ottawa sont d'accord avec cette proposition, et tous les coûts seraient absorbés par le financement annuel accordé au programme des ÉSS ainsi que par le financement ponctuel accordé à SPO pour les ÉSS en 2015.

SPO demande au Conseil de santé d'approuver le plan de consultation, tel que décrit dans le rapport, concernant le règlement municipal obligeant les ÉSS à s'enregistrer. SPO désire aider les entreprises à respecter les normes de prévention et de contrôle des infections, et ces consultations permettront aux intervenants de donner leur avis.

Les commentaires des propriétaires, des exploitants et du personnel de ces commerces ainsi que ceux des résidents seront communiqués au Conseil de santé dans un rapport subséquent.

BACKGROUND

The *Ontario Public Health Standards (OPHS)*, through the [Infection Prevention and Control in Personal Services Settings Protocol, 2008](#), requires that health units perform routine inspections for all personal services settings (PSS) – businesses such as hairdressers, barbershops, tattoo and body piercing studios, those that provide electrolysis and various other aesthetic services - at least once per year, as well as respond to any public complaints. Public Health Inspectors (PHIs) with Ottawa Public Health (OPH) carry out these inspections and educate operators and consumers about best practices for infection prevention and control (IPAC) to prevent the spread of infectious diseases.

The rationale for this work is that penetration of skin or mucous membranes (e.g. the inside of the mouth) can lead to viral and bacterial infections, including Hepatitis B (HBV), Hepatitis C (HCV), and Human Immunodeficiency Virus (HIV), as well as skin infections. As the popularity of PSS has grown, so too has the variety of services offered at these establishments. In addition to traditional services - such as manicure, pedicure and tattoo - some PSS are performing extreme body modification procedures, such as branding and tongue splitting, which may increase the risk of infection.

In 2013, after reviewing the changing pattern of public use of PSS and considering emerging public risks, the Board of Health moved a motion directing OPH to explore strategies to improve promotion of IPAC in PSS.

OPH has implemented the 2013 PSS Plan, which includes inspection, disclosure, education, health promotion and quality assurance (progress is outlined in supporting **Document 1**); highlights include the following:

Education

Set to launch this summer, OPH has developed branded *Safety Before Beauty* online e-learning modules to respond to PSS owners'/operators' requests for more educational materials from the health unit. The engaging format also allows OPH to connect with and support PSS clients to make informed purchases of service.

Inspection

OPH has found that the inspection program is assisting PSS to increase compliance with required IPAC best practices, largely through education by the PHI during inspections. As additional one-time City of Ottawa investment resulted in OPH's ability to inspect more PSS locations, the number of repeated critical deficiencies and overall compliance with the PSS Best Practices improved. In 2012-13, 55% of inspections (490) showed non-compliance with at least one IPAC requirement, and 26% (237) of inspections noted repeat deficiencies with the previous inspection. In 2014, 35% (373) of PSS inspections resulted in non-compliance, with only 5% (60) having a repeat deficiency.

Challenges to improving IPAC in PSS

Despite progress with education and inspection, challenges remain.

First, new or existing PSS that require inspection are often only discovered through the PSS's website, through social media, or word of mouth reports. As PSS businesses are not required to obtain a municipal business license or inform OPH that they are operating, OPH may only become aware of the existence of a PSS after receiving a complaint or a health hazard is identified.

Second, in some cases, education alone does not achieve the level of compliance needed. Repeat non-compliance is a marker for when additional action is required. Current approaches to repeat non-compliance include on-site education, increased surveillance and, when non-compliance persists, the issuance of an Order under public health legislation to either change particular practices or close the business until such time that corrections are made.

There are limitations regarding the use of Orders under the *Health Protection and Promotion Act* (HPPA). The legal test includes that the Order is required when a Medical Officer of Health or a PHI believes that a health hazard exists and that the requirements specified in the Order are needed to decrease the impact of a health hazard or eliminate it altogether. Deficiencies such as lapses in hand washing, errors or omissions in cleaning and sanitizing surfaces, or failure to provide appropriate verbal and written after care (for invasive procedures) result in a finding of non-compliance, but do not lend themselves to the tool that is an Order under s. 13 of the HPPA¹.

¹ HPPA: Order by Medical Office of Health (M.O.H.) or public health inspector re health hazard 13. (1) A medical officer of health or a public health inspector, in the circumstances mentioned in subsection (2), by

Although a verbal Order under s. 13 of the HPPA may be issued on the spot, due to the complexity and/or significance of the Order, a follow-up written Order is usually required. In addition, enforcing a s.13 Order is a time-consuming process.

All deficiencies that cannot be addressed through education and voluntary compliance currently would need to be incorporated in an Order under s.13 of the HPPA. Further legal action may result if the conditions set out in an Order are not satisfied. The public health inspector who issued the Order would commence a more complex proceeding. Unlike food premises, detailed standards for PSS are not set out under a regulation and do not include associated set fines. Tickets are currently not possible because the PSS standards are not regulations. If, however, the proposed PSS by-law is adopted, PHIs would be in a position to efficiently enforce specific standards and there would be a more immediate financial incentive for businesses to comply with requirements.

Seeking Solutions

To address these challenges, OPH has completed an environmental scan, conducted/analyzed surveys of PSS operators and the public, and engaged a number of internal and external partners to develop a proposed approach.

In order to assist with identification of PSS and to increase the tools available for achieving compliance with IPAC requirements, other public health agencies in Ontario, across Canada and in the United States have enacted local and/or provincial/state legislation to require that PSS obtain a municipal business license. While these jurisdictions have indicated licensing has assisted with the above challenges, a downside to this approach is that it requires businesses to pay a licensing fee.

The public health directorate of the MOHLTC has indicated that there are currently no plans to further regulate PSS at a provincial level. OPH surveys have indicated that both PSS operators and the public are in favour of additional regulation of PSS. Sixty four percent (64%) of operators indicated PSS should be licensed, and an additional thirteen percent (13%) indicated that PSS should be licensed though they had some concerns, related to the likely introduction of fees. Results from a public survey also indicated support for PSS licensing, with varying support for different services (84% for electrolysis, 87% spas, 90% piercing and 94% tattoo).

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 health hazard. R.S.O. 1990, c. H.7, s. 13 (1).

Proposal to “level the playing field” by requiring PSS owners and/or operators to register with OPH

OPH is proposing a City of Ottawa by-law, administered by OPH, which will level the playing field for owners/operators by requiring all PSS establishments to register with the health unit to be inspected as mandated. Under the authority of the proposed by-law, PSS that fail to register will incur a ticket with an associated fine. A registration requirement will close an ongoing gap in OPH’s ability to identify and inspect PSS to ensure compliance with required IPAC best practices, without the need to impose additional fees to businesses. The by-law, through inclusion of infection prevention and control standards, would enable OPH to reduce health risks by issuing provincial offence notices (tickets) if the operator fails to meet infection prevention and control standards. OPH will continue to positively recognize businesses that have implemented satisfactory infection prevention and control practices by posting on the Ottawa.ca/pssinspections website that the businesses are “in compliance” with the best practices.

DISCUSSION

A City of Ottawa by-law requiring all PSS to register their business will assist in identification of locations that require inspection. Draft PSS Registration By-law requirements (Document 3) are attached. The proposed Registration By-law will not require establishments pay a fee to register their business, but will support compliance with infection prevention and control minimum standards.

Registration

The proposed PSS Registration by-law is similar to the provincial *Skin Cancer Prevention Act (Tanning Beds)*, 2013 that requires tanning bed operators notify the local Medical Officer of Health prior to commencing the selling of tanning services or within 60 days of the coming into force of the notification requirements. Under these requirements, Tanning Bed operators in Ottawa must register their premise with OPH (using an OPH-developed template). Currently, the maintenance of the registry within OPH’s Environment Health Protection Branch has had minimal resource implications, with 64 registered Tanning Bed operators. OPH is currently aware of 970 PSS premises² operating in Ottawa.

² Personal service settings: settings in which aesthetic services such as body piercing, tattooing, hairdressing salons (etc.) are delivered.

Under the proposed PSS Registration by-law, OPH will be responsible for maintaining the PSS registry that would be used to identify premises for inspection, thereby avoiding burden on other City departments. The PSS that are required to register are those that offer aesthetics, body piercing, electrolysis, hairstyling, manicure and pedicure, and tattoo and micro pigmentation. Similar to the provincial tanning bed legislation, the PSS is required to register prior to commencing the carrying on, operating or offering of person services or within 60 days of the coming into force of the by-law. The proposed by-law also requires that operators/owners notify OPH of any relevant changes to their business (i.e. change of address), renew registration on an annual basis, and ensure their business is insured. The purpose of the insurance requirements is to provide a measure of consumer protection because insured businesses may better protect clients in the case of an injury.

The cost to OPH will include staff time to develop the infrastructure for PSS owners/operators to register their business, as well as staff time to create and maintain a database of all PSS that register with the health unit. OPH will also incur costs associated with promoting the new requirements to all Ottawa PSS to ensure all businesses are aware of their responsibilities. All costs for consultation, administration of the registry and notifying PSS of the registration requirement (approximately \$25,000 annually) will be absorbed by annual PSS program funding as well as the one-time funding allocated to OPH for PSS in 2015.

Standards

The proposed by-law incorporates key standards that are consistent with the Infection Prevention and Control Best Practices for Personal Services Settings document that is published by the Infection Prevention and Control Unit of the Public Health Division of the Ministry of Health and Long-Term Care. OPH is mandated to enforce the standards of this best practices document under the Ontario Public Health Standards. Standards include the requirement to use single-use instruments on one person only and properly clean and disinfect non-single-use items between uses. The proposed by-law also includes record keeping requirements such as records for use of mechanical sterilizers that are intended to ensure that PHIs are able confirm that certain practices in respect of infection prevention and control are being followed.

Fines

Under the proposed registration model, PHIs will be able to issue tickets with associated fines with a view to encouraging the operator to consistently meet any of the requirements of the by-law, including the registration requirements and infection

prevention and controls standards. After a PSS by-law is adopted, OPH would have the opportunity to request the Chief Justice of the Ontario Court of Justice establish set fines that escalate based on the health risk associated with non-compliance with specific IPAC practices. The current maximum set fine that may be approved for a ticket is \$1,000 excluding costs and the victim surcharge. In certain cases, including for some repeat deficiencies, the PHI may opt to proceed under Part III of the *Provincial Offences Act* (laying an Information) that would require the Defendant to appear before a Court.

Disclosure

OPH is also considering options for improving ease of use and ease of comprehension of online disclosure of inspection results. Currently, inspection results are available online with two categories of result: “In compliance” or “Not in compliance” with IPAC Best Practices at PSS. Inspection results are loaded onto OPH’s website shortly after they are completed, with the presence of any deficiency resulting in a finding of non-compliance.

PSS By-law Consultation Plan

As OPH is seeking to support PSS businesses to maintain IPAC requirements, consultations will ensure that stakeholders have an opportunity to provide input on the new regulatory scheme prior to implementation. OPH has also met with the Council of Business Improvement Areas (BIAs) to explain OPH’s interest in consulting on the proposed by-law. The business organizations indicated that they would be prepared to engage in the consultation process.

Building on previous consultations that indicated support for regulation of PSS, outlined in the Infection Prevention and Control in Personal Service Settings report ([ACS2013-OPH-EHP-0004](#)), OPH is seeking Board approval to obtain feedback from PSS owners/operators specifically regarding the draft PSS Registration by-law requirements that will be linked to the survey, as well as regarding challenges they may foresee and supports required for implementation. OPH will also seek owner/operator input on improvements to online disclosure of inspection reports. Consultations will include an explanation of how OPH will incorporate stakeholders’ views into a final proposal for recommendation to the Board of Health and Ottawa City Council.

Consultations will occur via an online survey and through focus groups. The draft online survey (provided as **Document 2**) will be available in English, French, Vietnamese, Chinese and Spanish. The survey will provide general information on the proposed registration intervention and several questions. The online survey will focus on PSS

owners/operators and will also be open to members of the general public interested in providing input. Business Improvement Areas and Chambers of Commerce will be consulted. OPH will make the online survey available over the summer and into the fall. OPH will also have focus groups with businesses to further examine the details of the by-law.

Upon Board approval, both traditional and targeted dissemination methods will be used to inform PSS owners/operators, as well as the public, of the online survey. OPH will promote the consultations in bilingual community newspapers and other print sources, as well as inform all PSS premises as to how to access the survey link. During their routine inspections, Public Health Inspectors will also communicate with PSS staff and owners/operators about the proposed changes and how to provide input on them. The survey link will be situated on OttawaPublicHealth.ca, where visitors can view more information about the work OPH does with PSS. PSS owners/operators will be encouraged to contact OPH via the Duty Desk Health Information Line (613-580-6744), healthsante@ottawa.ca, or by contacting their PHI to answer any questions they may have about the online survey.

OPH will also make use of festival events and social media (Facebook, Twitter, Tumblr blog) to expand the reach of the consultations in order to optimize the number of owners/operators and interested members of the public who provide feedback on the proposed by-law.

Feedback from PSS owners/operators/staff and residents will be used to inform next steps. Consultation results will be reviewed with the Board of Health in 2016, when direction regarding recommendations to City Council about a new PSS by-law will be sought from the board.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

CONSULTATION

OPH consulted with staff from the City of Ottawa's By-law and Regulatory Services Department. Legal Services has advised that registration is feasible, under the *Municipal Act, 2001* requiring Ottawa City Council to amend, or pass, a by-law specific to the registration of PSS. The proposed approach would allow a PHI to inspect the premises for purposes of determining compliance with the by-law. The PHI would have

regulatory powers to inspect both under the authority of the by-law and the *Health Protection and Promotion Act (HPPA)*.

Business Improvement Areas, Chambers of Commerce, the City's By-law and Regulatory Services Department, the City Clerk and Solicitor's Department and OPH's public engagement representative were consulted in preparation of this report. The report also drew on previous consultations with owners/operators of PSS and the public.

LEGAL IMPLICATIONS

There are no legal impediments to implementing the recommendation in this report.

The *Municipal Act, 2001* provides the legal authority for City Council to adopt a by-law that regulates personal service settings. Section 10(2), paragraphs 6 and 8 of the *Municipal Act, 2001* provide the Council of a Municipality the authority to pass by-laws for the health, safety and well being of persons and for the protection of persons, including consumer protection. Section 8(3) of the *Municipal Act, 2001* provides that Council of a municipality may in such a by-law regulate or prohibit regarding the matter, and require persons to do certain things regarding the matter. The draft personal services registration by-law requirements reflect that Public Health Inspectors will be enforcing provisions of the regulatory by-law as municipal law enforcement officers and will not be limited to inspecting personal service settings under the authority of the *Health Protection and Promotion Act*.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

ACCESSIBILITY IMPACTS

There are no accessibility implications associated with this report.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with this report.

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SUPPORTING DOCUMENTATION

Document 1: Progress on OPH PSS Strategy

Document 2: Draft Survey - New Registration System for Personal Service Settings

Document 3: Draft Personal Services Settings Registration By-law Requirements

DISPOSITION

Once approved by the Board, OPH will be responsible for completing the proposed consultative work and presenting a subsequent report to the Board of Health and Council.