

28 March 2024

Re: **Concerns on Scope of Bill 12**

Dear Premier Eby and Attorney General Sharma,

On behalf of the signatory business associations and our collective membership, we are writing to express our shared concerns about the breadth of the recent Bill 12, the *Public Health Accountability and Cost Recovery Act* (the “Bill”).

The intention to safeguard the physical and mental health and wellbeing of British Columbians is laudable and an objective we support. We are writing today to emphasize that the parameters in Bill 12 must be clear and appropriately delineated so as not to inadvertently expose a wider spectrum of businesses to legal risk. The current draft does not achieve this and has been advanced without sufficient engagement.

Our concerns arise from the potential ramifications of the Bill’s expansive interpretation, as summarized in several articles from B.C.’s legal community, including analyses from McCarthy Tétrault¹, Aird Berlis², and others. Our members have reacted swiftly to the proposed law as well, raising significant concerns as we scramble to understand the legal implications of such a broadly scoped bill. Given the uncertainty and broad scope, we urge the government to take the time to work with interested parties to ensure appropriate guardrails are in place and that there are no unintended consequences.

Some of the concerns include:

- If enacted, the law appears to apply to any product, good, service or by-product (product and/or service), which we understand can create liability for almost any business operating in or connected to B.C.
- Similarly, the Bill appears to apply not only to a product or service that may *cause* or may contribute to disease, injury, or illness but also to any product/service that contributes to even the *risk* of disease, injury, or illness without clear criteria for determining these risks or costs.

¹ <https://www.mccarthy.ca/en/insights/articles/much-broader-future-cost-recovery-litigation-british-columbia#:~:text=Broader%20cost%20recovery%3A%20Bill%2012,the%20risk%20thereof%E2%80%94are%20recoverable>

² <https://www.airdberlis.com/insights/publications/publication/b.c.-cost-recovery-legislation-has-significant-implications-for-product-and-service-providers>

- Further, Bill 12 expands the type and scope for costs the government to “other expenditures by the government, made directly or through one or more agents, other intermediate bodies or education authorities, for programs, services, benefits or similar matters associated with disease, injury or illness” creating significant risks to all sectors of the economy.
- The use of a certificate from a minister of the federal or provincial government as proof of expenditures without conclusive proof of actual risk or harm is alarming and without precedent.

The potential consequences of these points could be significant. An expanded scope of liability, along with the related expanded legal and insurance costs due to the broad nature of the Bill are significant concerns for B.C. businesses. These costs come amidst economic uncertainty, low growth, and a rapidly rising population. B.C.'s economy is slowing, as demonstrated by a year-over-year decrease in retail sales per January 2024 data. Inevitably, these costs, associated with increased liability and uncertainty, are paid by consumers and businesses.

Specifically, the government's communications and media reports have focused on “social media companies” and “algorithms” as reasons why this legislation is being introduced. While the signatories to this letter may have different views individually, a thorough discussion and consultation on the rules governing online behaviour and commerce to ensure our laws are up to date for our digital age would seem appropriate. Presumably this would also entail consultation to ensure the desired outcomes would be achieved in any new initiative.

As opposed to a targeted approach, this legislation is written in the broadest possible fashion. The result is that there is a real risk that this legislation could cause some to consider alternatives to investing in B.C., raise costs, or, at worst, relocate existing B.C.-based operations. In our view, it is critical that there be a thorough discussion and airing of views on the broad scope of this law prior to its passage.

As such, we request the government pause the advancement of the Bill and instead work with stakeholders to refine the intent, purpose, and language of the proposed law.

In conclusion, it is important to once again stress that we support the government's stated objectives, which include protecting British Columbians. We look forward to collaborating and finding a path forward.

Sincerely,



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