

FACT SHEET

FOOD SAFETY - UNPASTEURIZED MILK

ISSUE

Citizens express desire for access to illegal unpasteurized milk and seek removal of section 2(a) of the *Public Health Act's* Health Hazards Regulation, which deems unpasteurized milk to be a health hazard.

KEY FACTS

- Unpasteurized milk – often referred to as raw milk – is consumed as it comes directly from the cow, goat or sheep, without being processed to reduce levels of disease-causing bacteria such as *E. coli*, *Salmonella*, *Listeria*, *Staphylococcus* and *Campylobacter*.
- Its sale is illegal in Canada¹, and there is no scientific or other credible evidence that unpasteurized milk produces any measurable health benefits over pasteurized dairy products.
- Consuming unpasteurized milk presents a serious health hazard, and may result in mild illness, serious disease or even death, particularly among vulnerable populations including children, immune-compromised individuals, the elderly and pregnant women.
- Some British Columbia (BC) citizens ask that unpasteurized milk no longer be deemed a health hazard under section 2(a) of the *Public Health Act's* Health Hazards Regulation, citing access in other jurisdictions.
- The BC *Milk Industry Act* also prohibits the sale/supply of unpasteurized dairy products². A person may still drink unpasteurized milk from his/her own cow.
- Canadian dairy plants can legally use unpasteurized milk to produce cheese if it is aged for a minimum of 60 days under controlled conditions³. During the aging process, the internal environment of the cheese becomes more acidic, causing harmful bacteria in the milk to be destroyed. However, there is a risk that *E. coli* O157:H7 can adapt to the low acid conditions that form during the manufacturing process and may survive in low numbers⁴.

Oversight of Dairy Processing Plants

- As of September 3, 2015, the BC Centre for Disease Control (BCCDC) Food Protection Services had issued a total of 56 dairy plant licences⁵. There are 29 non-federally registered plants⁶ within BC that are exclusively inspected by BCCDC. Federal inspectors from the Canadian Food Inspection Agency (CFIA) lead inspections at the 27 federally registered plants⁷.
- BC dairy plants are inspected to ensure that their dairy products are safe and wholesome and that their operations are in compliance with the *Milk Industry Act* and its regulation.

¹ Canada: Food and Drug Regulations: C.R.C., c. 870: http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._870/page-87.html#h-74. (Accessed Jan 28, 2016).

² British Columbia: *Milk Industry Act* 1996: No sale of dairy products unless pasteurized 6 (1).

³ Canada: Food and Drug Regulations: C.R.C., c. 870: http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._870/page-109.html#docCont. (Accessed Jan 28, 2016).

⁴ Pacheco, F. and Galindo, A. "Microbial safety of raw milk cheeses traditionally made at a pH below 4.7 and with other hurdles limiting pathogen growth." *Current Research, Technology and Education Topics in Applied Microbiology and Microbial Biotechnology* 2. (2010): 1205-1216.

⁵ BCCDC. *Provincially Licensed Dairy Plants in BC*: http://www.bccdc.ca/resource-gallery/Documents/Guidelines%20and%20Forms/Forms/EH/FPS/Dairy/ProvinciallyLicensedDairyPlantsinBCweb_Jul272015.pdf (Accessed Jan 28, 2016).

⁶ *ibid*

⁷ *ibid*

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- All dairy plants are required to submit monthly finished product samples to accredited labs of their choice to verify that the applicable microbiological and chemical standards are met.
- Enforcement can include follow-up inspections, product withdrawal or recall, issuance of a prohibition notice and suspension of the licence.

Legal Case in BC related to Unpasteurized Milk⁸

- In July 2008, Fraser Health Authority (FHA) issued an Order (later appealed) directing Home on the Range Farm in Chilliwack to cease and desist distributing unpasteurized milk.
- An investigation of a case of *E. coli* and *Campylobacter* in an 18-month-old child in December 2009 by FHA revealed that the family had consumed milk from Home on the Range Farm.
- Home on the Range Farm violated the Order by continuing to distribute raw milk to alleged “owners” of the cows under a cow share (part ownership of cow) agreement, allowing “owners” to sidestep the *Milk Industry Act*, which prohibits the sale/supply of raw dairy products unless it is from one’s own cow.
- On March 18, 2010, the BC Supreme Court granted FHA a permanent injunction prohibiting Alice Jongerden (owner of Home on the Range Farm) from packaging or distributing unpasteurized milk or milk products for human consumption. In July 2010, FHA found Jongerden distributing unpasteurized milk, labelled “not for human consumption”, to cow shareholders. FHA served her with a contempt of court application in August 2010.
- In December 2010, the BC Supreme Court found Jongerden in contempt of court and ordered her to stop any future distribution of unpasteurized milk. In January 2011, Jongerden applied to the BC Supreme Court to overturn the 2010 court order, claiming that BC regulatory language declaring unpasteurized milk to be a health hazard was unconstitutional.
- In September 2010, Michael Schmidt and Gordon Watson announced that they had taken over operation of the Home on the Range cow share from Jongerden. Schmidt advised FHA the business, now called “Our Cows” – would continue to distribute unpasteurized milk as a body wash labeled “not for human consumption.” In October 2010, FHA issued a formal notice to Schmidt demanding that he cease and desist the production of unpasteurized milk and comply with the March 18, 2010, Supreme Court injunction.
- On June 5, 2013, the BC Supreme Court found Our Cows to be in civil contempt of the March 2010 injunction, and ordered Our Cows to cease packaging and distributing unpasteurized milk for human consumption. Schmidt and Watson were each given three-month suspended sentences, followed by one year of probation. The argument that BC regulatory language declaring unpasteurized milk as a health hazard was unconstitutional was rejected⁹.
- In February 2015, Schmidt’s appeal to the BC Supreme Court was heard and rejected.
- October 26-30, 2015 had been set to hear Jongerden’s constitutional challenge. However, on July 15, 2015, Jongerden brought an application to the BC Supreme Court to discontinue her constitutional challenge. The Supreme allowed the discontinuance with the following conditions:
 1. The Province is entitled to recover its costs of the action from Jongerden;
 2. Jongerden may not bring the same constitutional challenge again, either in another civil action or as a defence to any future enforcement action against her under the *Public Health Act*.

⁸ Fraser Health. *Confidential Briefing Note – Our Cows Operation*. February 2015.

⁹ Supreme Court of BC. *Fraser Health Authority v. Jongerden*, 2013 BCSC 986. <http://www.courts.gov.bc.ca/jdb-txt/SC/13/09/2013BCSC0986cor1.htm> (Accessed Jan 28, 2016)

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FINANCIAL IMPLICATIONS

- N/A

Approved by:

Arlene Paton, ADM, Population and Public Health, Ministry of Health; February 1, 2016