

Mandatory Testing and Disclosure Act



Dr. Maureen Baikie


Deputy Chief Medical Officer of Health

Nova Scotia Health Promotion and Protection

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Outline

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- Background
 - Content of the Legislation
 - Exploration of some Issues

Background



- Private Member's Bill
- Initial Bill was almost identical to the Ontario Legislation
- Replaced by a Bill based on draft model legislation from the Uniform Law Commission
- All parties in favour – Royal Assent in October 2004
- Proclaimed June 2006
- Advocacy by First Responders especially Police
- Concerns from the Advisory Commission on AIDS
- One Order so far under the legislation

Content of the Act



- An exposed person (applicant) may apply to the court seeking an order for a source person to be tested for certain communicable diseases and the results to be disclosed to the applicant

Content of the Act: Applicant



Applicant:

- has come into contact with a bodily substance of another person and as a result might be infected and:
- Is a victim of crime or
- Was providing emergency health care services or emergency first aid or
- Was performing duties as a:
 - Fire fighter
 - Peace officer
 - Police officer
 - Providing correctional services

Content of the Act: Application



Application must include:

- Description of the exposure
- Physician's Report:
 - Assessment of Risk
 - Information on the testing and preventive measures taken by the applicant

Content of the Act: Criteria



Court must be satisfied that the following **Criteria** are met:

- Applicant has been exposed to bodily substance from the source
- Applicant might have become infected
- Testing the Applicant won't help to determine if they have been infected as a result of this exposure
- The information obtained by the proposed testing cannot reasonably be obtained in any other manner
- Testing is necessary to reduce or eliminate the risk to the health of the applicant

Content of the Act: Testing Order



Testing Order requires the source person to:

- Provide a sample of the bodily substance specified in the order
- Do this within the time specified in the Order
- Comply with any directions of the medical officer

Content of the Act: Procedure



Procedure:

- Order goes to the Medical Officer of Health
- MOH directs the source person re place and time of testing
- MOH receives the results and provides a copy to the applicant and the applicant's physician, the source person and source person's individual physician only at their request
- MOH can ask for assistance from a Public Health Nurse, Public Health Inspector or Peace Officer

Content of the Act: Timelines



Timelines:

- Application made on three days notice to the source individual
- Testing to be done within the time specified in the order.
- Documents can be sent by registered mail and deemed to have been received on the 7th day following the day of mailing.

Content of the Act: Communicable Diseases



- Hepatitis B
- Hepatitis C
- HIV



Issues

Issues: General



Private Members Bill (Government side)

- Generic drafting
- Limited opportunity for input from subject matter experts including department staff and stakeholders
- Wording is not clear in some cases

Issues: Definitions



While providing emergency health care services :

- Definition is unclear
- Does this mean surgeons in the OR?
- What is the definition of emergency vs urgent?
- Was the intent to capture paramedics in this clause?

Solution:

- Defined in Regulations as “Services provided by a registered paramedic while on duty”

Issues: Definitions



While providing emergency first aid:

- What does this mean?
- Who does this refer to?

Solution:

Further defined in the Regulations as

- A volunteer under the Volunteer Service Act (Good Samaritan)
- A person trained to provide first aid. Including a registered pre-hospital first responder as defined in the Emergency Health Services Act.

Issue: Usual Role of Public Health



Public Health may provide advice:

- Assessment of exposed person
- Assessment of source person

Issue: Usual Role of Public Health



Public Health may make recommendations:

Recommendation to exposed person and their physician based on assessment

- HIV: antiretrovirals (2 to 72 hours)
- HBV: vaccine and immune globulin (48 hours)
- HCV: no drugs or vaccines
- repeat testing
- precautions to prevent others getting infected

Issues: Public Health Role in a Court Order



Role of Public Health Staff in a Court Order

- MOH role is to expedite the Order
- Can ask for assistance from PHNs and PHIs
- Public Health Staff including MOHs felt that this might jeopardize their role in working with both the source and the exposed person

Solution

- Only CMOH and DCMOH expedite the orders
- Local public health left to play their usual role

Issues: Role of Public Health Staff



Role of Public Health Staff in a Court Order

- Why do you need an MOH involved anyway?
- Our expertise is in assessment of risk not in delivering orders and results.
- Is there someone else who could expedite the order?
- At least we aren't required to act as adjudicators.

Issues: Voluntary Testing



Voluntary Testing

- Act says that information to be obtained by the testing cannot reasonably be obtained in any other manner.
- How is the applicant to know if the person has been tested voluntarily? Public Health Services (if involved) cannot disclose this without consent.
- So the person may have been tested voluntarily but court order may still be issued. Source receives the order and thinks they have complied when in fact they haven't.
- Who has the complete picture of the situation?

Issues: Reducing the Risk



Reducing the risk

- Act says that testing must be necessary to reduce or eliminate the risk to the health of the applicant
- Risk of HBV can be reduced with vaccine and immune globulin in a timely way
- Risk of HCV cannot be reduced by testing source
- Risk of HIV is low and good guidelines exist on what to do if source status unknown

Issue: Usefulness of the results



Usefulness

- Testing results of the source will not be available in time to make a decision to start therapy for HIV
- Results may be available in time to stop therapy for HIV if the source is negative with no risk factors.
- Negative source with risk factors may be in the window period unless they are clinically well
- The legislation doesn't include obtaining clinical information on the source so the test is being interpreted in the absence of clinical information
- **Testing results of the source may alleviate anxiety**

Issues: Timelines



Timelines

- No clear outside limit of when an application can be made for a test
- Order to contain a time limit for sampling for testing but not for getting the results and distributing them.
- What if a second sample is required for insufficient sample or for an indeterminate test?
- The applicant is left wondering when the results will be available.

Summary



- This legislation seems straight forward until you get immersed in it.
- Every case is very different
- Mandatory testing addresses only a small portion of a much larger complicated issue
- People with different opinions on the need for mandatory testing would like to improve the legislation

Thank you

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