

Spitting Suspects: Privacy Rights v. Health Protection

It is not uncommon for emergency officials (including firefighters, police officers and paramedics) to be in harm's way. Included in that harm is exposure to communicable diseases like HIV, Hepatitis A or Hepatitis B. In 1999, a suspect who was later found to be infected with HIV spit blood into Police Sergeant Mark Bloxham's eyes; the sergeant decided that it was time to seek greater protection for Alberta emergency workers. Now, his efforts are seeing legislative response years later with the passing of the Mandatory Testing and Disclosure Act (the Act).

1. Act came into force on October 1, 2007. It requires that if a suspect exposes an emergency official to a transmittable disease and refuses to provide a blood test, he or she can be forced to submit to blood testing through a court order. It also allows Alberta's chief medical officer to access the person's medical files to determine whether there is a risk of HIV or Hepatitis A or B. The underlying principle is that emergency officials should be protected from long periods of uncertainty pertaining to their own health which would occur if it is unknown whether the exposure to diseases was an empty threat or an unfortunate reality.

Civil libertarians who oppose the law suggest that it represents an undue infringement on individuals' right to privacy. Although the Constitution does not explicitly state a right to privacy, courts have interpreted sections 7 and 8 of the Charter of Rights as guarding against unreasonable invasions of privacy. Section 7 protects the right to life liberty and security of the person and section 8 protects against unreasonable search and seizure. It will be interesting to see whether the Act will withstand a Charter challenge on the basis of these provisions.

Sources:

Glenn Kauth, Spitting Suspects Face Blood Test Sun Media (September 13, 2007).

Duncan Thorne, Law Protects Emergency Workers Edmonton Journal (September 13, 2007).