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Communiqué

for Health Industry Clients
on the Legal Retainer Program

Legislative Updates

- Bill 105 *Health Protection and Promotion Act*
- Bill 125: *Ontarians with Disabilities Act, 2001*
- Bill 130: *Community Care Access Corporations Act, 2001*
- Bill 145: *Occupational Health and Safety Amendment Act, 2001*

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♦ Bill 105: *Health Protection and Promotion Act*

Introduction

On December 13, 2001, Bill 105, a private member's bill, was passed on the Legislature=s last day of session. It has not been proclaimed and is, therefore, not in force as of today=s date.[1] Bill 105 amends the *Health Protection and Promotion Act* and allows certain people to apply to the Medical Officer of Health for an order to compel a blood sample from a person believed to have exposed others to a communicable disease, such as HIV or hepatitis. Bill 105 could dramatically affect hospitals via its employees, as potential applicants, and its patients, as potential subjects of the orders.

Key Highlights

The Bill permits victims of crime, emergency health care providers (including AGood Samaritans@) and those who perform a function prescribed by regulation (the Aapplicant@) to apply to the Medical Officer of Health for an order to take a sample of blood from an individual that is suspected of being infected with a communicable disease if:

$ the applicant has come into Acontact@ with a Abodily substance@ of another person;
$ the contact occurred through a crime or the provision of emergency health care to the person where the person is ill, injured or unconscious, or while performing a function prescribed by the regulations in relation to the person;

[1]Please note that the Toronto Star erroneously reported on January 8, 2002 that Bill 105 had indeed been proclaimed.

- the applicant may have become infected with a virus that causes a communicable disease as a result of the contact; and
- taking a sample of blood would not endanger the person=s life or health.

The rationale for the order is the lengthy incubation periods for various communicable diseases.

If such an order is granted it ensures that:

- a qualified medical practitioner, or other such qualified person, takes a sample of blood from the person;
- the medical practitioner, or other such qualified person, delivers the sample to an analyst;
- the medical practitioner , or other such qualified person, gives the analyst the person's address for service;
- the analyst analyses the sample in accordance with the order; and
- the analyst makes reasonable attempts to deliver a copy of the results to the person and the applicant. In addition to the results, the applicant will receive a written notice recommending that the applicant consult a medical practitioner for a proper interpretation of the results.

The analysts are subject to a variety of obligations. They must ensure that the sample is not used for any other purpose than that set out in the order, they must not release the sample to any unauthorized individual and they must not disclose the results to any person other than those set out in the order.

The Medical Officer of Health may hold a hearing to determine if such an order should be made but he or she is under no obligation to do so. If the Medical Officer of Health refuses to make such an order the applicant may appeal to the Chief Medical Officer of Health.

If an order has been granted and the person does not comply, the Medical Officer of Health or the Minister of Health and Long Term Care may apply to a judge for an order requiring the person to comply with the order and to take whatever other action the court considers appropriate to protect the interests of the applicant.

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Implications

The actual order and analysed result may prove of little worth when one considers that prophylactic treatment must often be implemented immediately. For example, post-exposure prophylaxis (APEP@) is used to reduce the chance of becoming infected with HIV after being exposed. PEP should begin immediately, preferably within one to two hours of contact. Bill 105 would not assist in this situation as the procedure involved in applying for and obtaining an order and receiving the analysed results would be too time consuming.

The analysed results are also a conundrum. If the person is in fact infected with HIV or hepatitis and the results are released to the person and the applicant, the applicant is under no statutory duty to keep that information confidential.

There is an appeal procedure for the applicant, should he or she be denied an order, but no such avenue exists for the person. It is conceivable that this Bill will be subject to a Charter Challenge at some point in time.

♦ Bill 125: *Ontarians with Disabilities Act, 2001*

Introduction

On December 14, 2001, Bill 125 received Royal Assent. Bill 125 creates a new act, the *Ontarians with Disabilities Act, 2001* and imposes positive duties on many organizations, including all hospitals under the *Public Hospitals Act* and every private hospital operated under the authority of a licence issued under the *Public Hospitals Act*. The spirit and intent of Bill 125 is to limit the obstacles and barriers people with disabilities face in Ontario.

Key Highlights

Bill 125 mandates that each hospital is to prepare, each year, an accessibility plan (the Aplan@) and consult with persons with disabilities and others in preparing the plan. The plan is to be made available to the public. Any hospital which fails to prepare a plan or make it available to the public is guilty of an offence and on conviction is liable to a fine of not more than $50,000.00.

The plan is to address the identification, removal and prevention of barriers to persons with disabilities in the

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hospital=s by-laws, if any, and in its policies, programs, practices and services.

The plan must include:

$ a report on the measures the hospital has taken to identify, remove and prevent barriers to persons with disabilities;
$ the measures in place to ensure that the hospital assesses its proposals for by-laws, policies, programs, practices and services to determine their effect on accessibility for persons with disabilities;
$ a list of the by-laws, policies, programs, practices and services that the hospital will review in the coming year in order to identify barriers to persons with disabilities;
$ the measures that the hospital intends to take in the coming year to identify, remove and prevent barriers to persons with disabilities; and
$ all other information that the regulations prescribe for the purpose of the plan.

Two or more hospitals that are each required to prepare a plan may prepare a joint plan.

It should be noted that the Government of Ontario (the AGovernment@) will specify guidelines for the preparation of the plans and may establish different guidelines for different hospitals. If this comes to fruition, hospitals should ensure that they follow their specified guidelines. Additionally, if two hospitals wish to create a joint plan they should ensure that they are both subject to the same guidelines.

In addition to different guidelines, hospitals may be stratified into different classes. The Government may enact regulations which create separate classes of hospitals. The classes may reflect a variety of attributes, qualities or characteristics or a combination thereof.

♦ Bill 130: *Community Care Access Corporations Act, 2001*

As outlined in Alan Belaiche=s Communiqué of November 16, 2001, Bill 130 is designed to bring Community Care Access Centres (ACCACs@) closer to the control of the Minister of Health and Long-Term Care and the government.

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Note: This communiqué is provided as an information service to our clients and is a summary of current legal issues of concern to Health Industry Clients. Communiqués are not meant as legal opinions and readers are cautioned not to act on information provided in this communiqué without seeking specific legal advice with respect to their unique circumstances. Your comments and suggestions are most welcome and should be directed to Kathryn Frelick, Coordinator, Legal Retainer Program.

Bill 130 received Royal Assent on December 14, 2001, however it has not yet been proclaimed.

♦ Bill 145: *Occupational Health and Safety Amendment Act, 2001*

Bill 145 increases the powers of inspectors to enter dwellings and obtain warrants. Inspectors may now obtain a warrant, without notice, and employ Aany investigative technique or procedure@ if there are reasonable grounds to believe that an offence under the *Occupational Health and Safety Act* has occurred.

If exigent circumstances exist an inspector can forego the obtaining of a warrant and employ all of the powers that he or she would have received with the warrant.

No person shall hinder or obstruct an instructor in the exercise of his or her power. Additionally, positive duties are placed on persons to assist the inspector in his or her search, investigation or inspection.

Bill 145 received Royal Assent on December 12, 2001 and, as of today=s date, has not been proclaimed.

About the authors:

Kathryn Frelick is a lawyer practicing in our Health Industry Practice Group, with a focus on advocacy, regulatory and health policy issues

Rebecca Durcan articled with Miller Thomson LLP and will be joining the Legal Retainer Program and Health Industry Practice Group as an associate lawyer upon her call to the bar later this month.

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