

Mandatory Testing and Disclosure Act

CHAPTER 29 OF THE ACTS OF 2004

as amended by

2014, c. 32, ss. 138-140



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CHAPTER 29 OF THE ACTS OF 2004
amended 2014, c. 32, ss. 138-140

**An Act Respecting Mandatory Testing
and Disclosure to Protect Victims of
Crime, Emergency Service Workers
and Other Persons**

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Mandatory Testing and Disclosure Act*.
2004, c. 29, s. 1.

Interpretation

2 In this Act,

(a) “applicant” means an individual who applies for a testing order pursuant to Section 3;

(b) “Chief Medical Officer” means the Chief Medical Officer of Health appointed pursuant to the *Health Protection Act*;

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- (c) “court” means the Supreme Court of Nova Scotia;
- (d) “Department” means the Department of Health;
- (e) *repealed 2014, c. 32, s. 138.*
- (f) “guardian”, in relation to an individual, includes a person who stands *in loco parentis* to the individual;
- (g) “health authority” has the same meaning as in the *Health Authorities Act*;
- (h) “medical officer” means a medical officer of health appointed pursuant to the *Health Protection Act* and includes the Chief Medical Officer and the Deputy Chief Medical Officer;
- (i) “Minister” means the Minister of Health;
- (j) “minor” means an individual who
 - (i) is less than fourteen years of age, or
 - (ii) is fourteen years of age or more but less than nineteen years of age and, in the opinion of the court, is unable to understand the nature and effect of a testing order;
- (k) “physician report” means a report described in Section 4;
- (l) “prescribed” means prescribed in the regulations;
- (m) “public health inspector” means a public health inspector designated pursuant to the *Health Protection Act*;
- (n) “public health nurse” means a public health nurse designated pursuant to the *Health Protection Act*;
- (o) “qualified analyst” means, with respect to the conduct of any analysis required by a testing order, a person who
 - (i) holds the prescribed qualifications for conducting that type of analysis, and
 - (ii) in the case of any type of analysis that must, by law, be carried out by a licensed professional, holds a valid licence to practise that profession in the Province;
- (p) “qualified health professional” means a member of a prescribed health profession who holds a valid licence to practise that profession in the Province;
- (q) “source individual” means an individual from whom a sample of a bodily substance is sought for the purposes of testing;
- (r) “testing order” means an order described in subsection 5(2).
2004, c. 29, s. 2; 2014, c. 32, s. 138.

Application for testing order

3 (1) An individual may apply to the court for a testing order if the individual

(a) has come into contact with a bodily substance of another individual

(i) as a result of being a victim of crime,

(ii) while providing emergency health care services or emergency first aid to that individual,

(iii) while performing duties as

(A) a fire fighter,

(B) a peace officer,

(C) a police officer, or

(D) a person employed to provide correctional services, or

(iv) while performing any prescribed function in relation to that individual; and

(b) as a result of that contact might be infected with a microorganism or pathogen that causes a prescribed communicable disease.

(2) Subject to subsection (3), an application must be made on three days' notice to the source individual.

(3) An applicant may apply for a testing order without notice to the source individual if the applicant satisfies the court that, in the circumstances of the case, giving notice to the source individual within a reasonable time is impossible or impracticable.

(4) An application must

(a) set out the circumstances in which the applicant came into contact with a bodily substance of the source individual;

(b) be accompanied by a physician report; and

(c) meet any other requirements set out in the regulations. 2004, c. 29, s. 3.

Requirements of physician report

4 A physician report required for the purpose of Section 3 must

(a) be made by a physician who possesses the prescribed qualifications;

(b) assess the risk to the health of the applicant as a result of the applicant's contact with a bodily substance of the source individual;

(c) include information regarding examination, testing, counselling or treatment of the applicant including the use of active and passive immunizing agents; and

(d) meet any other requirements set out in the regulations. 2004, c. 29, s. 4.

Testing orders

5 (1) On an application pursuant to Section 3, the court may make a testing order if the court is satisfied that

(a) the applicant has come into contact with a bodily substance of the source individual in one of the circumstances described in clause 3(1)(a);

(b) there are reasonable grounds to believe that the applicant might have become infected with a microorganism or pathogen that causes a prescribed communicable disease as a result of the contact;

(c) having regard to the incubation periods for the prescribed communicable disease and the methods available for ascertaining the presence of the microorganisms or pathogens in the human body, an analysis of the applicant's bodily substances would not accurately determine in a timely manner whether, as a result of the contact, the applicant has become infected with a microorganism or pathogen that causes a prescribed communicable disease;

(d) taking a sample of a bodily substance from the source individual would not endanger the source individual's life or health;

(e) the information to be obtained by the proposed testing cannot reasonably be obtained in any other manner; and

(f) having regard to the physician report submitted by the applicant, the testing order is necessary to decrease or eliminate the risk to the health of the applicant resulting from the contact.

(2) A testing order must require the source individual

(a) within the time specified in the order, to allow a qualified health professional to take from the source individual a sample of any bodily substance specified in the order for the purpose of determining whether the source individual is infected with a microorganism or pathogen that causes a prescribed communicable disease; and

(b) for the purpose of fulfilling the requirement described in clause (a), to comply with any directions of a medical officer pursuant to subclause 6(1)(d)(ii).

(3) Where the source individual named in a testing order is a minor, the testing order must require a parent or guardian of the source individual to

take all reasonable steps to ensure that the source individual complies with the testing order.

(4) A testing order may contain any additional directions that the court considers necessary.

(5) Where the court makes a testing order, the local registrar shall immediately forward a copy of the order and all documents relating to the application to

(a) the medical officer of the health region in which the source individual resides; or

(b) where the place of residence of the source individual is not known, the Chief Medical Officer. 2004, c. 29, s. 5.

Duties of medical officer under testing order

6 (1) On receiving a testing order pursuant to clause 5(5)(a), a medical officer shall

(a) designate a qualified health professional to take from the source individual a sample of any bodily substance specified in the testing order;

(b) designate one or more qualified analysts to conduct tests on the sample obtained from the source individual and specify the tests to be conducted;

(c) provide directions to the persons designated pursuant to clauses (a) and (b); and

(d) subject to subsection (2), serve the source individual with a copy of the testing order and a notice that

(i) sets out the name and address of the qualified health professional designated by the medical officer, and

(ii) gives directions to the source individual respecting the manner in which the source individual must comply with the testing order.

(2) Where a source individual is a minor, a medical officer shall serve a parent or guardian of the source individual with a copy of the testing order and the notice described in clause (1)(d). 2004, c. 29, s. 6.

Carrying out of testing order

7 (1) On receiving a testing order pursuant to clause 5(5)(b), the Chief Medical Officer may require any medical officer to carry out the responsibilities of a medical officer pursuant to Section 6 with respect to that order.

(2) Where a medical officer who receives a testing order pursuant to clause 5(5)(a) is unable to serve the source individual in accordance with clause

6(1)(d) or the parent or guardian of a source individual who is a minor in accordance with subsection 6(2),

(a) the medical officer shall advise the Chief Medical Officer of that fact; and

(b) the Chief Medical Officer may require any other medical officer to carry out the responsibilities of a medical officer pursuant to Section 6 with respect to that order.

(3) A medical officer acting pursuant to subsection (1) or (2) may exercise the powers of a medical officer anywhere in the Province. 2004, c. 29, s. 7.

Duties of qualified health professional

8 (1) A qualified health professional designated by a medical officer pursuant to clause 6(1)(a) shall

(a) take from the source individual a sample of any bodily substance specified in the testing order and deal with the sample in the manner directed by the medical officer; and

(b) deliver the sample to a qualified analyst designated by the medical officer for the purpose of having the sample analysed.

(2) A qualified health professional who takes a sample of a bodily substance from any individual pursuant to a testing order shall not use the sample in any manner other than the manner specified in the order or for any purpose other than the purposes of the order. 2004, c. 29, s. 8.

Duties of qualified analyst

9 (1) A qualified analyst designated by a medical officer pursuant to clause 6(1)(b) shall

(a) in accordance with any directions of the medical officer, conduct an analysis of the sample delivered by a qualified health professional pursuant to clause 8(1)(b); and

(b) promptly provide a written record of the results of the analysis to the medical officer.

(2) A qualified analyst who receives a sample pursuant to clause 8(1)(b) shall

(a) ensure that the sample is not used for any purpose other than the analysis required by the testing order;

(b) not release the sample to any person unless

(i) the sample is released to a person who is acting on behalf of the analyst for the purposes of

(A) carrying out the analysis required by the testing order, or

- (B) retention of the sample, and
 - (ii) the qualified analyst ensures that no other person has access to the sample while it is in the custody of that person; and
 - (c) not disclose the results of the analysis except in accordance with this Act. 2004, c. 29, s. 9.

Results of analysis

10 (1) As soon as possible after receiving the results of an analysis, a medical officer shall make reasonable efforts to furnish a copy of the results to

- (a) the applicant;
- (b) the applicant's physician; and
- (c) at the request of the source individual,
 - (i) the source individual or, in the case of a source individual who is a minor, a parent or guardian of the source individual, and
 - (ii) the source individual's physician.

(2) The results of an analysis are not admissible in evidence in any criminal or civil proceeding other than in accordance with this Act. 2004, c. 29, s. 10.

Public health inspectors or nurses

11 (1) In carrying out the medical officer's responsibilities pursuant to this Act, a medical officer may require the assistance of a public health inspector or public health nurse.

(2) A public health inspector or public health nurse who is providing assistance for the purpose of this Act may exercise any of the powers of a public health inspector or public health nurse, as the case may be, anywhere in the Province. 2014, c. 32, s. 139.

Power to call for assistance

12 (1) A medical officer, a public health inspector or a public health nurse may call for the assistance of a peace officer in carrying out any of the officer's, inspector's or nurse's responsibilities pursuant to this Act.

(2) A peace officer who is called on pursuant to subsection (1) may render the assistance requested. 2004, c. 29, s. 12.

Costs of testing borne by Department

13 The costs of any medical reports necessary to obtain a testing order, the costs of taking and analyzing a sample as required by a testing order and any

costs incurred by a medical officer in serving or attempting to serve any documents as required by this Act shall be borne by the Department. 2004, c. 29, s. 13.

Appeal

14 (1) An appeal lies to the Nova Scotia Court of Appeal on a question of law from a decision of the court respecting an application for a testing order.

(2) Where a testing order was granted pursuant to the application that is the subject of an appeal, the appellant shall serve a copy of the notice of appeal on the medical officer who performed the activities described in Section 6 in relation to the testing order. 2004, c. 29, s. 14.

Stay of testing order

15 (1) An appellant pursuant to Section 14 may apply to a judge of the Nova Scotia Court of Appeal for an order staying a testing order until the appeal is determined.

(2) The appellant shall serve the medical officer who performed the activities described in Section 6 in relation to the testing order with a copy of the notice of application. 2004, c. 29, s. 15.

Service of documents

16 (1) Any document that is required to be served pursuant to this Act or the regulations must be served on the person to whom it is directed.

(2) A document may be served personally or mailed by registered mail to the last known address of the person being served.

(3) A document served by registered mail is deemed to have been received on the seventh day following the day of its mailing unless the person to whom it was mailed establishes that, through no fault of that person, the person did not receive the document or received it at a later date. 2004, c. 29, s. 16.

Disclosure of information

17 (1) Subject to subsections (2) and (3), no person shall disclose any information concerning an applicant or a source individual that comes to the person's knowledge in the course of carrying out responsibilities pursuant to this Act or the regulations or as a result of obtaining a testing order.

(2) A person may disclose information described in subsection (1) if the disclosure

- (a) is required to administer this Act or the regulations;
- (b) is required to carry out a responsibility imposed or to exercise a power conferred by this Act or the regulations;
- (c) is required by law;

- (d) is requested or approved by the individual who is the subject of the information;
- (e) is ordered by the Minister for the purpose of protecting the public health; or
- (f) is made
 - (i) to a member of a health profession who holds a valid licence to practise that profession in the Province in the course of a professional consultation,
 - (ii) between solicitor and client,
 - (iii) in the case of information pertaining to a minor, to a parent or guardian of the individual, or
 - (iv) in prescribed circumstances.

(3) An applicant may disclose the information obtained pursuant to a testing order to the applicant's physician and other health care providers as and when necessary to obtain appropriate medical advice and treatment. 2004, c. 29, s. 17.

Judge to determine disclosure of confidential information

18 (1) No person who is subpoenaed or otherwise compelled to give evidence in a legal proceeding is required or allowed to answer any question or to produce any document that reveals information that is made confidential by this Act unless the judge or other person presiding over the proceeding first examines the information, with the public excluded, to determine whether the information should be disclosed.

(2) In making a ruling pursuant to subsection (1), the judge or other person presiding over the proceeding shall consider the relevance to the proceeding and the probative value of the information to be disclosed and the invasion of privacy of the person who is the subject of the information. 2004, c. 29, s. 18.

No action lies

19 (1) No action or proceeding lies or shall be commenced against the Crown, the Minister, the Department, an officer, employee or agent of the Department, a health authority, an officer, employee or agent of a health authority or a peace officer for anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by that person or by any of those persons pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any order or direction made pursuant to this Act or any duty imposed by this Act or the regulations.

- (2) No action or proceeding lies or shall be commenced against
 - (a) a physician who in good faith makes a physician report;

(b) a qualified health professional who in good faith takes a sample of a bodily substance from an individual pursuant to this Act; or

(c) a qualified analyst who in good faith performs an analysis of a sample of a bodily substance delivered by a qualified health professional pursuant to this Act. 2004, c. 29, s. 19; 2014, c. 32, s. 140.

Offence

20 (1) Any person who contravenes this Act is guilty of an offence and liable on summary conviction to the penalties set out in the *Summary Proceedings Act*.

(2) Every day on which an offence continues is a separate offence. 2004, c. 29, s. 20.

Limitation period

21 No prosecution for an alleged contravention of this Act or the regulations shall be commenced more than two years after the date of commission of the alleged contravention. 2004, c. 29, s. 21.

Act prevails

22 (1) Where there is a conflict between this Act and any other Act, this Act prevails.

(2) Subsection (1) applies notwithstanding any provision in another Act that states that the provision is to apply notwithstanding any other Act. 2004, c. 29, s. 22.

Regulations

23 (1) The Governor in Council may make regulations

(a) prescribing diseases as communicable diseases for the purpose of this Act;

(b) for the purpose of clause 2(o), prescribing the qualifications for conducting types of analysis;

(c) for the purpose of clause 2(p), prescribing the health professions whose members are eligible to be qualified health professionals;

(d) for the purpose of subclause 3(1)(a)(iv), prescribing functions that, if performed in relation to an individual, give rise to grounds for an application for a testing order if the individual performing the function comes into contact with a bodily substance of the individual in relation to whom the function is performed;

(e) governing applications for testing orders;

- (f) prescribing the qualifications of physicians who may make a physician report;
- (g) for the purpose of clause 4(d)
 - (i) governing the information to be furnished in a physician report, and
 - (ii) prescribing a form for a physician report and requiring that a physician report be made in the prescribed form;
- (h) for the purpose of subclause 17(2)(f)(iv), prescribing circumstances in which confidential information may be disclosed;
- (i) defining any word or expression used but not defined in this Act;
- (j) further defining any word or expression defined in this Act;
- (k) deemed necessary or advisable by the Governor in Council to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 2004, c. 29, s. 23.

Proclamation

24 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2004, c. 29, s. 24.

Proclaimed - May 12, 2006
In force - June 1, 2006
