

LEGAL AND ETHICAL OBLIGATIONS OF PUBLIC HEALTH AUTHORITIES AND GOVERNMENT

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- Province undertakes to provide
 - a) reasonable access to
 - b) medically necessary
hospital/physician care

by allocation of available resources.

Governmental powers:

- Legislative (provincial legislature)
- Executive (government)
- Judicial (courts/judges)

Powers are interactive:

- Executive proposes law (Minister)
- Legislature enacts law (government majority)
- Judges interpret legislation and legal context

Government – accountable to legislature
– can be sued in court

POLICY decisions are different from OPERATIONAL decisions

Government is accountable:

- to legislature for policy decisions (political)
- to courts for operational decisions (legal)
(i.e. decisions on how policies are put in operation)

Do operational decisions violate private law duties of care owed to individuals?

- e.g., government not liable for not preventing West Nile Virus infection

Court decisions can be influenced by policy factors, e.g.:

- master liable (vicariously) for servant's negligence
- government liable (Charter) for discriminatory denial of care to disabled patient

Principles of legal liability

- Liability for failure to meet standard of care (standard set by courts – can be below best)
- Not necessarily liable for error – can be non-negligent error
- Can be liability for officer's misfeasance (i.e. misconduct) in public office
- Liability can be claimed through class actions
- Can be liability for a non-delegable duty of care

Ethical obligations

(can coincide with or exceed legal duties)

Major bioethical principles:

- Respect for persons
 - a) autonomy of capable persons
 - b) protection of vulnerable persons
- Duty to do/maximize good (beneficence)
- Duty to do no (or minimize) harm (non-maleficence)
- Justice – treat like cases alike
 - balance burdens and benefits

Modern administrative ethic

Accountability for reasonableness

- (a) make decisions reasonably – obtain / respect evidence
- (b) transparency - public explanation of decisions

Government not necessarily at fault for bad decision, e.g., on rationing resources, but can be faulted for making decision badly.

Disclosure of information

Public has a right to information of error –
but data may not be informative (e.g.,
uncertain meaning)

Patient has a right to all personal information
on request

Patient has a right to own information if
affected by error