

HIV/AIDS: A NEED FOR PRIVACY

In society's response to the HIV/AIDS virus, privacy protection has become a major issue, which has been addressed twice by the Privacy Commissioner's office in Ontario over the last year. This report follows one entitled Aids and the Privacy Act published by the Canadian Federal Privacy Commissioner's office in March last year (PL&B Feb '89 p.4 and May '89 p.27).

In December 1989 the Office of the Information and Privacy Commissioner, Ontario released "HIV/AIDS in the Workplace", recommending several privacy principles for employers and employees to follow when dealing with HIV/AIDS related personal information. In September this year, it published a second volume - "HIV/AIDS, A Need for Privacy" dealing with the broader issues such as anonymous testing, mandatory reporting, contact tracing and other related matters.

There are differences between Canada's provinces on this issue. For example, mandatory name-linked reporting is required in Ontario. However, in Quebec, HIV/AIDS-related testing is conducted anonymously.

Maintaining a Balance

The report says that the government has an interest in ensuring that HIV/AIDS-related information is not improperly disclosed and in having clear rules for the appropriate disclosure of such information. As an essential public health measure, all policies and procedures should recognise the importance of maximum confidentiality, of HIV/AIDS-related data. Anonymous testing and partner notification is absolutely essential. In order to retain full trust and confidence of persons at risk, the government must guarantee the safety of this data from disclosure to anyone unless they have an absolute need, e.g. one's physician.

The physician's role is clearly pivotal in ensuring this sensitive balance is properly maintained. He must be at the centre of the testing and partner notification process, and be aware of his "duty to warn" those at risk. Balancing the positive benefits of controlling the spread of HIV infection and the potentially negative consequences of the collection, retention, use and disclosure of HIV/AIDS-related personal information are clearly very difficult. All sectors of society need reassurance, particularly those engaged in high risk activities.

The following recommendations and guidelines are presented in the report:

Recommendation 1

Anonymous testing for the presence of the HIV antibody should be available for persons who wish to be tested. The Health Protection and Promotion Act or legislation intended to replace it, should not require mandatory nominal (name-linked) reporting of HIV positive test results. Any obligation imposed by legislation to report nominal HIV/AIDS-related personal

information should be removed, and legislation enacted to permit anonymous testing for HIV antibodies.

Recommendation 2

The physician who orders an HIV antibody test should be responsible for partner notification and counselling - the primary objective being to facilitate voluntary partner notification by the affected individual. If the individual refuses to notify partners at risk, the physician should undertake to do this, with or without the assistance of the individual. The physician may elect to defer partner notification/counselling to a Medical Officer of Health, if he/she is unwilling or unable to perform this function.

Recommendation 3

If necessary, the Health Disciplines Act should be amended to include the concept of a physician's "duty to warn," enabling physicians to warn those at risk of transmission. Such a duty to warn should only be exercised if an individual infected with a communicable disease such as HIV, refuses to inform his/her partner of this fact and also refuses to give the physician permission to do so on his/her behalf.

Recommendation 4

There should be no mandatory testing for the presence of antibodies to HIV. This would not preclude, however, HIV testing of all donated blood, tissues, semen and embryos and universal testing as part of anonymous, unlinked surveys of seroprevalence, the prevalence of HIV infection in a given population.

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