

Law, Rights & HIV in Canada: Considerations for Infant Feeding Guidelines

Summary

Criminal Law:

In Canada, people living with HIV are legally obligated to disclose their HIV-positive status to their sexual partners before engaging in sex that poses a realistic possibility of HIV transmission. This legal obligation is related to consent to sexual activity and is not applicable with respect to childbearing or infant feeding.

Canadian criminal law has several provisions applicable in cases of neglect and/or abuse: failure to provide the necessities of life; abandoning a child; and criminal negligence (including negligence causing bodily harm and death). One woman living with HIV was convicted of failure to provide the necessities of life in 2006 for not following the recommended HIV prevention protocol at the birth of her second child. The baby acquired HIV.

More recently, women living with HIV in Africa and Russia have faced criminal charges for breastfeeding or comfort nursing.

Under Canadian criminal law, a fetus is not considered a person with independent legal rights. As a result, a woman can not face criminal prosecution for actions or omissions during a pregnancy that could harm the fetus.

Child Protection:

Parents have the responsibility and authority to make decisions regarding the care of their children. If however there are reasonable grounds to suspect that a child is *in need of protection*, there is a duty to alert the child protection authority in the jurisdiction.

There are no reported child protection cases on the issue of breastfeeding and HIV in Canada. Children's Aid has had a high level of involvement with families living with HIV; it is to be expected that suspicions of breastfeeding have been an factor with some families.

While in the past, Canadian healthcare providers may have alerted child protection authorities with respect to breastfeeding on the part of a woman living with HIV, such reporting would be unjustified today with respect to a mother following medical recommendations, as set out in the Guidelines.

Medicolegal Considerations

As a matter of human rights, women have the right to decide whether and when to have children, and whether to breastfeed. Any limitations placed on human rights must be proportionate to the risk and as circumscribed as possible.

Parents have a right to comprehensive and accurate information in order to make fully informed decisions regarding their sexual and reproductive health and rights. Service providers therefore have a reciprocal obligation to provide the information.

If any sort of legal proceeding is to arise, counselling notes and medical information can be subpoenaed as evidence.

Everyone is encouraged to consult reputable legal information sources and to consult with independent counsel, if they require legal advice.

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