

# HIV Disclosure Counselling Guidelines

June 2002

Ontario Advisory Committee on HIV/AIDS (OACHA)

## Preamble

Disclosure in the context of HIV/AIDS is complex. The legal obligation of persons living with HIV/AIDS (PHAs) to disclose their HIV status to sexual and drug-injecting partners prior to engaging in high risk activities has become clearer as a result of the Supreme Court of Canada's ruling in the case of R. v. Cuerrier. It is also generally considered a responsibility of persons living with infectious diseases to protect others from infection. However, the unique stigma associated with HIV/AIDS, due in part to its links with particular sexual and drug-using practices and its high prevalence in marginalized communities, contributes to difficulties experienced by PHAs in disclosing their status. Legitimate fears of discrimination, rejection, isolation and persecution can prevent PHAs from fulfilling their legal and ethical obligations to disclose.

Counselling can provide opportunities for PHAs to explore issues related to disclosure and help them gain insight, skills and confidence to disclose their status in a way that they feel comfortable. The Ontario Advisory Committee on HIV/AIDS (OACHA) recognized the need for consistent guidelines for counsellors working with PHAs on issues related to disclosure. OACHA prepared a resource document on HIV disclosure titled "Disclosure of HIV-Positive Status to Sexual and Drug-Injecting Partners". A broad range of HIV stakeholders, including public health officials, people living with HIV/AIDS, physicians, HIV outpatient clinic staff and staff from AIDS service organizations, provided input on this document. Released in November 2001, the resource document comprehensively outlines definitions, assumptions and principles that OACHA has adopted in relation to disclosure and HIV/AIDS, as well as some of the research that supports OACHA's positions. In addition, the document summarizes criminal, public health and civil law as it currently stands in relation to disclosure, as well as the ethical and philosophical principles of counselling. A list of resources and a bibliography is provided at the end of the document.

To supplement the resource document, OACHA also developed this set of concise guidelines representing *minimum* standards expected in counselling practice related to issues of disclosure of HIV status. In addition, OACHA also prepared a brochure for clients, containing basic information on disclosure issues, and personal health information confidentiality guidelines. Both the counselling guidelines and fact sheet were focus-tested with counselling providers and people living with HIV/AIDS.

## Who Are These Guidelines For?

These guidelines are intended for all counsellors and agencies working with PHAs in Ontario, including pre-and post-test counsellors at anonymous HIV testing sites, physicians, public health nurses, social workers, psychologists, psychotherapists, counsellors at AIDS service organizations (ASOs) and other service providers who provide ongoing supportive counselling to individuals living with HIV/AIDS.

OACHA recognizes that some counselling services are government-regulated and others are not. These guidelines do not override regulations that are in place. They are intended to guide the ***principles and process*** of the counselling relationship. They do not, however, prescribe procedure. In particular, these guidelines do not prescribe when or how a counsellor or counselling agency should disclose the HIV-positive status of a client to a third party.

These guidelines set the ***minimum*** legal, ethical and professional standards for counselling clients in relation to disclosure of HIV positive status. They do not represent a ***gold standard***, since it is not possible to anticipate every circumstance in which issues related to disclosure of HIV-positive status will arise between counsellors and their clients. Agencies, organizations and institutions should consider adapting and/or expanding these guidelines to meet the needs of specific service user groups and/or organizational policies. Furthermore, the OACHA resource document on HIV disclosure should be used as a reference for these guidelines.

## Counselling Goals in the Context of Disclosure of HIV-Positive Status

The overall goals of counselling in the context of disclosure of HIV-positive status are:

- To help clients resolve emotional and psychological issues in their lives;
- To help reduce the stigma associated with living with HIV/AIDS;
- To help reduce HIV transmission;
- To help clients integrate awareness of their HIV infection as a permanent factor of life;

## Minimum Standards

The success of any counselling relationship is dependent on the creation of a supportive environment of safety and trust by the counsellor for the client. All

pre- and post-test counselling, intake sessions for short and long-term supportive counselling and ongoing counselling should be geared towards establishing a relationship of trust between the client and counsellor.

The following guidelines should be read as minimum standards for counselling practice. Although not all agencies or organizations are based on client-centred counselling theory, the core conditions outlined below are one model of good practice.

## **Basic Core Conditions Applying To All Aspects Of The Counselling Relationship**

The following three “core conditions” apply to the practice of any client-centred approach to counselling and are considered essential to any successful counselling relationship:

### **1. Empathy**

Counsellors should attempt to understand and enter into their client’s feelings and frames of reference. Empathy involves the demonstration on the part of the counsellor of an understanding of the client’s experience. It is essential for the counsellor to facilitate the client to build trust in the counselling relationship.

### **2. Unconditional Positive Regard**

Unconditional positive regard is the counselling principle that all clients have value and are entitled to respect. It is often termed “being non-judgmental”, but it does not mean condoning or accepting all behaviour on the part of the client. It is an attempt on the part of the counsellor to convey to the client that she or he has intrinsic value as a human being, regardless of any negative thoughts, feelings or behaviour.

### **3. Genuineness**

The ability of the counsellor to be genuine in the counselling relationship is a powerful indicator to the client that the client’s thoughts, feelings and actions have a real impact on other people. In the context of disclosure, an expression of concern on the part of the counsellor for the welfare of another person with whom an HIV-positive client has engaged in high risk sexual or drug-injecting activities without disclosing is entirely appropriate, assuming that the counsellor expresses the concern with empathy and unconditional positive regard towards the client.

In addition to fulfilling the three core conditions, counsellors should aim to work on issues of disclosure at the client’s pace in a timely, incremental manner that is

in keeping with the progress of the client and is balanced with the need to reduce the potential for further transmission of HIV.

Counsellors need to recognize the racial, cultural, language, gender, sexual orientation and religious issues that are specific to an individual client, and aim to provide information and support that is meaningful in the context of the individual client's life.

## **Confidentiality, Third Party Disclosure and Record-Keeping**

For the purposes of these guidelines, confidentiality means that the personal health information of clients will not be collected, used or disclosed except under the following limited circumstances:

- disclosure to the client;
- disclosure, use or collection with the client's consent;
- as required by law.

Confidentiality is essential to any successful counselling relationship and enables the client to feel safe in expressing painful or difficult experiences. At the outset of the counselling relationship, counsellors should outline for clients the nature and limits of confidentiality in the particular setting in which counselling is offered. Counsellors should:

- Clarify for the client the confidentiality policy of the agency or practice, including any limits on confidentiality in the counselling relationship;
- Clarify for the client the record-keeping policy and procedures of the counselling agency or practice (Note: OACHA has developed confidentiality of personal health information guidelines to assist agencies in this regard);
- Clarify any professional regulations that may exist in the counselling agency or practice related to disclosure of a client's HIV-status to a third party by the counsellor and/or counselling agency or practice;
- Clarify how the counselling agency will respond if client records are subpoenaed.

OACHA recognizes that some agencies, organizations and institutions, but not all, are subject to provincial law under the Health Protection and Promotion Act (HPPA), the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and will be subject to any provincial legislation drafted to meet the requirements of the federal Personal Information Protection and Electronic Documents Act (PIPEDA).

If in doubt about the possible statutory obligations of your agency, please contact the HIV/AIDS Legal Clinic of Ontario (HALCO) at 1-888-705-8889.

## HIV Risk Reduction

The following issues should be considered in relation to reducing the risk of HIV transmission:

### General Values

1. The role of counselling in relation to disclosure and HIV risk reduction is to support the client to help prevent the further spread of HIV and not to punish the client for unsafe behaviour;
2. Disclosure of HIV status is likely to be difficult and may vary depending on specific circumstances;
3. The client is entitled to a full, active, healthy, sex life.
4. Substance use is a health issue, not a moral issue.

### Client Assessment

1. Assess the client's knowledge and skills in relation to HIV risk reduction as necessary and/or appropriate, including an assessment of the client's attitudes towards the practice of safer sex and injection and any barriers that may prevent such practices.

### Preventing HIV Transmission

1. Explain to the client, as necessary, the principles of HIV transmission, including the fact that HIV is an infectious disease that is primarily spread through direct blood-blood contact and contact between the blood and semen or blood and vaginal fluid of an HIV-positive and an HIV-negative person;
2. Provide information, as necessary, to clients on safer sex, safer injecting practices and other measures to reduce the risk of HIV transmission;
3. Depending on available resources, provide the tools necessary for safer sex and injecting practices (including male and female condoms, lubricant, clean needles, syringes and other injecting equipment, such as alcohol swabs, mixers and spoons) and clear instructions as to their use.
4. Counsellors should take a harm reduction vs. risk elimination approach.

### Legal and Ethical Issues

1. Clarify the ethical responsibilities of individuals in society to protect one another from infection with HIV and other infectious diseases;
2. Explain the legal requirement of PHAs to disclose their HIV status to people that are at "significant risk of serious bodily harm" from contact with the client (R. v. Cuerrier);\*

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\* High risk sexual and drug-injecting activities are currently defined by the Canadian AIDS Society (CAS) HIV Transmission Guidelines as unprotected insertive and receptive vaginal and anal intercourse and the sharing of needles, syringes and other injecting equipment that have not been cleaned. It remains unclear whether courts will confine activities with "significant risk of serious bodily harm" to the high risk sexual and drug-injecting activities as defined by CAS.

3. Explain that activities that have a “significant risk of serious bodily harm” certainly include unprotected anal and vaginal intercourse and the sharing of needles, syringes and other injecting equipment that have not been cleaned, and **may also** include lower risk sexual and drug-injecting activities, although this has not been fully clarified in the courts.

#### Understanding the Client’s Perspective

1. Acknowledge to the client that s/he is entitled to have control over the options around disclosing her/his HIV status to sexual and/or drug-injecting partners, subject to the qualification that his or her conduct is not placing these partners at significant risk of HIV infection;
2. Recognize the real and potential benefits of disclosure to the client, including enhanced communication, support and acceptance on the part of sexual and/or drug-injecting partners;
3. Recognize the real and potential dangers of disclosure facing a particular client, which may include rejection, discrimination, violence, etc.;
4. Recognize any potential obstacles to disclosure that may require specific interventions, such as addictions and other mental health issues (e.g. depression);
5. Recognize any potential cognitive or psychiatric disabilities that may prevent the client from fully understanding her/his rights and responsibilities and any information provided to him/her;
6. Recognize attitudinal and behavioural barriers that may require longer-term or specialized counselling.

#### Counselling Practice

1. Acknowledge and accept the specific sexual and drug-injecting culture of the client;
2. Acknowledge to the client that disclosure can be extremely difficult during moments of erotic arousal, and/or while anticipating the experience of injecting drugs, or while high. Therefore, encourage the client to address disclosure with potential sexual partners and/or people he or she injects drugs with prior to sexual or drug injecting activity;
3. Recognize your own biases and seek consultation/clinical supervision to address these;
4. Refer clients to other appropriate services as necessary (e.g. doctors, methadone programs, addiction services, etc.).

#### **Disclosure Issues Beyond HIV Risk Reduction**

The following actions should be taken by the counsellor in any counselling situation related to disclosure of HIV-positive status by the client that is not related to HIV risk reduction (e.g. disclosure to a friend, family member, employer, etc.):

1. Affirm that the client is entitled to control disclosure of his/her HIV status;

2. Acknowledge to the client that deciding when and how to disclose are important steps in the disclosure process that may be difficult for the client and that ongoing counselling may help;
3. Acknowledge to the client that disclosure of HIV status in all situations to all people is neither possible nor desirable nor necessary;
4. Examine with the client any potential benefits of disclosing his or her HIV status, particularly to the client's support network, including spouse, partner, family, friends, etc.;
5. Acknowledge the potential for discrimination and other social harms of disclosure to certain individuals or institutions (e.g. employers, insurers, etc.);
6. Acknowledge, respect and include all other disclosure issues that are inherent or anticipated as a result of HIV status disclosure (e.g. coming out issues due to sexual orientation, immigration status, drug use and/or issues of declaration such as being the victim of sexual violence);
7. Acknowledge that disclosure is a series of events over a lifetime, which may or may not become easier and over which the client will need to develop critical judgement skills;
8. Discuss opportunities for skills-building or other counselling approaches as necessary;
9. Recognize your own biases and seek consultation/clinical supervision outside the counselling relationship to address these;
10. Refer to other sources of expertise if appropriate.

### **Counselling Agency Response to Subpoenas to Release a Client's Records**

In the event that a client's records or anonymous test results are subpoenaed, the following actions should ideally be taken on the part of the counsellor and/or counselling agency:

1. Ask the police exactly what records they want. Ask to see their warrant. (A warrant is the written order of a justice of the peace that says they can seize your documents.)
2. Examine their warrant to make sure it relates to the records the police have asked for. (The police should have a copy of the warrant ready for you to keep for yourself.)
3. Locate the records for the police and place them in an envelope and seal the envelope. Write on the envelope "privilege asserted - do not open".
4. Tell the police "I am asserting that these records are confidential and privileged at law". If the police object or appear to doubt you, tell them you are relying on the principles set out in section 488.1 of the Criminal Code.\*
5. Tell the police the name, address and telephone number of the ASO's lawyer, if known. Say to the police "we will be instructing our lawyer to

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\* The sealing of client records and assertion of privilege are legal actions which demonstrate that an agency or organization is opposed to the subpoena and may appeal the seizure of the records in the courts.

- bring a motion to a judge as soon as possible". (Please note that such motions must be brought promptly and no later than fourteen days after the seizure of the records. If the ASO is not prepared to hire a lawyer for this purpose, it should not assert privilege over the records.)
6. Give the records to the police. The police will take them away.
  7. Call the client immediately (If possible) to inform him or her of the seizure.
  8. Call your lawyer immediately.

OACHA has produced Confidentiality of Personal Health Information Guidelines, designed to provide guidance on confidentiality and record-keeping for agencies which provide counselling services to persons living with HIV/AIDS.

## **Conclusion**

Effective counselling can help enable clients to positively integrate life with HIV and address issues of disclosure of their HIV-positive status, including, but not limited to, fulfilling their legal and ethical obligations with regards to the protection of others from HIV infection. Adherence by counsellors and counselling agencies to the guidelines contained in this document can help ensure supportive, non-judgmental, counselling services for people living with HIV/AIDS who are experiencing difficulties around disclosure. OACHA affirms that a comprehensive package of care, treatment and support, including information provision, education and counselling can enhance HIV prevention efforts, reduce the stigma associated with HIV/AIDS and contribute to the overall physical, sexual, emotional, psychological and spiritual well-being of people living with HIV/AIDS in Ontario.

## **Acknowledgements**

The development of resource materials on HIV disclosure was led by the HIV Disclosure Working Group of the Ontario Advisory Committee on HIV/AIDS (OACHA):

Mr. David Hoe (Chair)  
Ms. Lori Stoltz  
Mr. Michael Sobota  
Mr. Robert Trow  
Dr. David McKeown

OACHA would also like to thank Craig McClure and Ian Grubb of HealthHounds Inc. and staff from the AIDS Bureau, Ministry of Health and Long-Term Care, for their assistance in developing these materials.