



Letter to Minister McLellan concerning Bill C-217

February 22, 2001

The Honourable Anne McLellan
Minister of Justice and Attorney General of Canada
Justice Building, 3rd floor
284 Wellington Street
Ottawa, Ontario
K1A 0H8

Dear Minister:

Re: Bill C-217 (*Blood Samples Act*) (formerly Bill C-244, 36th Parliament)

A year ago, we wrote to you (by letter dated January 13, 2000) regarding our concerns with what was then Bill C-244 (the *Blood Samples Act*), introduced as a private member's bill by the Hon. Chuck Strahl (Canadian Alliance).

As you are aware, that bill has now been re-introduced in the 37th Parliament as **Bill C-217**, receiving first reading on February 5, 2001. As in its previous incarnation, the bill proposes to permit forced blood testing of persons for HIV or hepatitis B or C where peace officers, firefighters and other emergency services personnel, or other health care workers may have been exposed to the risk of infection with these viruses. It also proposes imprisonment for up to six months of any person who refuses court-ordered testing.

When this bill previously progressed to the stage of hearings by the Standing Committee on Justice and Human Rights, we appeared before the Committee to explain our position that such legislation is unnecessary, unethical and unconstitutional.

We also note that both the Department of Justice and the Department of Health in your government also expressed their concerns with this legislation to the Standing Committee. Your department questioned whether such legislation fell within the jurisdiction of the federal government under its power to legislate in relation to criminal law. Before the committee, we also raised this concern, noting that this legislation really dealt with an issue of workplace safety, as opposed to criminal law. Justice Canada also raised concerns about the constitutionality of this bill, given the obvious infringement of *Charter* rights. Health Canada told the committee that “mandatory testing neither achieves public health goals nor establishes a national environment of safety and reassurance for people considering testing.”

We share these views expressed by both departments of your government. **We wish to raise again our concerns with proposed legislation, and ask that your office and government not support this bill or others imposing compulsory testing for HIV.** In particular, we reiterate the following concerns that we identified in our previous correspondence:

- Forced HIV testing is impractical and of little practical value. Because it cannot provide a determinative answer to the HIV status of the “source person,” it does not relieve the exposed person of the decision whether to very quickly initiate anti-HIV drugs in an effort to prevent infection.
- The bill proposes to imprison a person who does not consent to being tested for HIV. It also fails to address the possible breaches of confidentiality about that person’s HIV status that may occur following forced testing, either through reporting on a court application for an order for testing or as a result of the exposed person disclosing to family, friends or community members the results of the source person’s HIV test. In any event, even if penalties for disclosing that information were included in the legislation, this would likely be illusory protection and would be of little value to the person whose confidentiality has been disclosed, particularly considering the stigma and discrimination that too often are experienced by people living with HIV/AIDS.
- Compulsory testing violates respect for personal autonomy (which is reflected in the legal doctrine of informed consent). Bodily autonomy is violated by the forced act of drawing

blood or other body fluid for a medical procedure without consent, and the bill violates the source person's psychological integrity by mandating that they "shall" be informed of their test results, even though they have refused testing.

- In our view, state authorization of forced HIV testing also violates the right to security of the person guaranteed by the *Charter* and is not in accord with the "principles of fundamental justice" (section 7), and also amounts to an "unreasonable search or seizure" (section 8). The Supreme Court has clarified that the *Charter* protects individuals from unjustified state intrusions upon their privacy, including private personal information. Given the questionable practical value of forced HIV testing, and the more than "minimal" impairment of constitutional rights represented by legislation such as Bill C-217 (including imprisonment for refusing to be tested and lack of protections for confidentiality of personal medical information which is disclosed without consent), we doubt that such legislation would be justifiable under the *Charter* (section 1).

We certainly agree that peace officers, fire fighters, and similar personnel should be supported in their efforts to prevent possible exposure to HIV, hepatitis B and C or other communicable diseases, as with other possible occupational hazards. However, compelling HIV testing *after* possible exposure does not undo any possible harm that may flow from the exposure. That damage (if any) has been done, and forced blood testing offers no remedy after the fact.

More constructive solutions to the risks faced by emergency services personnel would both offer greater protection against possible exposure to communicable diseases and respect the rights of Canadians to privacy and bodily integrity. Pro-active efforts to educate police, firefighters, and health care workers about how HIV and hepatitis are transmitted (and how they are *not* transmitted), as well as encouraging the use of universal precautions to reduce the likelihood of infection, are preferable responses.

It is our hope that your government will not allow this bill to pass second reading. It would appear from the submissions of your government's representatives to the previous Standing Committee hearings on this legislation that your government does not support such legislation. There would seem to be little point in re-opening committee hearings into a private member's bill that, with good reason, your government does not support.

We look forward to hearing from you regarding the government's position on this matter.

Sincerely yours,

Richard Elliott
Director, Policy & Research
Canadian HIV/AIDS Legal Network

cc: Hon. Allan Rock, Minister of Health

Ms Nina Arron, Director, HIV/AIDS Policy, Coordination and Programs Division, Health Canada

Mr Roger LeClerc and Mr Don Kilby, Co-Chairs, Ministerial Council on HIV/AIDS

Ms Sharon Baxter, Executive Director, Canadian AIDS Society


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