

Informed Consent: A necessary element of effective perinatal HIV testing

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Legal origins of “informed consent”:

- *Reibl v. Hughes*, SCC (1980)
- *Ciarello v. Schacter*, SCC (1993)

- *Fleming v. Reid*, Ont.C.A. (1991); *Rodriguez v. A.G. (B.C.)*, SCC (1993)
- *Health Care Consent Act*, Ontario (1996)

HIV testing and informed consent:

- CPSO policy, January 1991: “social and economic implications”
- Implications unchanged for many
- Not “the same” as HBV, Syphilis, Rubella

Taking exception with “exceptionalism”

Right to exercise informed consent not diminished by pregnancy

- *Winnipeg Child and Family Services v. DFG, SCC (1997)*

No justification for abandoning informed consent:

- Arbitrary
- Unnecessary
- Inconsistent with public health purpose

Conclusion:

- maintain informed consent
- add clear, strong recommendation and rationale
- debate what and how to best communicate
- monitor physician compliance