

## Legal aspects of the disclosure of HIV serostatus by educators

Simeon Maile

Department of Education Management and Policy Studies, University of Pretoria, Pretoria, 0002 South Africa

The disclosure of HIV serostatus in education labour relations is dealt with. I argue that whilst it is important for teachers to disclose their HIV serostatus for the benefit of education and the education of the public, the environment is not conducive to disclosure. This becomes evident when those who disclose their HIV serostatus are discriminated against and even humiliated. I substantiate my arguments with data from literature and legislation. Issues dealt with include the management of disclosure in the workplace, barriers and conditions for disclosure as well as legal aspects concerning disclosure.

### Introduction

HIV/AIDS is a global crisis and constitutes one of the most formidable challenges to workplace management. In the most affected countries, the epidemic is eroding development gains, undermining management strategies and destabilising workplaces. In Sub-Saharan Africa the epidemic has devastating effects, and the situation is aggravated by a multiplicity of factors. One of these factors is silence. Despite recent international attention to HIV/AIDS, in many ways the epidemic in Africa is still silent (Johnston, 2001:1). It is still a "hidden epidemic" because most individuals do not know their HIV status; it is still hidden because most of those infected are still in the asymptomatic incubation period; and it is silent because even when a person becomes ill and dies, the details regarding the real cause of death are not recorded correctly (South African Democratic Teachers Union (SADTU), 2000:2). Instead of stating that an individual died of AIDS the doctors will record that the deceased died of "opportunistic diseases" and mostly "natural causes" out of kindness to the families. According to SADTU (2000:1) this silence is caused by the stigma attached to HIV/AIDS.

Silence and denial are fatal because they prevent people from accurately assessing their own personal risk of infection (Coombe, 2001:9). Prejudice is still rife in education (Department of Education, 1999:13). Media reports reveal human rights abuses of people whose HIV serostatus is known. For instance, an employee in the Department of Education was dismissed by a school principal for disclosing her HIV status (Mendel, 2002:24; Magardie, 2002:8; Mkhize-Matjila, 2002:2). These media reports not only reveal abuses of the human rights of HIV positive persons, but also indicate that ignorance about the pandemic is still rife.

The general consensus is that teachers in Africa living with AIDS are seriously discriminated against by school managers, teaching colleagues and students (Bennell, Hyde & Swainson, 2002:86). These researchers reveal that there is a high level of secrecy and denial among teachers concerning HIV infection and clinical AIDS in schools. Given the stigma educators are not prepared to reveal their status.

In this article I deal with disclosure of HIV serostatus from a legal point of view. A critical factor in the management of HIV serostatus is how the confidential information on infected persons is handled. The consequences of one's HIV serostatus becoming publicly known can be devastating — it could lead to ostracism, rejection by family or friends and isolation at a time support is of vital importance (Fombad, 2001:644). Given these negative effects of disclosure, very few people will come forward for testing. Without guarantee of confidentiality disclosures may not be made. For this reason it is important to deal with disclosure of HIV serostatus from the legal point of view. Aspects covered include methodology, managing disclosures in the workplace, which covers reasons for disclosure, reasons against disclosure, barriers to disclosure, disclosure conditions and legal aspects of disclosure.

### Methodology

Disclosure of HIV serostatus appears to be a problem to most teachers. Earlier I alluded to the problem of stigmatisation. I will return to this

later to illustrate the magnitude of the problem. For now I will identify the problem (question) which prompted this research. Initially I became interested in HIV/AIDS issues as a result of my involvement in human rights education. I developed keen interest on how HIV/AIDS is managed in the workplace given the reports I gathered from research (Coombe, 2001; Bennel, Hyde & Swainson, 2002; South African Medical Research Council, 2001; South African Law Commission, 1997; Maman, Mbwambo, Hogan, Kilonzo, Sweat & Weiss, 2001; Centre for Democracy and Governance under US Agency for International Development, 2001; Presidential AIDS Advisory Panel, 2001) and media (Mendel, 2002; Magardie, 2002; Mkhize-Matjila, 2002). These reports agree that while it is important for people with HIV serostatus to reveal their status for education purposes, the current condition in schools is not conducive to disclosure. From this premise I asked myself the question as to whether HIV positive teachers who disclose their serostatus or want to disclose their status are protected. This question seems to be more appropriate in our current situation in South Africa because "people with AIDS have and are excluded from social and medical benefits, from occupations as well as from basic rights, recognition and acceptance"(Marais, 2000:58). It seems the language of HIV/AIDS at all levels is still full of exclusion and excommunication which is self-imposed or reactive in nature. Protection is the main thrust of this article. Protection of disclosure is important counter the stigma of HIV/AIDS. If people deal with it secretly it just reinforces the culture of fear and ignorance. I concluded that protection may be found in the law that regulate the labour environment. Hence the research question is: what are the legal aspects concerning disclosure of HIV serostatus in the workplace?

I have decided to focus my research on the law simply because law creates order through rules, laws, norms and principles with which employers and employees are expected to comply. The legal environment seems to be relevant because it regulates employment activities, powers and relationship of parties (Beckmann, Klopper, Maree, Prinsloo & Roos, 1995:2). The law is located in statutory law, common law and case law. Although I drew answers for the research question from these sources, I also used other relevant sources to substantiate my claims.

### Managing disclosure

#### Reasons for disclosure

All persons with HIV have the legal right to privacy. Consequently, no employee is legally required to disclose his/her HIV status to his or her employer or to other employees. However, if the employee chooses to disclose his/her HIV status to the employer or other employees, this information may not be disclosed to others without the employee's express written consent. It is crucial to note that information is a prerequisite for consent (Leenen, Gevers & Pinet, 1993:31). People cannot consent to things they know nothing about.

As a result consent without information is not valid. Many legal provisions on consent therefore apply also to information. My argument is that information is fundamental to disclosure. Teachers with HIV and/or AIDS should know the consequences of the disclosure. The right of access to information is a fundamental right. Rules on the management of disclosure information are derived from

legislation such as:

- Employment Equity Act, No. 55 of 1998;
- Labour Relations Act, No. 66 of 1995;
- Occupational Health and Safety Act, No. 85 of 1993;
- Compensation of Occupational Injuries and Diseases Act, No. 130 of 1993;
- Basic Conditions of Employment Act, No. 75 of 1997;
- Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000;
- Medical Schemes Act, No. 131 of 1998;
- Constitution of the Republic of South Africa, 1996; and
- Promotion of Access to Information Act No.2 of 2000.

Rules on the extent of information given to HIV positive employees are general, and leave a lot of discretion to employers and doctors. The doctor is compelled to explain foreseeable risks, those that are not exceptional according to current experience. With HIV/AIDS the obligation to inform the patient is more stringent. The information must be adapted to the person who receives it and the doctor must verify the patient's comprehension of it. In recent years in South Africa disregarding the obligation to inform the patient makes the doctor liable for damages. The form in which the information is given is very important. The information must be in writing and in the language of the patient for proper management and understanding. This is required by the law in education labour relations. The patient has the right to access to his or her medical records.

The right of access to information is entrenched in our legislation, I will not deal with all the laws here, but I will refer to the Promotion of Access to Information Act of 2000. This Act aims to foster a culture of transparency and accountability in public and private bodies, and to actively promote a society in which the people of South Africa have effective access to information which will help them to fully exercise and protect all of their rights.

For persons living with HIV/AIDS this Act has the potential to balance the rights of HIV positive employees and with those of the employers. For HIV positive teachers it provides greater access to personal information held by public and private bodies. For the employers it provides them with access to personal information that could be used for effective decision-making. It regulates the circulation of information. This is important in the management of HIV/AIDS in the workplace because it balances the rights of both parties. Therefore, the right not to disclose one's HIV status is not absolute (South African Law Commission, 1998:111). However, in terms of the Promotion of Access to Information Act No. 2 of 2000 protection of personal privacy is mandatory. Nevertheless, the employer who wants to know the status of an employee must approach the labour court for permission. This is stipulated in the Code of Good Practice of the Employment Equity Act No. 55 of 1998. The code lists various reasons why the employer may want to know the HIV status of an employee.

Earlier I established that a precondition for disclosure is informed consent. It means that an employee who discloses his or her HIV status need to be informed of the procedures for disclosure and the repercussions that may follow. Furthermore, authorised testing may be another reason compelling employees to disclose their HIV status by undergoing testing. For this, employers need to apply to the Labour Court for authorisation. For systematic analysis of disclosure reasons I will divide the reasons into:

#### *Reasons in support of disclosure*

It seems disclosure would promote trust among colleagues and between the teacher and the school manager. It would be impossible for professionals to act professionally if they are not in possession of crucial information. Disclosure will promote trust and proper human resources management. For instance, if a teacher has a chronic illness, the principal may be able to adapt his or her recruitment and selection criteria; job classification; job assignment; employee assistance programmes; and some other relief mechanism. If the HIV status is not

disclosed, it could lead to speculation and such speculation could be harmful to the teacher. Disclosure allows the school to offer support and understanding.

#### *Reasons against disclosure*

The current climate of discrimination against HIV positive persons is not conducive to disclosure. I doubt whether HIV positive teachers who disclose their status may receive the required support. Lack of support is probably compounded by stigma attached to HIV/AIDS. And in some instances the principal may lack knowledge to support the teacher. I will explain other reasons as barriers to disclosure.

#### *Barriers to disclosure*

Teachers living with HIV/AIDS are seriously discriminated against by school managers. This happens despite legislation that prohibit discrimination against persons living with HIV/AIDS. It seems to be difficult for HIV positive teachers to disclose their HIV status because of the prevailing stigma. The stigma is exacerbated by attitudes that people have against HIV positive teachers. The negative attitudes emanate from the association of HIV positive status to promiscuity. It is held that HIV positive teachers got what they deserve because they are promiscuous (Presidential AIDS Advisory Panel, 2001:74). In multi-racial organisation this problem is even worse because of racial stereotypes that exist against other races. For instance, it is believed among some South African whites that blacks are promiscuous hence the higher prevalence of HIV/AIDS amongst blacks. In such instances disclosure will be tantamount to confirmation of the stereotype.

It seems teachers are discouraged to disclose their HIV status because the disease is associated with homosexuals who are discriminated against and denied human rights (Grey, 1992:236-238). Homosexuals are regarded as disgusting people in the world and suffer extreme discrimination in the workplace, and in the society at large. Grey (1992:178) asserts that:

"The oppression of gay people starts with the most basic unit of society, the family, consisting of the man in charge and wife who models their children's sexuality according to their perceived ideal gender."

As a result of the prejudice HIV/AIDS are regarded as gay plague, and blamed on gay people. Nicolson (1995:33) concurs with this claim by arguing that there is a link between homosexual anal intercourse and AIDS. It is a fact that because the lining of the anus tears rather easily, persons who are the receptors in anal intercourse are at serious risk of contracting the virus.

Another barrier to disclosure is culture. This is particularly important in the African context. Talking about sex matters is probably a taboo in most African cultures. This is usually the case if the infected person is younger. Young people cannot openly talk about sex matters with adults. Hence:

"... people in general are not candid over sexual matters. They do not show their sexuality freely, but conceal it as though the weather were bad in the world of sexuality ..." (Grey, 1992:267).

The African context is silent about sexual matters in public discussions. However, there are forums in which Africans talk about sexual matters. They use special forums such as initiation and virginity testing forums (Sithole, 2001:2). In schools it remains a problem because culture of African teachers has an impact on their thinking, belief system and definitions on what constitute disclosure (Wehrly, 1995:8-17). All in all, my argument is that cultural ascriptions are a barrier in disclosing HIV status.

Disclosure problems are compounded by the dilemma of who should be informed at school. The law is silent about who should be informed at school level. This is particularly important when the employer of teachers is not available in the teacher's workplace. However, it appears the relevant person to disclose the information is the principal since he or she represents the department. He or she is in contact with the teacher on a daily basis and have personal relationships with the teachers. However this is not enough. There is still

an argument whether the principal has more authority to handle employment matters than the school governing body. The Department of Education (1999) does not provide guidelines as to who should handle disclosure of HIV status except the statement that (Department of Education, 1998:10):

- 6.3 Any person to whom any information about the medical condition of a learner, student or educator with HIV/AIDS has been divulged must keep this information confidential.
- 6.3.1 Disclosure to third parties may nevertheless be authorised by the informed consent of the learner or by the written consent of the educator, or be justified by statutory or other legal authorisation
- 6.3.2 Unauthorised disclosure of HIV/AIDS-related information could give rise to legal liability

This provision is silent as to who should handle disclosure at school level. The South African Law Commission (1998:115) suggests that "in view of the increasing democratisation of education and participation of parent bodies, school governing bodies should be given an equivalent right of disclosure to information." In conclusion it can be stated that the person to whom disclosure can be done is not yet agreed to, and it becomes a barrier.

Theories on the origins of the HI virus reflect prejudice of the holder. Western people commonly believe the virus have started amongst Africans, perhaps caught from monkeys. According to Nicolson (1995:11) this theory originated with the discovery that AIDS already existed in Zaire in the 1960s, and that a similar virus is found in green monkeys. This theory has disturbing racial overtones and easily fits with racist Western prejudices about African hygiene and sexuality. Consequently, African carries of the virus may not openly declare their HIV status.

These barriers point to the fact that the environment is not conducive to disclosure of HIV status. An enabling environment is critical if voluntary disclosures are to take place. An enabling environment would lead to protection of confidentiality. I will deal with this.

### Disclosure conditions

Research by Maman, Mbwanambo, Hogan, Kilonzo, Sweat and Weiss (2001:14-19) reveals that disclosing HIV status is a difficult process. The difficulty emanates from the negative environment that exists at home and in the school. I will now deal with home factors. I want to analyse disclosure factors related to the school environment. The reader is reminded of the stigma and discrimination I referred to earlier. The prevailing stigma and discrimination make disclosure difficult. When a teacher discloses his or her status it must probably be for a reason. Hence I chose the heading disclosure conditions to indicate that teachers reach a breakthrough before they disclose the HIV status. I categorised the conditions into individual, relational, and environmental conditions.

#### *Individual conditions*

Teachers are human beings with families. Families or partners only know of their status when one spouse decides to undergo HIV testing. There are various reasons why they undergo HIV testing. For our focus — education labour relations — teachers may undergo HIV teaching when the employer has applied for authorised testing to the Labour Court for reasons such as:

1. application for employment
2. condition for employment
3. during procedures related to termination of employment
4. an eligibility requirement for training or staff development programmes; and
5. an access requirement to obtain employee benefits.

These conditions may force an individual to undergo testing. It is a means for future planning. Other testing include permissible testing which is taken in the event of occupational accident and for the purposes of applying for compensation following an occupational accident.

#### *Relational conditions*

Earlier I alluded to the fact that there is a need for an enabling environment for disclosure to take place. It means that teachers develop relationships of trust with their mentors first before they can divulge their HIV status. When the relationship of trust is developed, disclosures can be done easily.

#### *Environmental conditions*

Currently there is still stigma around and discrimination against HIV positive persons in the workplace. HIV positive teachers need a counselling environment (Maman *et al.*, 2001:18). The environment, as it is now, is not conducive to disclosure. It is aggravated by lack of legitimisation (Centre for Democracy and Governance, 2001:18; Lekota & Mkhwanazi, 2002:2; Seepe, 2002:9; Kidra, 2002:6). The current debate as to what causes AIDS (Presidential AIDS Advisory Panel, 2001) and refusal by the government to accept that HIV causes AIDS means that HIV status may not be accepted. To create legitimacy of disclosure HIV/AIDS policies require support from political leaders (Tregrove-Jones, 2001:16). The environment is negative and therefore not good for disclosure. Those who disclose their HIV status need protection from stigma and discrimination. I will analyse protection mechanisms in the paragraph below.

### Legal aspects of disclosure

#### *Discrimination*

Teachers living with HIV/AIDS are a vulnerable group who need protection from discrimination. Hence legislation is enacted to deal with discrimination. Vulnerability to discrimination emanates from the unequal power between the employer and the employee (Levy, 1992:4). To support this claim the South African Law Commission (1997:29) argues that:

"Despite a widely accepted point of view that [discrimination] is ineffective at eliminating HIV from the workplace, there are increasing reports of [discrimination of HIV positive teachers in] employment in the public and private sectors."

Discrimination occurs despite the legislation enacted to prohibit it. For instance, Hoffman *v* South African Airways 2000 (2) SA 625 (W) demonstrates that employees may continue to suffer discrimination in several guises (Le Roux, 2000:98; Rycroft, 2000:11; Christianson, 1999:11-16).

The Constitution Act, No. 108 of 1996 entrenches the right to equality (section 9) and the right to be free from unfair discrimination based on disability. These rights are protected by national legislation regulating education labour relations. For instance, the Labour Relations Act, No. 66 of 1995 protects teachers for employment. Unfair discrimination on the basis of disability constitutes an unfair labour practice. Therefore, discrimination based upon HIV status constitutes discrimination either on the basis of disability, or on the basis of an arbitrary ground. Equally, in terms of section 6 (2) (b) of the Employment Equity Act, No. 55 of 1999, it is unfair discrimination to distinguish, exclude or prefer any person on the basis HIV status. However, employers may exclude disabled persons including those with HIV on the basis of the inherent requirements of the job.

In this section I want to argue that disclosure if not done according to legal provisions may constitute unfair discrimination. The grounds for unfair discrimination in section 6(1) of the Employment Equity Act, No. 55 of 1999 mirror those set out in the Constitution and the Labour Relations Act, but for the purposes of clarity, discrimination must be linked to employment policy or practice. When an employee is denied his or her employment rights because of his or her HIV status it will constitute unfair discrimination. This means that the Employment Equity Act of 1999 added HIV status to the traditional grounds listed in the above acts. This accords special attention given to employees with HIV (Christianson, 1999:12). Therefore, forced disclosure will constitute unfair discrimination and is prohibited by the law.

### *The right to privacy*

Disclosure is a personal decision that an individual is entitled to make autonomously and in private. In public discourse this entails keeping the secret. It is rooted in the right to privacy. The right to privacy and secrecy are interrelated. Both are intended to protect citizens from disclosure of data that they have to provide in the context of medical assistance or employment. The modern concept of privacy is derived from secrecy (Leenen, Gevers & Pinet, 1993:81). Secrecy covers the relationship only between the patient and the doctor, but also between the employer and the employee. From a management point of view, it is difficult to control data stored in offices from filtering during processing. For this reason I will discuss the right to privacy and the right to access to information. The protection of personal data is regulated by administrative legislation. This means that disclosure should be managed according to strict administrative codes as prescribed in the law such as the Promotion of Access to Information Act, No. 2 of 2000 and the Promotion of Equality and Prevention of Unfair Discrimination Act No. 3 of 2000. These provisions must be read together with laws that protect individual rights.

In addition to the provisions in the Constitution and the Promotion of Access to Information Act No. 2 of 2000, the right to privacy is protected by our common law. The right to privacy protects personal information concerning an individual's state of seclusion and is excluded from the knowledge of others; and it is for individuals themselves to decide on the content and extent of their interests in their privacy (South African Law Commission, 1998:51). A teacher is entitled to the same common law and constitutional rights in respect of the protection of his or her privacy as an adult. The school manager to whom confidential information regarding HIV infection of a teacher is divulged, will be ethically and legally bound to keep that information confidential. As such, the right to privacy developed from secrecy at common law. In professions it is formulated as a legal duty and in legal parlance it is often described as the right to confidentiality. Professional secrecy protects both the teacher and the public. I will analyse this from professional (educational labour relations) and medical perspectives.

The right to confidentiality when seen from a medical perspective entails that doctors, nurses, psychologists, dentists and other health care workers are ethically and legally required to keep all information confidential. The concept of confidentiality presupposes a relationship of intimacy or trust between two or more people in whom private or secret information is shared on the understanding that this information will not be repeated to an unauthorised person or persons (Fombad, 2001:646) This means that any information about the teacher's HIV status can only be given to another person with the teacher's consent (Achmatt, Barrett, Cohen, Fine, Gotz, Grant, Heywood, Kekana, Richardson, Stone & Strode, 1997:49). Ethical guidelines on confidentiality are set in the South African Medical and Dental Council Act No. 56 of 1974. This Act established the South African Medical and Dental Council which described a doctor's duty to keep information confidential. In terms of the Council no doctor or practitioner may divulge verbally or in writing any information which ought not be divulged regarding the ailments of a patients with the express consent of the patient or, in the case of a minor, with the express consent of his guardian, or in the case of a deceased patient, with the consent of his/her next of kin or the executor of his/her estate. In conclusion, the ethical guideline on confidentiality means that practitioners must generally not give any information about a patient unless:

- the patient has agreed to it; or
- the information is about the illness or treatment of a child — then they can tell others with the permission of the child's parents or guardian, or
- the patient is dead — then the doctor must get permission from the next-of-kin (Leigh-Taylor, 1976:97; Jayasuriya, 1988:36; Hasson, 1998:11).

In the main, medical information about a person is protected by the

codes of professional conduct under which most of the health-care team, to whom confidential information is given, operate (Harris & Haigh, 1990:67). Therefore, it is a doctor's duty, except in exceptional circumstances, strictly to observe the rule of professional secrecy by refraining from disclosing voluntarily to any third party any information he or she learnt directly or indirectly in his or her professional capacity as a registered medical practitioner. The death of the patient does not absolve him from his obligation.

In professional perspectives the right to confidentiality is based on legal rules. The Constitution Act, No. 108 of 1996 section 14 guarantees the right to privacy that is relevant for the protection of rights of HIV positive teachers. The right to privacy include the negative right — the right not to have one's communications infringed. It guarantees the right of a person to have control over the use of private information (De Waal, Currie & Erasmus, 1999:263). This right regulates communication of HIV status to another person. Hence disclosure can be regarded as privileged communication (Fisher & Sorenson, 1985:15) which should be handled with care and respect of the teacher's civil liberties. Privileged communication encourage more thorough, detailed discussion between teaches who are HIV positive and the principal or whoever is responsible for disclosure. The protection is for the teacher, who could if he or she so choose, disclose the communication to the principal. In this way the privilege is waived. There is a criterion for privileged communications and it includes:

1. The communication must originate in confidence that it will not be disclosed.
2. The confidentiality must be essential to full and satisfactory maintenance of the relationship between the parties.
3. The relationship must be one which, in the opinion of the community, should be sedulously fostered.
4. The injury to that relation, caused by disclosure, would be greater than the benefit gained to the process of litigation.

Privileged communication happens if three conditions are present. First, one party in the relationship must be legally certified as a lawyer, doctor or minister; second, at the time of communication in question he or she must have been acting in a professional capacity; and third, the person making the communication, if in possession of his or her faculties, must have regarded the professional person as his or her lawyer, doctor, or minister (Fischer & Sorenson, 1985:16).

The legal and ethical duty of confidentiality is not absolute, as there are other interests which may be more important and which may justify or necessitate the breach of confidentiality. In general, disclosure can be justified if the individual gives his or her informed consent thereto; if legislation requires that the information be disclosed; if a doctor or school principal is ordered by court to disclose the information; or disclosure would be in the overriding public interest (South African Law Commission, 1998:52; Grubb & Pearl, 1990:43). In the case of Jansen van Vuuren and another NNO v Kruger 1993 (4) SA 842 (A) the plaintiff's HIV status was disclosed without consent to another doctor and a dentist without any reasonable justification. The court awarded R5 000 in damages. This case illustrates the importance of sticking to law in disclosures.

### *The right to access of information*

The limitation on the right to privacy means that access to HIV information may obtained, but through legal procedures. The Constitution Act, No. 108 of 1996, section 32 provides that:

- (1) Everyone has the right of access to
  - (a) any information held by the state; and
  - (b) any information that is held by another person and that is required for the exercise or protection of any rights.

In terms of this provision, does it mean that a school principal can divulge medical records of a teacher suffering with HIV/AIDS? And who should have access to the records? Before I answer these questions it is important to note that the right of access to information is a basic requirement in a democratic state that strives for openness,

participation, transparency and accountability (Bray, 2000:59; Malherbe, 2001:74). Access to information is regulated by the Promotion of Access to Information Act No. 2 of 2000. This Act protects third parties affected by disclosure of information. It prescribes procedures to access information. As for the first question I can say that a principal is not allowed to divulge information to other teachers. However, the South African Schools Act No. 84 of 1996 section 19(2) requires school governing bodies of public schools to make information available to the provincial Head of Department, and section 59 places a duty on the public school to make information available for inspection by any person insofar as such information is required for the exercise and protection of such person's rights (Bray, 2000:59).

#### *The right to human dignity*

The right to human dignity is regarded as the foundation of all other rights (Rautenbach & Malherbe, 1998:16). The protection of human dignity requires that a subject of the state should enjoy first generation, second generation and third generation (see Bray, 2000:11 for the grouping of rights) human rights because of the simple fact that human dignity demands that a person should not merely be free from oppression or discrimination emanating from disclosure but also free from deprivation of life necessities (Basson, 1994:24). This right entails recognition of individual autonomy, that all persons should be able to make individual choices. This was upheld in *S v Makwanyane* 1995 (6) BCLR 665 (CC) where the court maintained that:

"Recognising a right to human dignity is an acknowledgement of the intrinsic worth of human beings: human beings are entitled to be treated as worthy of respect and concern. This right therefore is the foundation of many of the other rights that are specifically entrenched in the Bill of Rights."

Respect for individual human dignity entails recognising that all persons are able to make individual choices. This includes the choice to disclose or not to disclose one's HIV positive status. Cardinal in our democracy is a belief in human dignity: that people have the moral right — and moral responsibility to confront themselves, answering to their own consciences and convictions, the most fundamental questions touching the meaning and value of their own lives.

The most important argument that I raise is that the teacher's disclosure of HIV status must be protected under the right to human dignity. It means that there must not be any unfair discrimination — i.e. treating HIV positive teachers differently in a way which impairs their fundamental dignity as human beings.

#### **Conclusion**

In this article I have discussed the disclosure of HIV status in the context of education labour relations. I have argued that people cannot just disclose their HIV status. There are particular reasons why they disclose their HIV status. However, I noted that there are barriers to disclosure. I have identified the barriers as stigma or discrimination, culture, prejudice against homosexuals, dilemma of to whom should disclosure be made, and hostile and sceptical environment. I also analysed the conditions under which an individual may disclose his or her HIV status. The conditions included individual conditions, relational conditions and environmental conditions. The discussion concluded with analysis of legal aspects of disclosure of HIV serostatus. And with the latter I established that HIV positive persons have the right to privacy, not to be discriminated against, and human dignity. However, the right to access to information makes the information on the teacher's HIV serostatus available to third parties. Rights are not absolute, can be limited. In the long run, preservation of confidentiality is the only way of securing public health; otherwise doctors will be discredited as a source of education, for future patients will not come forward if doctors are going to inform on them. Consequently, confidentiality is vital to secure public health as well as private health, for unless the infected come forward they cannot be treated fairly. This is particularly important because "South Africa is the latest country in the ranks of those seeking to break through the shroud of

stigma and shine a light on the human disaster of HIV/AIDS" (Tren-grove-Jones, 2001:9).

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