Personalised medicine and the duty of disclosure

Over forty years ago Windeyer J aptly noted that law was “marching with medicine but in the rear and limping a little”. The statement remains relevant today, with medical science evolving at a pace that leaves the law looking relatively amoebic.

Despite the benefits of genomic testing, there are also disadvantages to having knowledge of genetic information when applying for risk-rated insurance products. Such products include certain life insurance products (eg trauma, disability, sickness and accident, and income protection insurances) and some general insurance products (eg travel, professional indemnity, non-compulsory first and third party property motor vehicle, and some kinds of sickness and accident insurance). At present, applicants for risk-rated insurance products, such as life and general insurance products, are subject to a duty of disclosure to inform insurers where they are aware of any factors which may be relevant to an insurer’s decision to underwrite a risk. A duty of utmost good faith also applies to parties entering into such insurance contracts. These duties encompass the duty of an insured to declare the results of any genetic or genomic testing (together genetic testing) where they are relevant to the risk being underwritten in an insurance contract.

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