
TALKING POINT

AIDS and the Law

Do people with HIV have duty to tell lovers?

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Enter the legal-social-sexual-political quagmire of HIV.

In conversation with Howard, a gay man, the anguish and frustration of watching the progress of AIDS in his community quickly becomes apparent. On the subject of criminal charges against those who knowingly infect others with HIV, Howard's not sure, "but something's got to be done. There are (HIV positive) people running around having unprotected sex. They're killing people."

Something will be done, the only question is what and when. The Charles Ssenyonga case in London, Ont., has made this clear.

Ssenyonga, who has since died, was charged with criminal negligence causing bodily harm after three women testified he infected them with HIV. A Newfoundland man was found guilty of the same charge for infecting two women.

Howard muses on ancient history: "I had a neighbor whom I knew was infected and was working as a prostitute.

"He told me, 'I'm going to take as many people with me as I can.' I called the police."

The man left town, and no charges were laid. Howard is now in step with the community ethic, and says several times that "you have to take your health into your own hands; approach each potential sex partner as if they are HIV positive."

This is what the AIDS advocacy groups in Toronto all say. However, unlike Howard, they adamantly oppose criminalizing HIV positive people for any reason and would like to see an end to partner notification requirements in provincial health legislation.

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"Limiting the sexual behavior of HIV positive people also restricts the rights of HIV positive women to become pregnant and raise children," they say. One wonders whether Ssenyonga's partners would hold this view.

Taylor, who publicly acknowledges she is HIV positive, was quoted in The Star in July as saying: "We have taken the responsibility to get ourselves tested, so why should we be doubly responsible for other people's choices?"

It is counter-intuitive to promote suspicion and distrust as the norm in love and marriage, yet this is the solution proposed by all advocacy groups dealing with AIDS in Toronto.

As Glen Brown of AIDS Action Now put it, "The issue of denial that we really need to get at is not the denial of people who are HIV positive, it is the denial of HIV negative people."

Where it exists in Canada, partner notification is on the honor system.

Once the HIV positive person has been counselled about the nature of HIV, and the obligation to practise safe sex and notify previous sex partners, the public health requirements have been observed. This may surprise people who thought they could expect a little brown envelope in their mailbox if their partner became known to public health.

Public health is best served by an honor system that is adhered to, even in the absence of a coherent legal framework.

The criminalization of HIV infection in Canada opens up a scary new world. In fact, the federal government is even now studying how legislation might be framed whose intent would be to punish those who deliberately infect others with HIV or hepatitis B.

Also under consideration is a provision for the mandatory testing of those accused of rape. Many people feel any attempt to legislate our bedrooms, particularly when it applies to male homosexuals and intravenous drug users, could be construed as homophobic, racist or worse. Perhaps this is why Canadian lawmakers have been slow to react, while south of the border, 24 U.S. states now have AIDS laws, with some 200 convictions.

There is a fine line between laws that can deal with such malice and those that offend the human rights of the already disenfranchised.

The AIDS communities have reacted strongly against any legislative solutions. They have also failed to call for sanctions against those who knowingly spread HIV. We all need to accept that someone has to. The absence of any condemnation from the HIV positive community may ironically help to bring about the criminal sanctions that they, with one voice, condemn the most.

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