



**Ontario
Medical
Association**

525 University Avenue
Suite 300
Toronto, Ontario
M5G 2K7

Tel. (416) 599-2580
Fax. (416) 599-9309
Inwats 1-800-268-7215

MINISTRY OF HEALTH
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LEGAL SERVICES BRANCH

March 15, 1994

Ms. Christine Henderson
Legal Services Branch
Ontario Ministry of Health
Hepburn Block - 10th Floor
80 Grosvenor Street
TORONTO, Ontario
M7A 1S3

Dear Ms. Henderson:

Re: Non-Nominal Reporting Legislation

Following our meeting on this subject, I thought I would raise the following questions with you. May be you have time to address them. The article from the Observer is excellent in demonstrating the issue of protecting unsuspecting third partners. In the Ontario context, it is not clear to me what the distribution of responsibility is between the partner (to protect themselves), or the HIV positive patient to protect all partners, the physician of the patient, the hospital or out-patient clinic, the laboratory, the public health unit, or the police. I do not know that we have any empirical data from surveys of the public in Ontario as to who the public feels we should rely on in this regard. Nor do we know of the various possibilities who is best able to do this kind of work.

With regard to OMA concerns , our letter to the Minister of Health last fall should be of interest to you. It is enclosed for your information.

The other area that is unclear to me is the evolving criminal nature of wilfully transmitting the HIV virus through unprotected sex. I have enclosed brief media reports on the U.S. and Canadian case. We also have the written judgment from

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Ms. Christine Henderson

March 15, 1994

the Criminal Injuries Compensation Board in the case of Charles Ssenyonga. It is not clear to me what impact the increasing criminalization of HIV transmission will have on whatever public health scheme we set up for non-nominal testing and reporting for the physician's responsibilities or liabilities.

I hope this will be of some help.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Krauser', written over the word 'Sincerely,'.

John Krauser, MA
Associate Director
Dept. of Health Policy

JK/tg
Encl.

aidsnrr

Court refuses to hear AIDS sentence appeal

BY DAVID VIENNEAU
OTTAWA BUREAU

OTTAWA — The Supreme Court of Canada has refused to review the toughest jail sentence ever given in this country for wilfully transmitting the deadly AIDS virus through unprotected sex.

The court yesterday refused to hear an appeal from Raymond Mercer, 30, of Conception Bay, Nfld., who was sentenced to 11 years in prison. He had pleaded guilty to two counts of criminal negligence causing bodily harm.

The court, as usual, offered no reasons for its decision.

"The Supreme Court of Canada has now laid down the law on how the transmission of AIDS is going to be dealt with, and it is going to be severe," Edward Conway, Mercer's lawyer, said. "This is now the new non-legislative standard until Parliament decides to set new standards."

There is no specific crime for spreading AIDS and the 11-year sentence shocked many. The mother of one of the two women Mercer had consenting sexual intercourse with said he should have received life.

Mercer had known for a year he was HIV-positive but nonetheless had unprotected sex with the two women. Both have

tested positive for AIDS.

Conway said the prison term is the longest ever given to someone convicted of transmitting AIDS.

The Newfoundland Court of Appeal, which tacked on 8½ years to Mercer's original 2½-year sentence, concluded a tough penalty was needed as a deterrent to others.

Law society okays compensation deal

A change in wording has erased the Law Society of Upper Canada's objection to a \$30,000-a-year compensation package for victims of the tainted blood scandal.

People who contracted HIV, the virus that leads to AIDS, from transfused blood have until March 15 to go to a lawyer and sign a form accepting the offer from the provinces, Canadian Red Cross, insurance and pharmaceutical firms. On signing, they lose the right to sue.

The acceptance form originally stated that each person who signed did so "willingly and not under any duress."

The problem was erased yesterday when the required wording was changed to state simply that a client "willingly" accepts the deal.

Observer 28 June 94.

Aids scandal as NHS fails to trace carriers

Annabel Ferriman
Health Correspondent

HUGE gaps in the tracing of sexual partners of people infected with the HIV virus have been uncovered by *The Observer*.

The result is that there is an Aids time bomb ticking away in the population at large.

Half of Britain's hospitals make no attempt to contact Aids patients' partners and ex-partners to alert them to the danger. Many hospitals which do trace contacts have only begun looking for possible carriers in recent months.

This haphazard public health policy means there are many thousands of people walking around who do not realise they have the deadly virus.

It also exposes the latest figures, showing that 17,500 people are infected with the virus, as a gross underestimate. Experts fear the true figure could be close to 50,000.

The NHS has no real means of knowing, because of its failure to systematically trace con-

tacts. Doctors and health advisers rely on HIV-positive patients to break the news to their partners, those with whom they have had sexual relations and those with whom they may have engaged in drug abuse.

The dangers of failing to notify the sexual partners of HIV carriers are vividly illustrated by the events in Birmingham last week, when it was revealed that a haemophiliac carrying the virus had infected at least four women. South Birmingham Health Authority has introduced contact tracing only in recent months.

A survey of sexual disease clinics, to be published shortly in the *British Medical Journal*, calls on the Government to draw up guidelines to encourage more hospitals to undertake contact tracing.

The survey reveals that only 50-60 per cent of hospitals provide a 'partner notification service' in which trained staff will, with the patient's consent, tell partners they have been exposed to HIV. Patients, however, are encouraged to do this

themselves but sometimes cannot face it.

The Government held a confidential meeting on the issue last month, but has not yet produced its report. It is a highly contentious area because many doctors and contact tracers, now called health advisers, insist that if patients think they are going to be pressurised into revealing the names of contacts, they will not turn up for testing.

Dr Richard Keenlyside, senior lecturer in epidemiology at the Middlesex Hospital, London, who carried out the contact tracing survey, said: 'There is a real conflict for doctors between the need to maintain patient confidentiality and the need to protect the public. Some health advisers see their role primarily as supporting the patient, and see the job of looking after others as secondary.'

Dr Keenlyside's survey of 207 sexually transmitted disease clinics shows a difference between London and the regions. London undertakes less contact tracing, mainly due to

the higher workload of the inner city clinics and the larger number of partners reported by HIV-infected patients.

Some clinics claim they would like to offer partner notification, but have not got the resources. 'We would like to be more proactive, but it is a phenomenal amount of work if it is done properly, and we are already seeing 150 people a day,' said Vincent Moss, manager of health advisers at St Mary's Hospital, London.

Joan Jenkins, founder president of Women's Health Concern, a charity campaigning for better services for women, said: 'It is quite wrong if hospitals are not contacting partners. It is difficult because people often do not tell the truth, but tracing partners should be pursued vigorously.'

Patients' groups and Aids charities yesterday called for more resources so hospitals could trace and inform partners, with the patients' consent.

'A high-quality Aids service should include not only counselling, but also offers of help to

people who are infected with the virus but who do not want to break the news to their partners, or former partners, that they are at risk,' said Marianne Riggé, director of the patients' pressure group, the College of Health.

The National Aids Trust called for the Government to make Aids a priority in its White Paper on preventive health care being published next week. 'We would like to see adequate provision of trained health advisers to ensure that partner notification can be offered to patients,' said Julian Meldrum, the trust's research officer.

In Sweden, all doctors are required to try to notify partners and the system appears to work well. When researchers recently conducted a study of its efficacy, they showed that by notifying and testing the partners of 365 HIV patients they uncovered another 53 HIV-positive people, who did not know they were infected.

Deaf ear, pages 8-9

Briefly

HIV-infected man convicted in rape of 11-year-old boy

MIAMI (Reuter) — An HIV-infected man has been convicted of attempted murder for kidnapping and raping a boy.

A jury yesterday found Ignacio Perea's sexual behavior was roughly the same as using a loaded gun when he kidnapped the 11-year-old in September, 1991, took him to a warehouse and raped him repeatedly.

Prosecutors said it was the first time a U.S. jury had ruled the AIDS virus was a deadly weapon.

Perea faces up to 25 years in prison. He is to be sentenced this month.

Canadian flight to Cuba

September 24, 1993

The Hon. Ruth Grier
Minister of Health
Province of Ontario
10th Floor - Hepburn Block
80 Grosvenor Street
TORONTO, Ontario
M7A 2C4

Dear Madam Minister:

Re: Mandatory Nominal Reporting of HIV Positive Patients

As you are no doubt aware, AIDS Action Now (AAN), your staff, OMA and CPSO representatives have been trying for some time now to achieve consensus on wording for a new regulation under the Health Protection and Promotion Act (HPPA). The intention is to no longer require physicians to report the name of each HIV positive patient routinely to the medical officer of health. The new regulation will introduce a threshold for HIV reporting such that the vast majority of responsible HIV positive patients may enjoy greater privacy in the doctor-patient relationship while still ensuring that those who persist in putting their partners at risk of HIV can be followed up by public health.

The OMA is concerned with the difficulty in achieving a consensus and hope that this important issue can be resolved in the near future. Physicians have raised to us concerns that if not addressed, may further discourage primary care physicians from accepting new HIV positive patients into their practice.

We support the initiative to allow the option of non-nominal reporting. Our members also wish to preserve the ability to involve public health in confidential partner notification. The OMA sees public health as having special expertise in this area that supports the physician in his/her care of the patient and any new responsibility to notify and counsel partners.

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