G+M 93-08-31

LEGAL GAP / *The justice system isn't equipped to handle those who deliberately transmit HIV; laws dealing with the spread of venereal diseases have been removed from the Criminal Code. In Ontario, HIV is listed simply as a communicable infection, like mumps*

Erecting barriers to slow the spread of AIDS

BY IAIN D. MACKIE
London, Ont.

THE death of Charles Ssenyonga has left unanswered many legal issues related to the deliberate spreading of the human immunodeficiency virus (HIV), the virus believed to cause AIDS.

Mr. Ssenyonga, of London, Ont., tested positive for HIV in March, 1989, and was ordered by the Middlesex-London Health Unit to refrain from sexual activity in February, 1990, because he continued to have unprotected sex. He appealed that decision.

In early 1991, the Crown charged him with aggravated assault and criminal negligence causing bodily harm, alleging that he had infected three women with HIV between September, 1989, and September, 1990. He was acquitted of the aggravated assault charges because of the consensual nature of the sexual acts involved. At the time of his death, he was awaiting the judge's decision on the charge of criminal negligence.

If he had been tried on that charge, the judgment would have defined the legal obligations of those with HIV infection to inform their sexual partners of their HIV status. This definition may now have to wait for an appeal to the Supreme Court of Canada from a judgment in Newfoundland, where a man was sentenced to 11 years, on a charge of criminal negligence causing bodily harm, for infecting two women with the AIDS virus.

Public-health laws vary from province to province. In Ontario, the Health Protection and Promotion Act gives medical officers of health the legal authority to prevent the spread of infectious diseases. However, the act, last updated in 1983, was not drafted with HIV in mind.

It classifies infectious diseases as either "communicable" or "virulent." Communicable diseases, such as mumps and chicken-pox, tend to be fairly benign and self-limiting, and pose no serious health risk. Viru-

ISAAC/Bulletin Today, Manila, the Philippines

In 1991, Dr. Richard Schabas, Ontario's Chief Medical Officer of Health, tried to reclassify HIV as a virulent infection, to allow for such isolation and confinement. This attempt resulted in his near-lynching by AIDS activist groups, which argued that "punitive" approaches to the spread of HIV would drive underground those most in need of support and counselling.

A activists also argued that the word "virus

activist AIDS communities, officers may be reluctant to lay charges for fear of political backlash. In more rural communities, where activism is limited or non-existent, the laws may be more stringently applied. Crown attorneys have similar discretion in laying criminal charges.

It should be emphasized that the vast majority of Canadians with HIV infection are sexually responsible, practice safer sex and

rights and responsibilities of those with HIV to inform and protect their sexual partners.

Bold public-education campaigns should be aimed at people who consider themselves at low risk, such as women and teenagers. Too many people still believe HIV is only a problem of gay men and injection-drug users.

Finally, we need a radically new approach to those who deliberately spread

had infected three women with HIV between September, 1989, and September, 1990. He was acquitted of the aggravated assault charges because of the consensual nature of the sexual acts involved. At the time of his death, he was awaiting the judge's decision on the charge of criminal negligence.

If he had been tried on that charge, the judgment would have defined the legal obligations of those with HIV infection to inform their sexual partners of their HIV status. This definition may now have to wait for an appeal to the Supreme Court of Canada from a judgment in Newfoundland, where a man was sentenced to 11 years, on a charge of criminal negligence causing bodily harm, for infecting two women with the AIDS virus.

Public-health laws vary from province to province. In Ontario, the Health Protection and Promotion Act gives medical officers of health the legal authority to prevent the spread of infectious diseases. However, the act, last updated in 1983, was not drafted with HIV in mind.

It classifies infectious diseases as either "communicable" or "virulent." Communicable diseases, such as mumps and chicken-pox, tend to be fairly benign and self-limiting, and pose no serious health risk. Virulent diseases, such as syphilis, gonorrhea and Lassa fever, tend to be either treatable with appropriate antibiotics or rapidly fatal; these illnesses pose a greater threat to the general public. Under the Ontario act, health authorities may confine or isolate individuals with a virulent infection for up to one month or, with application to the courts, for up to four months.

Unfortunately, HIV is neither curable nor readily treatable. Infected individuals may remain healthy for many years, often unaware of their infection. The potential for unknowing spread of HIV to others is significant.

Remarkably, in Ontario HIV is listed only as a "communicable" infection, not as a virulent one. Under the act, people with communicable infections may be ordered to refrain from activities that might transmit the infection. If they fail to comply, the health officer may ask a court to issue a restraining order, and if they do not comply with that order, they may be charged with contempt of court. There are no provisions for confining them.

ISAAC/Bulletin Today, Manila, the Philippines

In 1991, Dr. Richard Schabas, Ontario's Chief Medical Officer of Health, tried to reclassify HIV as a virulent infection, to allow for such isolation and confinement. This attempt resulted in his near-lynching by AIDS activist groups, which argued that "punitive" approaches to the spread of HIV would drive underground those most in need of support and counselling.

Activists also argued that the word "virulent" might lead the public to think HIV is easily transmitted, which is not the case. More important, confinement of people with HIV in prisons or hospitals offers little or no chance of behaviour modification. Under intense political pressure, Dr. Schabas backed down, and HIV remains listed as a "communicable" disease.

THE criminal-justice system is not equipped to handle those who deliberately transmit HIV. Laws dealing with the spread of venereal diseases were removed from the Criminal Code in 1985, with little explanation. Current criminal laws may be adapted to cases of HIV transmission, as in Mr. Ssenyonga's case, but the system permits only the imposition of fines or prison sentences, with little or no option for behaviour modification.

For their part, medical officers of health in different places may apply the public-health laws selectively. In larger centres such as Toronto or Vancouver, with vocal activist AIDS communities, officers may be reluctant to lay charges for fear of political backlash. In more rural communities, where activism is limited or non-existent, the laws may be more stringently applied. Crown attorneys have similar discretion in laying criminal charges.

It should be emphasized that the vast majority of Canadians with HIV infection are sexually responsible, practice safer sex and are not "sexual terrorists." But how should society deal with the relative few who do deliberately spread HIV?

First, leaders in the AIDS movement, government and public health must state unequivocally that the deliberate spread of HIV will not be tolerated. People living with HIV/AIDS must use their moral weight to tell others in the same position what is acceptable behaviour and what is not (such as unprotected intercourse). At the same time, we should recognize that those with HIV should be free to have fulfilling sexual lives within the confines of safer sexual practices.

The Ministry of Health must ensure that enforceable standards related to HIV are consistently applied in all public-health jurisdictions across Ontario. The same goes for Crown attorneys in the laying of charges.

Specific laws dealing with HIV must be drafted with the co-operation of AIDS support groups, public-health authorities, legal experts and people with HIV/AIDS, rather than leaving it to the courts to define the rights and responsibilities of those with HIV to inform and protect their sexual partners.

Bold public-education campaigns should be aimed at people who consider themselves at low risk, such as women and teenagers. Too many people still believe HIV is only a problem of gay men and injection-drug users.

Finally, we need a radically new approach to those who deliberately spread HIV. It must be weighted toward educating them, and making them aware of the consequences of their actions. One proposal is to set up community support groups for HIV-infected individuals convicted of HIV-related offences, composed of physicians, psychologists, public-health workers and representatives of community-based AIDS groups. Such support groups, properly supervised by the courts and health authorities, would be more effective in protecting the public than confining the individuals in a non-supportive prison environment and releasing them back into the community with no supervision or support.

Confinement must be retained for those rare individuals who continue to deliberately expose others to HIV, but it should be used only after all other methods have failed.

Iain D. Mackie is associate professor of medicine at the University of Western Ontario, and director of the HIV care program at St. Joseph's Health Centre in London, Ont.