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Are You A Criminal?: The Supreme Court of Canada Rules on Disclosure to Sex Partners

On 3 September 1998, the Supreme Court of Canada released its decision in the case of R v Cuerrier. The Court unanimously concluded that, under Canadian law, a person with HIV/AIDS may be found guilty of the crime of "assault" if he or she fails to disclose his or her HIV positive status before engaging in unprotected sexual intercourse.

Background

In August 1992, Cuerrier (HC) was told by a public health nurse that he was HIV-antibody positive, that he should use condoms for sex and tell his sexual partners about his HIV-positive status. He said he could not disclose this in his small community. Soon after, he began a relationship with KM that included frequent unprotected vaginal sex. Within a week of first having sex with HC, KM discussed sexually

transmitted diseases (STDs) with him. He told her of his recent sexual encounters with women who themselves had had numerous partners. KM did not specifically ask about HIV. HC told her he had tested HIV-negative several months earlier, but did not mention a his recent positive test result. KM said at trial that she knew the risks of unprotected sex, including transmission of HIV and other STDs.

A few months later, both HC and KM had HIV-antibody tests. He tested positive, she negative. Both were told of HC's infection, and advised the use of condoms for sex. KM was told she would need further tests because she might still test HIV-positive. HC said he did not want to use condoms, and that if KM still tested negative in a few months, he would look for a relationship with a woman who was already HIV-positive. They continued having unprotected sex for 15 months. KM later testified that: (1) she loved HC and did not want to lose him; (2) as they had already had unprotected sex, she felt she was probably already infected; and (3) she would not have had sex with HC had she known his HIV status at the outset. At the time of trial, she tested HIV-negative.

A few months later, HC began a sexual relationship with BH. After their first sexual encounter, she told him she was afraid of diseases, but did not specifically mention HIV. HC did not tell her he was HIV-positive. No condom was used for about half their 10 sexual encounters. BH then discovered that HC was HIV-positive and confronted him, at which point he said he was sorry and should have told her. BH was not infected.

HC was charged with two counts of aggravated assault, on the theory that his partners' consent to sex was not legally valid. Citing an earlier Ontario case, the trial judge acquitted him on both counts. The BC Court of Appeal agreed, saying there could be no assault because the women had consented to the sex. The Crown appealed to the Supreme Court of Canada.

The BC Persons with AIDS Society (BCPWA), the Canadian AIDS Society and the Canadian HIV/AIDS Legal Network jointly intervened before the Supreme Court, arguing against the use of the assault provisions of the Criminal Code to criminalize non-disclosure of HIV positive status.

The Arguments

The prosecution argued that, because HC did not disclose his HIV infection, his partners' consent to sex was not "informed" consent, and/or that the scope of their implied consent had been exceeded.

The Crown also argued that, for reasons of public policy, the complainants' consent should be considered legally ineffective.

The BC Court of Appeal had rejected these three arguments, ruling that there was no duty, enforceable by criminal prosecution, requiring a person to provide full disclosure of all known risks associated with sex in order for his or her partner's consent to be valid: "The criminal law of assault is, indeed, an unusual instrument for attempting to ensure safer sex." The Court of Appeal also noted the arguments of the intervening BCPWA and the BC Civil Liberties Association that criminalization may be ultimately counterproductive in fighting AIDS by driving people away from getting tested and by frustrating education (and treatment) efforts, and that public health measures are better suited for dealing with people unable or unwilling to take precautions to protect others from HIV infection.

The Crown's chief argument, however, was that HC's failure to disclose his HIV positive status was a "fraud" that rendered his partners' consent legally invalid. The BC Court of Appeal rejected this argument as well, following the established rule that only fraud as to "the nature and quality of the act" (in this case, the sex) would vitiate a partner's consent. On appeal, the Supreme Court based its judgment squarely on this "fraud" argument, but set out a new, different test for "fraud."

The Decision: "Significant Risk of Serious Bodily Harm"

While differing over how broadly "fraud" should be defined in the law of assault, all seven of the Supreme Court judges who heard the case agreed that HC's failure to disclose his HIV-positive status was a fraud that could vitiate his sexual partners' consent to sex.

Mr. Justice Cory, writing for a majority of four judges, ruled the Crown must prove two things to establish "fraud." First, there must be conduct that a reasonable person would consider "dishonest." The Court held there is no difference "between lies and a deliberate failure to disclose." Therefore, the non-disclosure of an important fact, such as HIV infection, can be considered "dishonest." Second, the Crown must prove this dishonesty resulted in a "significant risk of serious bodily harm" to the person whose consent is being obtained by means of the dishonesty. The Court stated that: "Without disclosure of HIV status there cannot be true consent. The consent cannot simply be to have sexual intercourse. Rather it must be consent to have intercourse with a partner who is HIV-positive."

However, there is some ambiguity in the decision. The Court seems to state categorically that an HIV-positive person must disclose his or her serostatus to a sexual partner, and it is clear that this duty certainly exists in the case of unprotected sexual intercourse. However, the judgment also states: "To have intercourse with a person who is HIV-positive will always present risks. Absolutely safe sex may be impossible. Yet the careful use of condoms might be found to so reduce the risk of harm that it could no longer be considered significant so that there might not be either deprivation or risk of deprivation [meaning harm]. To repeat, in circumstances such as those presented in this case, there must be a significant risk of serious bodily harm before the section can be satisfied. In the absence of those criteria, the duty to disclose will not arise."

The full text of the Supreme Court's decision in R v Cuerrier can be found at < <http://www.droit.umontreal.ca/doc/csc-scc/en/index.html>>. For more information, see also Criminal Law Bulletins 2 through 7 and R Elliott. Criminal Law and HIV/AIDS: Final Report. Montreal: Canadian HIV/AIDS Legal Network & Canadian AIDS Society, 1997 (available at www.aidslaw.ca or through the National AIDS Clearinghouse (tel: (613) 725-3434)); or contact the Canadian HIV/AIDS Legal Network (tel.: (450) 451-5457; fax: (450) 451-5134; [email:info@aidslaw.ca](mailto:info@aidslaw.ca)).

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Public Education Materials

On June 1, 1998, the Ontario Family Benefits Program was replaced by the new Ontario Disability Support Program. Because the legislation has been substantially altered, HALCO has written and produced 3 pamphlets to assist PHAs in navigating the confusion wrought by the changes. The 3 pamphlets are:

[Grandparenting from Family Benefits](#) & The New Ontario Disability Support Program - This pamphlet is about being "Grandparented" from the old Family Benefits Program onto the new program.

[Do You Need Income Support](#) Because You have a Disability or Health Problem?: This pamphlet discusses how to get on the ODSP if you are new to income maintenance programs and you are HIV+ or have any other disabilities.

[Working & the new Ontario Disability Support Program:](#)

This pamphlet covers what PHA's need to know should they start feeling better and want to return to the workforce on a part-time or full-time basis and what their rights are.

There are no costs associated with receiving these pamphlets. Please call HALCO to order. Also, please note that we have 2 other HALCO-produced-&-written pamphlets in stock and they are:

[When Someone Dies Without A Will](#)

[When Someone Dies and Leaves A Will](#)

HALCO's 1998 AGM: Report From The Chair

The following is the text of a speech given on September 16, 1998, at HALCO's Annual General Meeting by its out-going Chair of the Board of Directors, Alan Stewart:

The year since our last AGM can be characterized as a year of escalating demands and increasing challenges in all areas of the clinic's activities. In addition to giving legal advice and offering legal services, the clinic also provides public speakers, conducts workshops on legal issues on request, and actively advocates on behalf of PHAs with government when new legislation is proposed. In all these areas of activity we have struggled to keep up with the work which needs to be done.

For example, in the calendar year of 1997 the clinic averaged about 100 requests for services each month. In the first six months of 1998, on average it received 150 requests for services per month; and in the month of July this year, we received 200.

In terms of our representation of individual PHAs, the clinic's lawyer routinely appears before a number of tribunals and in the courts. Because we are committed to our poverty law mandate and because we have very limited resources, we continue to focus our case work on basic survival issues: income assistance; and access to housing. In the last year, the largest case we handled was the four day inquest into the death of Billy Bell who died in horrendous circumstances in the Kingston Penitentiary. In that case we represented the Prisoners with AIDS Support and Action Network and successfully convinced the jury to recommend that PHAs in federal prisons have access to palliative care services and that Correction Services Canada pilot a needle exchange project inside. We would very much like to be able

to do large cases like the Bell inquest on a regular basis. However, over the last year the clinic has found itself starting to have to turn people away who need our services and qualify for them because we do not have sufficient legal staff to deal with their problems. We believe that is not acceptable.

In terms of government legislative initiatives, the last year has seen the passage of new social assistance laws, new landlord and tenant legislation and the introduction of personal health information draft legislation. The clinic has kept the community informed of what the government is doing through our newsletter, through mail outs and by faxing information across the province to every AIDS Service Organization. As a result, the community has been able to articulate loudly and clearly its positions on government initiatives. We are very proud of the fact that during the legislative hearings on the Social Assistance Reform Act, there was an AIDS Service Organization speaking at every meeting of the legislative committee and that the government actually listened to what we had to say. Over the next year we anticipate that the provincial government will abolish legal aid as we know it and introduce new legal aid legislation. This new legislation may not allow the clinic to continue to do this kind of work. Indeed, the new legal aid legislation may mean that the clinic will not exist at all after March of 1999. We also believe that the issue of the release of personal health records will come back to the legislative agenda and be a major battle that PHAs must fight.

Despite all of this the clinic has no more staff than it did a year ago. Last year we used all of our savings and the donations that we had accumulated since before the clinic was opened and hired an articling student. This year we applied for and got \$35,000 from the Trillium Foundation of Ontario to produce an HIV and the law manual which should be available in June of 1999. The Trillium money and the ACT Community Partner's Fund has allowed us to have another articling student this year. However, after this year we will not be able to have an articling student and our staff complement will be reduced back to one lawyer, one community worker, and one support staff position. In addition to not being able to obtain the new positions which are desperately needed we have been unable to give any of our staff pay raises since the clinic was first founded because of a freeze on our government funding. We have been told by provincial government representatives that it is likely that under the new legal aid system the money for legal clinics will continue to be frozen for another three years. Health Canada has persistently told us that the money available through the Canadian AIDS Strategy, including the money specifically designated for legal and ethical issues, is not available to fund the delivery of direct services to PHAs.

All of this means that despite the fact that the clinic has been successful and welcomed in the community as a valuable service, we face difficult issues about our ability to keep functioning. Do we stop answering the phone so we can go to hearings and court more often? Or do we stop lobbying government or stop producing the newsletter so we can keep answering the phones? How do we hold on to our staff when we cannot keep pace with increases in the cost of living?

These are the challenges that face the new Board of Directors. We should be justifiably proud in what we have accomplished together, but we cannot sit on our hands and pretend that the current situation can continue indefinitely. It cannot. We need to use the success of the clinic to date, the dedication of our staff and our members to convince funders, be they government or otherwise, that we deliver a valuable service that is desperately needed and deserves to be adequately funded to meet the legal needs of PHAs.

On behalf of all of us I would like to thank the staff at HALCO, my colleagues on the Board, and the clinic's volunteers for their work and dedication.

1998 Board of Directors

Joan Anderson has been involved in the community based AIDS movement since 1984 and has extensive experience in HIV/AIDS advocacy and public policy development. Joan has held the position of Director of Education and Advocacy at ACT for 4 1/2 years and recently moved to a part-time position as Director of Advocacy. Joan works collaboratively with HALCO on advocacy issues.

Mark Blans was appointed to the PWA board in November of 1997 and subsequently appointed to the HALCO board as a PWA representative. Mark has researched HIV and AIDS issues for 10 years and has been active with both PWA and ACT during that period. Mark has thoroughly enjoyed sitting on HALCO's board and looks forward to anticipating and addressing new challenges during his new term. Mark is currently working on the development of HALCO's upcoming website. Mark looks forward to working with the membership, staff and colleagues to ensure HALCO continues to offer both high quality and timely services.

Helen Daley has been practicing for 10 years as litigation counsel. Helen is a member of The AIDS Committee of Toronto and served as an ACT Board member from 1992 through 1995. In 1995 ACT appointed Helen as one of its two representatives to the founding

board of HALCO. Helen returns to the board this year as an elected community member.

Bill Flanagan is an Assistant Professor of Law at Queen's University, and is one of the ACT appointees. Bill is also a part-time Vice-Chair of the Workplace Safety and Insurance Appeals Tribunal, a member of the law society of Upper Canada, the author of various legal articles on AIDS-related legal issues, a former Chair of the Board of Directors of ACT, and currently Chair of the Canada AIDS Russia Project, which funds a community-based AIDS Service organization in St. Peterburg, Russia.

James Kreppner has been involved with the HIV & AIDS Legal Clinic since its beginning, and is one of the two members of the board appointed by the Toronto People With AIDS Foundation. James' other activities include, and have included being a board member of the Toronto PWA Foundation, the Toronto-Central Ontario Regional Hemophilia Society, the Canadian Hemophilia Society. In addition, James' memberships include the National Advisory Committee of HIV/AIDS Treatment Information Network (CATIE), the HIV/AIDS Clinical Trial Network (CTN) Community Advisory Committee, and its Steering Committee, and he is a council member of the Canadian Treatment Advocates Council (CTAC). Currently, James is also a Vice-President of Hemophilia Ontario.

Peter Richtig has been HIV+ for eight years and has worked in the AIDS movement for five years; as an advocate for the rights of HIV+ people. Aside from being on the Board of Directors of HALCO, Peter is: on the Board of the Toronto PWA Foundation, on the Steering Committee of the PHA Caucus of the Ontario AIDS Network (OAN), on the Advocacy Committee of the OAN, and the Coordinator of Support Services at the AIDS Committee of Durham.

Alan Stewart has been on HALCO's Board of Directors for two years, most recently serving as Chair of the Board. He was on the Board of the AIDS Committee of Toronto from 1990 to 1994. He was Secretary and Vice-Chair, sat on the Policy and Advocacy Committee and the Community Relations Committee, and acted as liaison with Dancers for Life. Alan has also been a buddy and currently serves on the Hotline and Policy and Advocacy Committee. For several years he volunteered at CATIE, most of that time copy-editing Treatment Update. Alan works as a professor at the University of Toronto and as a freelance writer.

Connie Vernon graduated from Queen's University Law School and is currently articling at Virgilio, MacDonald in Richmond Hill, Ontario. Before attending Queen's, Connie worked for ten years at Seneca

College. While at the College, she worked in the areas of athletics and student leadership development. Connie is pleased to have the opportunity to serve on the Board.

Bob Watkin is a retired lawyer and former partner of several downtown law firms. He has served on HALCO's Board since February of 1995 and is a former Acting Chair, Vice-Chair and Treasurer. Bob is also President, Director and a volunteer at the Teresa Group. Bob has been a delegate to the Ontario AIDS Network (OAN) and is currently acting as the Coordinator of the Gay Men's Caucus of the OAN.

Annual General Meeting: September 16, 1998

HALCO's Annual General Meeting was held September 16, 1998 at the 519 Community Centre. This year's AGM was chaired by Charles Roy, Executive Director of the AIDS Committee of Toronto. Approximately 20 members attended to elect the Board of Directors for 1998-99.

Of the nine board positions, four are appointed. Two appointments each are made by the Toronto People With AIDS Foundation and the AIDS Committee of Toronto. Five Board positions are elected from the community. HALCO's by-laws require that a majority of the Board of Directors be HIV positive. This year 5 individuals stood for election at the AGM. The staff and board of the clinic would like to recognize and thank all those who participated in the election to the board for their interest, dedication and commitment.

At the AGM, the financial statements of the clinic were presented to the membership. As well, the membership voted to reappoint Hill & Company as the clinic's Financial Auditors for the next fiscal year. During the financial report, it was emphasized that after this year, the clinic will no longer have the ability to have an articling student.

At the conclusion of the business portion of the meeting Richard Elliott, a former Board member and a lawyer at Iler, Campbell addressed the meeting. Richard spoke about the possible implications of the Cuerrier case at the Supreme Court of Canada, which established a person's consent to unprotected sex is not valid if they were unaware of the other person's positive HIV status. More information about the Cuerrier case is [contained in the article](#) on page one of this issue of halco news.

We would like to thank the Second Cup at Church and Wellesley for their generous donation of coffee at this year's AGM.

On Being a Litigant: Part II By Robert G. Watkin

This is the second, and final part of an article written for halco news by Bob Watkin, a HALCO board member, about the experience of living through the litigation experience. [Part I of this article](#) appeared in the Summer, 1998 edition of halco news (Vol. 3, No. 2)

"Catch 22"

The rules of practice provide the structure by which an action proceeds. The law of evidence governs how, when and if various parts of your story can be presented as part of your action. The general principles of law are the standard by which the success of your action will be determined. These rules, laws and principles were established in order to provide certainty and to create a logical progression to the process of an action through completion. Simple right? Not!

Just as everyone involved in your action is entitled to assemble their own version of your story for their own ends they also are entitled to their own interpretation of those rules, laws and principles. It follows that disputes will arise over the way a particular rule, law or principle applies to your action; whether or not there has been a sufficient degree of compliance with its method of application; or whether or not it applies at all in your case. Those disputes are resolved by a procedure known as a motion. A motion is like a mini-trial and can take place throughout the course of your action.

The catch for you is that these rules, laws and principles themselves become the source of confusion and delay. They may sometimes not make any sense to you. You will have to look to your lawyer for understandable explanations. These rules, laws and principles are important. A case can be lost if the minefield created by these rules, laws and principles is not successfully negotiated.

As the number of motions multiply you may wonder whether there is an alternative underlying purpose to them. There may be. The more motions there are, the more it costs and the longer it takes to pursue your action. The increasing costs can wear you down financially. The increasing length of time can wear down your resolve and commitment to the action. Delay can clearly benefit the party with the greater financial and emotional resources. That is unlikely to be you. :

There is also another sad truth which you will be entitled to wonder about if you are a PHA and the plaintiff. In your case the best defence for the defendant is a dead plaintiff. If your case is based on discrimination and you are not there to testify there is nothing for the

defendants to defend. You may very well begin to wonder if the delay is really just a waiting game. You will be told that the rules of practice provide for this situation. Your evidence can be videotaped and played at trial after your death. It has been done in at least some of the cases brought against the Red Cross. I was told it would cost me between ten and twelve thousand dollars. I haven't done it as yet. If I have to it means that my evidence will be delivered after my death. I just won't know the outcome. Be prepared to be very, very frustrated.

"Philadelphia"

Cases like mine and yours are precedent setting. There is a significant chance they will attract the attention of the press. You will have to be prepared for the notoriety that attention can bring. It will be unpleasant. The possibility of this notoriety is a factor you should consider before you bring your action.

The facts of my case resemble the storyline of the movie "Philadelphia". For this reason alone my lawyer warned me well in advance that I could attract the attention of the press. I thought long and hard about losing my anonymity and privacy. I also had to go home and tell my mother I had AIDS as I hadn't told her at that point. These were very difficult decisions to make and carry out.

My action was launched and the press arrived. I filmed a two day interview with major television network which never aired. I was interviewed by a major news service and newspapers both in Canada and the United States. The stories in Canada were released the same day the TTC accident at Dupont station occurred and were lost in the events of the day. After all the mental preparation I had gone through this turn of events was a substantial let down.

Even with the limited exposure I did receive, the resulting notoriety was unpleasant. People did react and talk to me differently. Complete strangers would stop me on the street and feel free to make comments on very personal matters. I received phone calls from members of the religious right offering to help me save my soul. I received phone calls from some obviously very disturbed people. I did receive some calls of encouragement.

I was misquoted. I did see my story interpreted in the press in a manner I didn't expect. Having been burned I required a subsequent reporter to read the story back to me before it was printed. She did so and I approved it. Due to shortage of space the last two lines of the story were dropped on printing. That part of the story made reference to a third person's situation and the deletion completely altered the

meaning of the comment I had made. Never do an interview about your case without your lawyer being present. What you say can and will be used against you.

"Bent"

As a gay man living with AIDS, homophobia and AIDSphobia are biases I live with every day. Depending on who you are, you also live with one or both of them as an everyday occurrence. Just as the phobias are present in every day life, they will be present in some of the persons involved in your case. It may be discreet or it may be blatant, but it will be present.

Obviously as my case is based in part on discrimination I am of the opinion the defendants have these phobias. This remains to be proved at trial. It can only be a matter of conjecture to what extent, if any, the other participants in my trial from time to time have either or both of these phobias.

If bias is present and it is blatant then you will be lucky as it can then be dealt with by your lawyer. If bias is present and discreet there may be no way of dealing with it.

"The Money Pit"

To be blunt, the expense of mounting a legal action is horrendous. One of the very first things you should do if you are thinking about bringing an action is to sit down with the lawyer you are thinking about hiring and obtain an estimate of what it will cost you to pursue an action through trial and possibly on appeal. You are going to be shocked. Unless you are lucky enough to find a lawyer who will act for you on a pro bono basis (i .e. waive his or her fees or work for free now and be paid out of the proceeds of your successful action) you should negotiate with your lawyer practical payment terms which you can meet. If you don't or can't pay your lawyer's fees or don't meet the payment terms it is unlikely your lawyer will continue to act for you. The expense of an action includes not only your lawyer's fees but also other expenditures such as filing fees, photo-copying, preparation of transcripts, expert witness fees, court reporters' fees and the like. Whether or not you are lucky enough to obtain a pro bono lawyer, you will likely have to pay these disbursements as and when they are incurred during your action.

Remember that at the outset your lawyer can only give you an estimate. There are many things that can happen which can increase the actual total cost of an action such as numerous motions,

videotaped evidence and the like. For example, the original estimate I received three years ago has been revised significantly upwards twice. My entire financial worth is now tied up in my action. If I lose I will have nothing left. The stress brought on by the financial strain of maintaining my action has at times affected both my physical and mental health. Whether or not you think you can cope with this additional stress is another factor you need to seriously consider when you are deciding whether or not to bring an action.

"The Gulag Archipelago"

For you, as it has been for me, the litigation experience will be an intensely personal one. It is your story, your life, that will be on trial. Every aspect of your life may be open to examination. You will be asked intrusive and embarrassing questions. Your credibility will be assessed. You will be manipulated. Your privacy will be completely lost as you are required to answer probing intimate questions. You will hear interpretations of your words and actions that will make you cringe. If your case attracts the attention of the press you may acquire a notoriety that will permanently affect the rest of your life. You will be subject to financial duress.

No one else can share the entirety of the litigation process with you. You are at the centre of it. You are on your own. Before you start an action you must realistically assess yourself. Do you have the inner strength to deal with all the stress of the action and its possible consequences? Be honest with yourself. It could be a serious mistake if you don't. There is no point in trying to tilt at windmills unless you have the personal skills and strength necessary to both ride the horse and carry and aim the lance.

There are three possible sources of support for you. One is your intimates such as your partner, spouse, family and friends. Another possible source of support are professionals. The last is your community such as AIDS Service Organizations, legal rights groups or other like associations.

In dealing with your intimates try to remember that you are the only one who will ever know completely what the litigation is doing to you. There will be varying degrees of understanding and sympathy among your intimates. What ever you do, do not deflect your anger and frustration over what is happening to you on to any of them because they don't appear to understand or seem unsympathetic. Be thankful for the love and concern of those of your intimates who stay in your corner. Be prepared for rejection by some of your intimates as it will happen. It

should make you appreciate those who continue to support you even more.

There are some types of professional help available to you. Your lawyer is available to help you understand the litigation process. If you don't understand what is happening then ask your lawyer. Do not, however, rely on your lawyer for emotional support. It is not part of his or her job and shouldn't be. If you are suffering from some affliction, whether connected to the litigation or not, then get the appropriate type of professional help. Lastly, maintain your physical health as best as you can. See your doctor or other treatment professional. The stress of the litigation process can and will affect your health. It is of critical importance that you do what is necessary to maintain it. If it is true that in AIDS cases a dead plaintiff is the best defence, the corollary of that proposition may very well be that a live plaintiff is the best offence.

Individuals within your community can and will be supportive of you in terms of providing you with information that is within their areas of expertise. I am extremely grateful to those individuals who have done so for me. Some organizations will intervene at the appellate level. That means that those organizations will hire their own lawyer and present their own arguments which may be supportive of you at the appellate level. This may be of limited help to you as you will have to maintain your action through trial and through the appellate courts on your own both personally and financially.

AIDS is a stigma disease. It not only affects the health of those living with HIV and AIDS but as well can compromise their familial, social and economic well-being. The stigma has been with us from the outset. We all know that having HIV or AIDS can cost you your family relationships, friends, housing, employment, access to health care, privacy and a host of other entitlements that other people take for granted. It took the touch of a Princess to even begin to humanize us in the eyes of some of the rest of the world. As the new treatments prolong the lives of some of us and even allow a few of us to contemplate re-entering the "normal" world, the stigma looms as an even larger problem. Its consequences will take on new and more varied forms.

AIDSphobia is just as heinous as homophobia, anti-semitism, and racism. The consequences of the prejudice generated by hatred are just as pervasive and insidious for persons living with HIV and AIDS as it is for Jews, gays, lesbians and persons of colour. There needs to be a collective, comprehensive and proactive effort by the AIDS community to combat the stigma. It needs to happen now. There needs to be a public consciousness in relation to AIDSphobia as now

exists in relation to anti-semitism and racism and as is developing in relation to homophobia.

It has been through the effort, commitment and determination of individuals pursuing their causes of action through to the end that important advances have been made in the areas of spousal support, pension benefits, the application of the Income Tax Act and basic human rights. I stand in awe of the courage, determination and strength of these individuals in seeing their causes through to an end.

"Blowing in the Wind"

At the outset of this epic I set out three questions and said I would try to answer them for both you and myself. I will try to answer them now.

1. Why did I sue?

The answer is a simple one and is given at the beginning of Part I of this article (halco news, Summer 1998). In order to prevent the loss of my insurance benefits I had to obtain an injunction. In order to try to obtain an injunction I had to commence the action. As a lawyer I thought I was aware of all the consequences of starting an action. I was only aware of some of the issues and consequences, both practical and legal. The rest I learned through hard experience. I didn't even really appreciate the full effect of the ones I thought I did know. In many ways I knew too much about too little.

2. Why Do I Continue to Sue?

I would be less than honest if I didn't admit that there have been moments of abject despair for me. The effects of my depression, events occurring in the course of the action, developments in relation to my physical health, the duress of the financial strain, the death of friends, the aggressive collection efforts of Revenue Canada, the effect of the stigma on me personally and the feelings of isolation derived from the litigation experience occurring, separately or in combination, at various times have all contributed to those moments. Most recently I lost a ten month relationship due in no small part to the uncertainties in my life caused by the existence of the action and my inability to plan for the future because of it. Three years has been a long time and there is no immediate prospect that the end will come soon.

It is true that there is the possibility of a substantial financial benefit to me if I pursue my action to the end and if I win. I can assure you that the possibility of such a financial benefit was not enough on its own to

keep me motivated to continue in those darkest moments. The underlying reason that has fuelled my resolve to continue to date will be given in answer to the third and last question.

3. Would I do it again?

Yes. As a gay man I have experienced homophobia during my life in every form from the discreet to the most blatant. I have experienced everything from differentiation in treatment to verbal abuse and physical assault. As it happened to me I averted my eyes, hid my pain, avoided confrontation and even apologized for who I am. As a PHA I have experienced outright rejection by friends and a family member, been refused treatment by my dentist, given substandard treatment in a hospital emergency room, experienced joblock, lost my career and had my financial security jeopardized. It has been said to me that the only reason I am pursuing this action is that I have nothing left to lose. It isn't true that I have nothing left to lose. I still have what remains to me of my self-respect and human dignity.

Preserving my self-respect and human dignity is not the sole reason I continue to sue and would do so again. Whenever those moments of despair are darkest for me and my will to continue is at risk, the most important question I ask myself is whether I want to let what happened to me ever happen again, to me or anyone else. The answer to that question is no. As long as I have the ability to answer that question in the negative I will have the resolve to continue my action to the end and I would do it all over again. Win or lose. As long as I have breath to force out the word, the answer will always be "No".

Advocates' Manual Update

Work on the HIV & the Law: A Lay Advocate's Manual continues at HALCO. Four chapters of the manual are currently nearing completion, and will soon be sent for review.

We have been fortunate to have Adwowa Rouse, our articling student for the 1997-98 year, return to us through a program run by the Bar Admissions Program to continue to work on the Manual through to the end of December.

As HALCO's website moves into operation and parts of the Manual are completed, we hope to have them available on-line.

Website & Poster On the Way

Yes, HALCO is developing a website. At the time of this article, it is still under construction. However, we will send out notices to all ASO's, legal clinics, and members when it is operational. At the site, HALCO will post its pamphlets and additional resources so that PHAs and people providing service to PHAs can access information and assistance.

The site will also provide links to other valuable resources for PHAs and people working in the areas of HIV and AIDS. The address is:
<http://www.halco.org>.

We are also in the process of fine-tuning the printing of the poster and it should be ready for distribution soon. The poster will be distributed to ASOs, legal clinics, community health centres and HIV & AIDS medical clinics across the province. If you or your agency receives a copy of the poster, please take the time to post it where clients will be able to see it.

Lots of Thank Yous!

The staff, board, and members of HALCO would like to thank **Shimon Brownstein, Kirk Fallis, and Kelly Jordan** for their invaluable contribution as board members of HALCO. Their wisdom, dedication and humour will be sorely missed. We wish them well in their future endeavours - they deserve it! Cheers Shimon, Kirk, and Kelly!

And we would like to extend our gratitude to **Jude Stewart**. Jude is a graphic designer who graciously donated her time and skills in creating a poster for the HIV & AIDS Legal Clinic (Ontario). The clinic was financially unable to engage the services of a full-time graphic artist, so Jude came on board and provided us with an excellent result of her hard work. The poster is going out to all legal clinics and AIDS service organizations across Ontario to promote HALCO's services. Thanks again Jude! Great job!

Office Closings for This Quarter

HALCO's offices will be closed the following days over the next 3 months:

October 12 (Thanksgiving Day),
November 11 (Remembrance Day),
December 25 (Christmas Day),
December 28 (Boxing Day) &
January 1, 1999 (New Years Day)

Further closings at Christmas time may happen subject to a decision of the Board of Directors. Other closings will be posted.

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