



For Immediate Release  
September 3, 1998

## **SUPREME COURT RULING WILL HARM HIV PREVENTION**

OTTAWA -- The Canadian AIDS Society (CAS) and the Canadian HIV/AIDS Legal Network (Network) expressed concern that a Supreme Court of Canada decision released today could seriously undermine efforts to prevent HIV transmission.

The case in question, *R. v. Cuerrier*, involves a British Columbia man charged with two counts of aggravated assault for having sex with two women without telling them he was HIV-positive. Neither woman contracted HIV as a result.

The Supreme Court has ruled that it is a criminal offence for an HIV-positive person to engage in consensual sex without disclosing his or her HIV status. CAS, the Network, and the BC Persons with AIDS Society (BCPWA) jointly intervened to argue against such a decision.

"Making it a criminal offence not to tell your sex partners you're HIV positive would appear to be getting tough in the fight against AIDS," said Ralf JÅrgens, Executive Director of the Network. "But in reality, it will do little or nothing to stop the spread of HIV and risks significantly damaging the voluntary testing, counselling and support programs that make a real difference."

A report released last year by CAS and the Network, after broad consultations, concluded that criminalizing behaviour that risks transmitting HIV could undermine the very public health measures set up to fight the epidemic.

"We have spent years setting up voluntary testing and prevention programs," said Terrence Stewart, Chair of CAS. "Getting tested early gives people who are HIV positive an early start on anti-AIDS drugs and a longer life. Many testing programs also help people

living with HIV/AIDS inform their partners in a supportive, non-threatening environment. If people risk criminal prosecution for not telling their sex partners they're HIV-positive, this is a reason to avoid getting tested."

At the heart of this case is the issue of disclosure, something that is difficult given the extreme social stigma attached to this disease. "Imposing a blanket rule of mandatory disclosure doesn't permit any consideration of the many factors that may affect someone's willingness, or ability, to disclose their HIV-positive status," said Jürgens.

"Making it a criminal offence to not disclose your HIV status won't resolve problems of disclosure -- it will make disclosure even more difficult," said Stewart. "The Criminal Code should not decide when and how to disclose your HIV status," he added.

CAS and the Network are also concerned that criminalizing non-disclosure of HIV status will lull HIV-negative people into a false sense of security that the Criminal Code, rather than safer sex, will protect them from HIV. "The law can't protect us from HIV infection; we all need to practice safer sex," Stewart said.

Both Stewart and Jürgens stressed that cases such as these are rare. "Most people with HIV/AIDS are responsible individuals who take precautions to protect others."

CAS and the Network rejected any suggestion that the Supreme Court needed to extend the crime of assault to cover this case. "In some very limited circumstances, other existing offences could be used to deal with cases where a person has actually infected someone else. In all other cases, provisions in public health laws could be used and would be better suited. This is a public health issue, and should be treated as such," said Jürgens.

Stewart agreed, saying public health measures offer a better alternative to criminal charges when dealing with conduct that risks spreading HIV. "Public health officials already have the power to intervene when they are aware that somebody is engaging in activity that risks transmitting HIV to another person and are unable or unwilling to change their behaviour," he noted. These interventions can be much better tailored to fit the individual's particular circumstances, and are more proactive. Criminal charges, if they are to be used at all, should be a measure of last resort."

Other interveners at the Supreme Court hearing included the BC Civil Liberties Association and the Ontario government.

- 30 -

[To Criminal Law section of the Joint Project on Legal and Ethical Issues Raised by HIV/AIDS](#)



[About The Network](#) | [Main Content](#) | [What's New](#) | [Media](#) | [Links](#) | [Reach Us](#)

[Make a Donation](#) | [Quiz](#) | [Home](#) | [Français](#) | [Search](#) | [Site Map](#)

