

CANADIAN NEWS

This section provides brief reports of developments in legislation, policy, and advocacy related to HIV/AIDS in Canada. (Cases before the courts or human rights tribunals in Canada are covered in the section on HIV in the Courts – Canada.) The coverage is based on information provided by Canadian correspondents or obtained through scans of Canadian media. Regular correspondents are listed on page 2; information about occasional correspondents is provided with their contribution. Address correspondence to David Garmaise, the editor of Canadian News, at dgarmaise@rogers.com.

Québec: An outbreak of HIV/AIDS-related stigma and discrimination

In the space of a few weeks in January 2004, actions by three different institutions in Québec combined to threaten the human rights of people living with HIV/AIDS, raise the spectre of mandatory HIV testing, and create unnecessary public fears about the spread of HIV infection. In response to what they called “the worst weeks in recent history for people living with HIV/AIDS in Québec,” the Canadian HIV/AIDS Legal Network and COCQ-Sida (the Québec coalition of community-based organizations fighting AIDS) called for a province-wide campaign against HIV/AIDS-related stigma and discrimination.¹ A victory was achieved when a Montréal catholic seminary announced that it had backed down from its initial proposal to mandatorily test all applicants for priesthood for HIV, but much more is needed to fight the rapid outbreak of mandatory-testing proposals.

The three institutions involved were the Grand Séminaire de Montréal, the Ste-Justine Children’s Hospital, and the City of Montréal.

Grand Séminaire

On 10 January 2004, the Grand Séminaire de Montréal, a Catholic

seminary, announced that as of September 2004, all applicants for the priesthood would be required to undergo HIV testing.²

Initially, the Grand Séminaire linked the HIV testing policy with homosexuality. It said that the new policy did not mean that HIV-positive

applicants would be automatically excluded, but that they would be required to explain how they got infected. If they were infected as a result of homosexual activity, the Grand Séminaire said, they would have to convince the administration that they were serious about their religious vocation.³ Marcel Demers, the rector of the Grand Séminaire, said that homosexual applicants would not be automatically refused, but that their chances of being accepted were minimal.⁴

Then, the Grand Séminaire claimed that homosexuality had nothing to do with it. At a news conference on 12 January, the Archbishop of the Diocese of Montréal, Cardinal Jean-Claude Turcotte, said that “homosexuality is not a criterion.” The issue, he said, was the “health of

the candidates” and their “[physical] capacity to fulfil their duties.”

Cardinal Turcotte said that the priesthood was “a lifelong project” and that “AIDS is a serious illness that can cut short the life of a person.”⁵

Cardinal Turcotte said that the Grand Séminaire was not the only Catholic seminary to require HIV testing. He said that HIV testing was mandatory at seminaries in Edmonton and Vancouver, in many US states, and in Africa.⁶

Reaction

The Grand Séminaire policy was denounced by numerous gay and HIV/AIDS organizations. A representative of the Association gay anonyme pour prêtres exclusivement (AGAPE), a group of gay Catholic priests that works within the church, characterized the policy as “excessive” and said that if he were planning to enter the Grand Séminaire today, he would have to think twice about it. Gilles Marchildon, Executive Director of Égale Canada, a gay rights organization, said that the policy would “further stigmatize people living with HIV/AIDS by making them unwelcome within the church.” Robert Rousseau, of Séro Zéro, an AIDS service organization, said that the policy sends a dangerous message of exclusion.⁷

On 13 January, the Canadian HIV/AIDS Legal Network and COCQ-Sida wrote to Cardinal Turcotte to protest the new policy.⁸

On 14 January, the Québec Human Rights Commission said that it would examine whether it should launch an investigation into the matter. Commission spokesperson Ginette l’Heureux said that the church may be contravening the Québec Charter of Human Rights and Freedoms if the purpose of asking for the test is to

check the person’s state of health. An employer can discriminate on the basis of a person’s handicap if it prevents the person from carrying out the job, she said, but there is nothing inherent in HIV that prevents a person from saying mass or carrying out other priestly duties.⁹

On the same day, the Legal Network and COCQ-Sida wrote to the Québec Human Rights Commission strongly urging the Commission to launch an investigation.¹⁰ In that letter, the two organizations said that “the decision by the Grand Séminaire de Montréal to ask applicants for priesthood to submit to an HIV test can have a negative impact on Québec society, by promoting discrimination against all people ... living with HIV/AIDS.” The letter went on to say:

Submitting applicants to an HIV test cannot be justified.... [U]nder Canadian law, no employer has the right to impose mandatory pre-employment HIV testing, and it is also against the human rights laws of all provinces to demand such information because to do so amounts to discrimination based on disability. The human rights acts also do not in any way provide an exemption to the Catholic Church that would allow it to demand pre-employment HIV testing of potential employees. Under article 20 of the Québec Charter of [Human] Rights and Freedoms a distinction or exclusion might not be discriminatory if it is based on a “qualification required for an employment” or is “justified by the religious nature of a non-profit institution.” But clearly being HIV-negative is not a necessary ... requirement to be a priest, and the archdiocese has a duty, like all other employers, to accommodate any employee with a disability (be it HIV or something else). And there is nothing in the “religious nature” of the Church that would provide any justification or requirement to only hire HIV-negative priests.

HIV is not a barrier to fulfilling the duties of priesthood. HIV-positive people can and do lead long, healthy lives. It is often not their HIV-positive status, but society’s discrimination that makes it impossible for them to make a full contribution – which is exactly why they continue to need protection against the types of discrimination non-voluntary HIV testing opens the door to, and why it is so important for the Commission to launch an investigation.

The decision by the Grand Séminaire and the public statements by Cardinal Turcotte perpetuate stigma and misinformation about HIV and people with HIV. All Quebecers living with HIV have received a slap in the face from an institution that should practice what it should preach: respect and inclusion. The decision and the public statements have been widely reported in the media – in fact, no other story on HIV has received as much coverage in the media in recent history. The message that people risk taking from it is that it is OK to exclude people with HIV because they are incapable of fully participating in the activities of life. We

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are concerned that we will see an increase in discriminatory practices against people with HIV if the Commission does not launch an investigation.

The Human Rights Commission agreed to consider the request to launch an investigation.

On 15 January, the Legal Network and COCQ-Sida issued a news release reiterating the points raised in the letter to the Human Rights Commission. "The consequences of HIV antibody testing continue to be different from many other medical tests," said Lise Pinault, Executive Director of COCQ-Sida. "No doubt, there are significant benefits to people who undergo voluntarily HIV testing. They can access treatment if they are HIV positive, and take steps to prevent HIV transmission. However, if the HIV test is not entirely voluntary and undertaken with appropriate counselling, it can be used to unjustly discriminate against people, to exclude them from full participation in society, based on false notions about HIV and people with HIV." Ralf Jürgens, Executive Director of the Legal Network said, "In 2004, discrimination against people with HIV/AIDS in Canada remains pervasive, and we cannot allow further injustice to happen."¹¹

The Legal Network prepared opinion pieces that were published in both *Le Devoir* and the *Toronto Star*.¹² The Network also wrote to Archbishop Raymond Roussin in Vancouver and Archbishop Thomas Collins in Edmonton to urge them to reconsider their HIV testing policies for seminarians.

Ste-Justine Children's Hospital

On 22 January 2004, officials of the Ste-Justine Children's Hospital called a news conference to announce that it was recommending that 2614 patients be tested for HIV infection because it had just learned that a surgeon who operated on these patients was HIV-positive. The hospital did not name the surgeon, who died in 2003. However, media sources disclosed that the surgeon was a woman and also pub-

lished her name.¹³

Dr Lucie Poitras, Director of Professional Services at the hospital, said that the risk of HIV transmission to the patients during surgery was "extremely weak ... almost non-existent." Khiem Dao, the hospital's Executive Director, said that the hospital was nevertheless recommending that the patients be tested because "children's safety takes priority over all other considerations."¹⁴

Dr Poitras said that the surgeon informed her immediate supervisor in 1991 that she was HIV-positive, and that a committee was formed to determine "what kind of medical work [the surgeon] could do."¹⁵ However, the hospital was unable to find any records of the committee's deliberations after 1996.¹⁶

Reaction

Some media commentators expressed shock that an HIV-positive physician was allowed to operate on a patient; others claimed that any risk (no matter how low) that could lead to the transmission of a serious or deadly disease should be disclosed to patients prior to treatment.¹⁷ In some media reports, there were calls for mandatory testing of physicians.

Philippe Couillard, the Québec Minister of Health and Social Services, said that HIV-positive doctors should disclose their condition to hospital directors, but that mandatory HIV testing of physicians would be "legally dangerous." He said that HIV testing could violate privacy laws and the Québec Charter of Rights and Freedoms. "It raises numerous questions regarding confidentiality," he said, "and testing can create a false sense of security."¹⁸

Couillard pointed out that the surgeon "took very strict precautions when she acted on patients." He said

that the real issue in this case is that "after 1996, there was no proper follow-up in the institution." He also noted that the Québec College of

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Physicians was working on a disclosure policy for doctors with contagious illnesses.¹⁹

In an editorial published on 27 January, the *Montréal Gazette* argued against mandatory testing of surgeons.

[M]edical professionals are best suited to provide guidance on such questions. Deep public fears that are particular to HIV and AIDS should not drive public policy.

Experts say the risks of HIV transmission from surgeon to patient, if established protocols are followed, are so low [that] systematic and recurrent testing of surgeons would be a waste of money. In the U.S. about 25,000 people who had been operated on by HIV-positive surgeons have been tested, and not one was HIV-positive. There have been only two known infections of this kind in the entire world. Greater patient protection might well be achieved by testing surgeons for influenza, checking their blood-alcohol count, or not letting them operate if they haven't had, say, six hours of sleep.

And who, exactly, should be tested? Why test surgeons but not nurses ... or orderlies? How often should all these people be tested? Weekly? And since HIV transmission from patient to doctor is much more common than vice-versa, should all patients be tested, too? Ultimately, the question becomes: Should everybody who provides or

receives a medical service be tested? We think not.

It's instructive to remember the example of the late Quebec-born surgeon Lucille Teasdale, who safely treated 39,000 people in her Ugandan clinic in the 15 years after she contracted HIV from an injured soldier. After being diagnosed, she was advised by her own London doctor the public interest was best served by her continuing to do surgery. She took precautions and continued, as did ... the Ste. Justine's surgeon....

[The Ste-Justine surgeon] did the ethically right thing by reporting her illness to her surgical supervisor in 1991, and the supervisor did the right thing by creating an internal "expert committee" to monitor her health and work, in accordance with Quebec College of Physicians guidelines.²⁰

The *Gazette* editorial went on to say that shortcomings in the hospital's oversight system need to be corrected.

On 2 February, Philip C Hébert, a family physician and bioethicist at Sunnybrook and Women's College Health Sciences Centre in Toronto, and Philip B Berger, chief of the Department of Family and Community Health at St Michael's Hospital in Toronto, said in an opinion piece in the *Toronto Star* that the hospital's actions have "naturally caused much worry for [the patients'] families." The physicians went on to say that

[t]he risk of HIV transmission from physician to patient is of extremely low magnitude – lower than many risks we accept daily. HIV will be passed on from an infected surgeon to his or her patient once in every 10 million encounters. The risks of almost everything we do are more common than this....

If physicians had to disclose everything with a 1 in 10 million risk, we

would never get through the day. For example, both authors of this article have notoriously bad handwriting. Should they warn their patients about the serious hazards of illegible handwriting (which are likely greater than 1 in 10 million)?

This would mean that almost any less than optimal condition – just the physician having a bad day might qualify – would have to be disclosed to the patient. Requiring disclosure of all conditions potentially affecting physicians would paralyze patient decision-making....

The rule for consent in Canada is to tell patients what a "reasonable person" would want to know. In our view, anything with less than a one in a million chance of occurring is so remote as not to require disclosure to a reasonable person.... [T]he way to protect the public is not to impose an impossible rule of disclosure. The best way is to ensure that physicians ill with conditions that might affect their ability to work safely have access to confidential advice and medical care.

In the case of the HIV-infected surgeon, it is reasonable to require reporting to a medical board that could independently assess the health practitioner's fitness to practise. This will protect patient and practitioner alike.

In the matter of patient safety, the physician's competence and professionalism are paramount – not his or her HIV status. No ethical physician would knowingly place a patient at risk of avoidable harm. Maintaining the privacy of HIV-infected health-care providers can be reasonably balanced against the right of patients to know of potential harm.²¹

Also on 2 February, following consultations with its members, the Québec Medical Association (QMA), a division of the Canadian Medical Association, came out in favour of a disclosure and monitoring process

within health-care institutions for physicians infected with HIV, but said that it objected to systematic screening of physicians. Dr André Senikas,

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President of the QMA, said that "When a physician is infected, whether with HIV or another pathogenic infection, decisions affecting the physician's right to work should be based on professional self-regulation, as well as on the best scientific data available, and not on political or emotional considerations."²²

The QMA also called for universal precautions to protect both patients and physicians.

City of Montréal

The Canadian Press said in a story on 24 January 2004 that new recruits for the Montréal Police Force will be tested for HIV starting 1 March 2004, and that candidates who test positive for HIV will not be hired. In the article, Peter Yeomans, who is the City of Montréal executive committee member responsible for public security, cited "public security" as one of the reasons for the policy. "A police person is called into emergency situations where there is obviously injuries, open lesions," he said.²³

In the Canadian Press story, Yeomans suggested that money was also a concern. In another article a few days later, Yeomans provided the

following explanation for the policy: “We want to protect the employee and the public – it’s a public health issue. We’re looking at a 30-year proposal here; we want to bring people into the force and work right to retirement.”²⁴

Reaction

In a news release issued on 26 January, the Legal Network and COCQ-Sida pointed out that all members of the police forces take “universal precautions” to protect themselves and others while on their job. It makes no sense to suggest that new recruits need to be free from HIV, the organizations said. They added that this could soon lead to proposals that all members of the police forces be regularly tested for HIV and other infectious diseases, such as hepatitis – which is not necessary and would therefore be discriminatory.²⁵

Keith Monteith, Executive Director of AIDS Community Care, a Montréal AIDS service organization, said that “to exclude someone from a job who’s going to be able to function for many, many years” is discriminatory and is giving in to public fears. “I don’t see how [HIV-positive members of the force] can transmit HIV to someone during the course of their work,” Monteith said, “considering they know how to take precautions.”²⁶

The Québec Charter of Human Rights and Freedoms prohibits discrimination on the basis of a disability. The Québec Human Rights Commission explicitly recognizes HIV as a disability. “Health tests cannot be ordered unless they are directly related to the job,” said Commission spokesperson l’Heureux. She said it was up to the employer to prove that testing is directly related to the job and that an illness prevents the person from doing the work. “We can’t discriminate against someone who is not

in perfect health,” l’Heureux said.²⁷

On 29 January, the *Gazette* reported that a survey it undertook of associations representing dentists, nurses, restaurants, and ambulance crews revealed that none of them require that applicants for jobs be tested for HIV.²⁸ However, Peter Yeomans was later quoted as saying that HIV testing should be considered for other public employees; he named ambulance technicians and firefighters as examples.²⁹

Call for a campaign against stigma and discrimination

On 26 January 2004, in light of the events at the Grand Séminaire, the Ste-Justine Children’s Hospital, and the City of Montréal, the Legal Network and COCQ-Sida issued a second joint news release, calling on the Québec government to fund a province-wide campaign against HIV/AIDS-related stigma and discrimination.³⁰

“First, all Quebecers living with HIV received a slap in the face from Cardinal Turcotte, when he made public statements defending the decision to ask all priesthood applicants to undergo HIV testing, and suggested that HIV-positive people would not be able to fulfill the duties of priesthood,” said Ralf Jürgens. “Then, there have been calls for mandatory HIV testing of health-care workers, despite 20 years of consensus that this is not the best way to protect patients, and despite the minimal risk of HIV transmission from health-care providers to patients. And finally, Peter Yeomans ... irresponsibly suggested that applicants for Montreal’s police need to be free from HIV to be able to do their job,” he added.

“We are shocked by how little people in power and ordinary Quebecers seem to know about HIV and people

with HIV, and by their willingness to exclude them. The government has an

The government has an obligation to counter the stigma and prejudices.

obligation to counter the stigma and prejudices,” said Lise Pinault.

“Between 14,000 and 22,000 people in Québec are believed to be living with HIV or AIDS (out of a total of 56,000 in Canada). Because of new treatments, the majority of these people are living longer and in better health,” Jürgens added. “It is ignorant to suggest that HIV-positive people cannot be employed and fully contribute to society.”

The Legal Network and COCQ-Sida also wrote to Minister of Health Couillard to formally present their call for a province-wide campaign.³¹

Grand Séminaire backs down

The actions of the Legal Network, COCQ-Sida, and others quickly produced results on one of the fronts. On 16 February 2004, the Archdiocese of Montréal issued a statement saying that it had rescinded its plan to require that applicants to the Grand Séminaire undergo HIV testing.³²

Ginette l’Heureux of the Québec Human Rights Commission expressed satisfaction with the announcement, saying “I think they’ve reflected on this and have been enlightened.” Ralf Jürgens said, “This seems to indicate that they got the message that this would have been illegal.... For us, the statement is a positive one.... We hope that they are acting in good faith.”³³

While the community can take some satisfaction that its actions produced positive results, the events at the Grand Séminaire, the Ste-Justine Children's Hospital, and the City of Montréal clearly demonstrate that HIV/AIDS-related stigma and discrimination are still very much alive in Canada and that a well-organized response is required to deal with the problem.

– David Garmaise

¹ Canadian HIV/AIDS Legal Network, and Québec Coalition of Community-Based Organizations Fighting AIDS (COCQ-Sida). AIDS and human rights organizations say no to HIV testing based on ignorance and prejudice. News release, 26 January 2004. Available at www.aidslaw.ca/Media/press-releases/e-press-jan2604.htm.

² D Parkes. Catholic seminary to screen for HIV. *The Gazette*, 10 January 2004.

³ Les tests de dépistage du sida pour les prêtres sont critiqués. *Radio Canada*, 11 January 2004.

⁴ *Supra*, note 2.

⁵ F Deglise. Grand Séminaire de Montréal – Dépister le VIH dans une logique de "transparence." *Le Devoir*, 13 January 2004.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ The letter is available at www.aidslaw.ca/francais/Contenu/themes/tests/Lettre_CardinalTurcotte.pdf.

⁹ D Parkes. Seminary's demand for HIV test may violate rights: commission. *The Gazette*, 14 January 2004.

¹⁰ The letter is available at www.aidslaw.ca/Maincontent/issues/testing/Lettre_HIVTestCQDPJ.pdf.

¹¹ Canadian HIV/AIDS Legal Network, and Québec Coalition of Community-Based Organizations Fighting AIDS (COCQ-Sida). HIV testing of priesthood candidates called illegal and unethical. News release, 15 January 2004.

¹² R Jürgens. Rappel au cardinal Turcotte et autres intéressés – Quelques rudiments du test du VIH. *Le Devoir*, 16 January 2004; R. Jürgens. A refresher course on HIV testing. *Toronto Star*, 20 January 2004. Both articles are available at www.aidslaw.ca/Media/archivedreleases.htm#pcl.

¹³ P Ray. Montreal Ste-Justine Children's Hospital will test 2,614 patients for HIV. *Canadian Press*, 22 January 2004.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ L Lévesque. Quebec Medical Association adopts disclosure policy for HIV-positive doctors. *Canadian Press*, 5 February 2004.

¹⁷ P Hébert, P Berger. Dealing with surgeons and HIV. *Toronto Star*, 1 February 2004.

¹⁸ HIV-positive docs should advise their hospitals: Québec health minister. *Canadian Press*, 26 January 2004.

¹⁹ *Ibid.*

²⁰ HIV: Public safety doesn't require HIV testing. *The Gazette*, 27 January 2004.

²¹ *Supra*, note 17.

²² Québec Medical Association. The QMA supports an internal disclosure process. News release. Available at www.amq.ca/ang/pri_nou_commu.htm#6fevrier2004.

²³ New Montreal police recruits will be tested for HIV after March 1. *Canadian Press*, 24 January 2004.

²⁴ 1 Block. Montreal police alone in HIV test. *The Gazette*, 29 January 2004.

²⁵ *Supra*, note 1.

²⁶ S Banerjee. City's ban on HIV-positive cops disputed. *The Gazette*, 28 January 2004.

²⁷ *Ibid.*

²⁸ *Supra*, note 24.

²⁹ D Parkes. Seminary won't test for HIV. *The Gazette*, 17 February 2004.

³⁰ *Supra*, note 1.

³¹ The letter is available at www.aidslaw.ca/Maincontent/issues/testing/E-letter_to_health_minister.PDF.

³² Catholic Archdiocese of Montréal. The Archdiocese of Montreal continues its reflection but excludes the imposition of H.I.V. test. News release. Available at <http://diocesemontreal.org/accueil/langues/>.

³³ *Supra*, note 29.

Alberta: New bill will allow for mandatory HIV testing in emergency situations

A private member's bill is expected to be introduced in the spring 2004 session of the Alberta Legislative Assembly that will allow for forced testing of individuals for HIV, hepatitis, and other blood-borne diseases if their bodily fluids come into contact with emergency workers or Good Samaritans. The bill will likely have strong support from within the ranks of the governing Conservatives.

According to an article in the *Calgary Herald*,¹ Edmonton Conservative MLA Thomas Lukaszuk is expected to introduce legislation that will force individuals to undergo tests for HIV, hepatitis, and other bloodborne diseases if their bodily fluids come into contact with those of a police officer,