



CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL
CROWN COUNSEL POLICY MANUAL

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SUBJECT: Sexually Transmitted Diseases		CROSS-REFERENCE: CHA 1

POLICY

On receipt of a Report to Crown Counsel involving the possible transmission of a sexually transmitted disease, if a medical health officer has not been involved, Crown Counsel should ensure that the matter is reported to the appropriate medical health officer as soon as possible.

Any prosecution decision should take into account conditions which the medical health officer may order under pertinent legislation.

Where a charge is proposed involving the possible transmission of a sexually transmitted disease, including the HIV virus, the decision should be reviewed by Regional or Deputy Regional Crown Counsel. The Director, Legal Services should be advised of any decision to charge.

Where a charge is approved, Crown Counsel or support staff should ensure that the victim is aware of available victim assistance programs.

Where a person is convicted of an offence involving the possible transmission of a sexually transmitted disease, Crown Counsel should seek a pre-sentence report and a report from the local medical health officer to assist in the formulation of an appropriate position on sentence.

DISCUSSION

Duty to disclose condition to sexual partners – aggravated assault

On a charge of aggravated assault where the accused tested positive for the HIV virus and failed to disclose his condition to a sexual partner, the Supreme Court of Canada in Regina v. Cuerrier (1998) 127 CCC (3d) 1 ruled that:

1. An accused who knows that he is HIV positive has a duty to disclose that fact to prospective sexual partners before engaging in unprotected sexual intercourse. Failure to disclose will amount to fraud vitiating consent.
2. Consent in sexual matters will be vitiated only where the deception creates a significant risk of serious bodily harm.
3. The Crown will be required to prove beyond a reasonable doubt that the complainant would have refused to engage in unprotected sex with the accused if he or she had been advised of the fact that the accused was infected.
4. This standard is sufficient to encompass not only the risk of HIV infection but also other sexually transmitted diseases which constitute a significant risk of serious bodily harm.

Duty on Crown Counsel to provide a report to medical health officer

Section 2 of the *Health Act* Communicable Disease Regulation requires that where a person knows or suspects that another person is suffering from a communicable disease, he or she shall, without delay, make a report to the medical health officer.

Schedule A to that Regulation provides a list of communicable diseases which include:

- Acquired Immune Deficiency Syndrome
- Genital Chlamydia Infection
- Hepatitis Viral:
 - Hepatitis A
 - Hepatitis B
 - Hepatitis C
 - Hepatitis E
 - Other Viral Hepatitis
- Human Immunodeficiency Virus
- Venereal Disease:
 - Chancroid
 - Gonorrhoea – all sites
 - Syphilis

Medical health officer can order enforceable conditions under the *Health Act* or the *Venereal Disease Act*

Summary of Provisions:

Health Act:

Under section 11(1), a medical health officer may order, based on certain reasonable grounds, that a person comply with conditions designed to prevent the exposure of other persons to the disease.

Under subsection (2), a medical health officer may lay an information charging a person with contravening the above-mentioned order.

Under subsection (4), on a finding that the order has been contravened, the court may, in addition to any other penalty provided in the Act, order that the person be detained in a prescribed facility for up to one year.

Under subsection (7), this section does not apply to venereal diseases.

Venereal Disease Act:

Under section 5(1), based on certain reasonable grounds, a medical health officer may direct a person to be examined by a medical practitioner.

Under subsection (2), with a certificate stating that the person is infected with venereal disease, a medical health officer may deliver to the person directions as to a course of conduct to be pursued in order that other persons are not exposed to the infection.

Under section 6(1), a medical health officer may lay an information before a justice charging that a person is unwilling or unable to conduct himself or herself in a manner that does not expose other persons to the infection or refuses or neglects to take treatment.

Under subsection (6), on a finding that the allegation is proven, a justice may order the person be detained in a place of detention for a period not longer than one year.

Under section 14(4), it is an offence to fail to comply with the direction of a medical health officer under section 5(1) to submit to an examination, and the penalty is imprisonment for not less than seven days and not more than 12 months.

Under section 15, all proceedings for the recovery of penalties and under section 6 must be conducted in private, and information about the proceedings must not be disclosed.

Possible offences

Depending on the facts, possible offences involving communicable diseases might include offences under the *Health Act*, the *Venereal Disease Act* or *Criminal Code* offences such as aggravated assault, aggravated sexual assault, criminal negligence causing bodily harm, unlawfully causing bodily harm, or threatening.