

SPECTRUM

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GAY FORUM

...Terry Richards...

The law and homosexuality

Homosexuality is assuredly no advantage, but it is nothing to be ashamed of, no vice, no degradation, it cannot be classified as an illness... Many highly respectable people of ancient and modern times have been homosexuals, several of the greatest men among them (Plato, Michelangelo, etc.). It is a great injustice to persecute homosexuality as a crime, and cruelty too.

(From Freud's "Letter to an American Mother"; 1935)

One of the biggest misconceptions about homosexuality is that it is an illegal lifestyle. Nothing could be further from the truth. Homosexuality is not illegal in Canada or in the United States. In simpler terms it is not illegal to be gay. Although at the present time there are many groups and religions who oppose homosexuality there is no law that condemns it.

As far as sexual practices are concerned (and this applies to heterosexuals) anyone who engages in unsafe sex and knows that he/she is HIV positive can face a number of penalties. This can range from being charged with aggravated assault to attempt to cause bodily harm. An HIV positive resident of Halifax, NS has been charged with criminal negligence because he is alleged to have practiced unsafe sex knowing of his conditions. People of this sort can be quarantined (confined in isolation in a hospital or dwelling) and may be sued by sexual partners who had no idea that his/her partner had the AIDS virus. A perfect example of this occurred five years ago with lovers who sued the Stars estate and won. Christian was awarded \$14.5 million dollars and Hudson was accused in the suit of having "outrageous conduct."

Although long term relationships are recognized between couples of the opposite sex, this is not the same for gay couples. The law simply doesn't recognize gay relationships for any purpose. Same sex partners are denied the rights of Canada Pension Plan Spousal Allowances and in Canada a Canadian cannot sponsor a sponsor of the same sex for immigration purposes. Another problem homosexuals face is in regards to the yearly income tax program. If I, for example, wanted to claim my live-in lover as a dependant I could not do so. The simple reason is that we are gay. Yet common law couples of the

opposite sex have been doing this for years. However, if "family status" or "household composition" were included in the NB Human Rights Code and were left undefined it might be possible to challenge laws which fail to recognize gay couples. In April of 1989 a Canadian human rights tribunal decided that the inclusion of "family status" in the Human Rights Act meant that a federal employer had to provide the same employee benefits to gay couples that it provided to heterosexual unmar-

ried couples.

Another problem is that of discrimination. Discrimination based on sexual orientation is currently prohibited in the provinces of Quebec, Manitoba, Ontario, and the Yukon, but New Brunswick has yet to follow suit. As the law now stands, if you are evicted from your home, fired from your job, or thrown out of a public bar because of your sexual orientation there is nothing you can do. No law will protect you. I recently had a college friend who moved his lover

into his single, one-bedroom apartment over the summer. When the landlord found out the two were gay, they received their eviction notice. One month later the apartment was rented to a heterosexual couple. I also had a friend who was working at a fast food restaurant here in the city. During his tenure there he got his ear pierced. Three days later he was fired because his employer didn't want the public to think he had gay staff. How many of you straight, macho university guys wearing an earring? It is

through the NB Human Rights Coalition (that I am a part of) that we are lobbying the provincial government to amend the Human Rights Code. This would enable homosexuals to have the basic right to equal opportunity in employment, housing, and the public service without regard to sexual orientation. Our goal is also to educate the public on what homosexuality is. We have been fighting a long war, but it is a war worth fighting for.



Aids: The legal issue

In the past 10 years, AIDS (Acquired Immunodeficiency Syndrome) has become one of the most feared and talked about diseases. Because of the ways in which this disease is spread, society has attached a stigma to AIDS. Legal issues such as privacy and mandatory testing, therefore, have become very important. This article will outline the most prominent legal issues concerning AIDS and how these issues relate to university students.

Mandatory Testing

Mandatory testing means that anyone could be required to submit to a test for the AIDS virus. At this time, mandatory testing is not a policy that is widely advocated or accepted because it interferes substantially with an individual's right to privacy. The Canadian Charter of Rights and Freedoms guarantees rights such as the right to life, liberty and security of the person. However, the Charter applies only to the government of Canada and the Legislatures of each province. It does not apply to all institutions and may not apply to a university. If the Charter does not apply students may still be protected by Human Rights Legislation. Generally, the existing law seems to suggest that mandatory testing for AIDS cannot be carried

our indiscriminately on the entire student population. The University of New Brunswick does not have a mandatory AIDS testing policy. You will not be required to submit to an AIDS test against your will.

Discrimination

AIDS is most commonly associated with homosexuals and drug users. This association can be attributed to the ways in which AIDS is transmitted. Because the most common way for the disease to be spread is through homosexual contact and intravenous drug use, these groups are considered to be at high risk of contracting or spreading the disease. As well, individuals of African or Haitian origin seem to be more susceptible to AIDS and are also considered a high risk group. Many people are afraid of AIDS and therefore are afraid of contact with high risk individuals. Once a group is identified in this way, discrimination and ostracism can result.

The Charter guarantees the right to be free from discrimination. The grounds for discrimination include the following:

- race
- national or ethnic origin
- colour
- religion
- sex

- age

- mental or physical disability
Under this definition, therefore, individuals of African or Haitian origin are protected. However, sexual orientation is not included in this definition and homosexuals cannot rely on the Charter to protect them from discrimination. If you feel you are being discriminated on this basis, you should contact the New Brunswick Human Rights Commission.

Privacy

There is some debate over whether a person tested for AIDS has the right to confidentiality of his or her test results. For example, if a test result comes back positive, is there a duty to inform others that this person is infected? Generally, the answer is no. Such information will usually be kept private and confidential.

However, there may be a duty imposed by law to disclose an HIV positive test in a inherently dangerous situation. For example there might be a duty to disclose to hospital staff that a patient was infected with the AIDS virus. Disclosing HIV infectiousness may only be allowed where it would pose a foreseeable risk of harm not to do so.

Because of the fear people have

of this disease, the guidelines are not yet clear and there are no absolute guarantees with regard to confidentiality of tests results.

Criminal Negligence

It is a criminal offence for a person who is aware that he or she is HIV positive to knowingly and deliberately do any act that will expose another person to that disease. Such actions demonstrate a great disregard for the health and safety of others and are punishable by a jail term.

Much of the law concerning AIDS and other sexually transmitted diseases remain unsettled. Because it is such a difficult issue, it is wise to be aware of your rights at all times. If you feel you are being discriminated against or that your privacy has been invaded, you may have legal recourse. Whether or not an individual contracts a disease, he or she should be aware of his or her rights and duties in relation to others.

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