

## Legal Ease

## Criminal Law

One beautiful Saturday night Deanna decided she would have a seat in the park to smoke a marijuana cigarette. As luck would have it, Officer O'Malley was in the park at the same time and spotted her. As he approached her, he saw the hand-rolled joint and smelled the burning marijuana. What will happen to Deanna?

Officer O'Malley tells her that she is under arrest for possession of a narcotic. He takes the marijuana cigarette to be used as evidence. He searches her and her belongings for additional evidence. At this point Officer O'Malley informs Deanna that she has the right to contact a lawyer. He tells her that anything she says may be used against her in Court. Therefore, it is probably best if she spoke to her lawyer before talking to the police. Deanna has the right to remain silent and does not have to answer any of Officer O'Malley's questions. This does not mean that she can lie. Lying to the police is obstruction and can lead to additional charges. If Deanna were to become violent, she could be charged with assaulting an officer.

Because Deanna's offence is minor, Officer O'Malley gives her an appearance notice. If there were some extenuating circumstances Officer O'Malley may take her to the police station. The appearance notice states the alleged offence and a date that Deanna must appear in court. Deanna may also be required to go to the police station at a later date for fingerprinting and photographing. If she fails to

appear for either date a warrant will be issued for her arrest. Failing to appear without a lawful excuse is a criminal offence.

Deanna's first court appearance will be at her arraignment. She shows up with her lawyer on the date specified in the appearance notice. If Deanna could not afford a lawyer she may be able to get Legal Aid to cover the costs. Deanna goes before the judge and the charges against her are read. At this point Deanna pleads guilty or not guilty. If she pleads guilty, the lawyer representing the Crown, the crown prosecutor, presents the facts of the offence to the judge. Deanna's lawyer then presents any information which is favourable to her. The judge sentences her there or he or she may set another date for sentencing.

If Deanna pleaded not guilty the judge adjourns the case for trial at a later date. Deanna is released until the date of her trial. If the offence was more serious the accused could be held in custody. In this case the crown prosecutor has proceeded by summary conviction as opposed to indictable which is for more serious offences and carries more severe penalties. This means the trial is in front of the provincial court judge and there is no jury.

At the trial the crown prosecutor presents the evidence against Deanna. This includes Officer O'Malley's testimony and the cigarette and accompanying chemical analysis certificate. Deanna's lawyer is entitled to cross-examine

Officer O'Malley and examine the cigarette and the certificate of analysis. Deanna has the choice whether or not to testify. She cannot be forced to do so. If she does decide to testify, the crown prosecutor can cross-examine her. If Deanna was to lie on the stand she could be charged with perjury which is a very serious criminal offence.

After both sides present their case the judge decides whether Deanna is guilty or not guilty. If it was a complex case, the judge can adjourn to consider the decision and give written reasons. Since this is a straightforward case, the judge probably gives the decision there. Given the facts of this event Deanna is most likely found guilty. The judge will either sentence her there or sets a later date for sentencing.

Deanna now has a criminal record which will stay with her the rest of her life, unless pardoned.

The material in this article was obtained from the pamphlets **A Guide To Drug and Alcohol Law for Canadians** by the **Alcoholism and Drug Addiction Research Foundation**.

**THIS COLUMN IS INTENDED TO BE USED AS A GUIDE ONLY. IT IS NOT MEANT TO BE A REPLACEMENT FOR PROFESSIONAL LEGAL ADVICE. IF YOU REQUIRE FURTHER LEGAL INFORMATION ON LEGAL COUNSELLING, PLEASE CONTACT A LAWYER.**

## S.W.A.T

## Testing for H.I.V.

Q. Who should be tested for HIV (the AIDS virus)? If you find out that a former partner is now sick with AIDS should you be tested for the virus?

A. Taking the test is an individual decision.

Some reasons for being tested include:

A. Learning that a former sexual partner has HIV infection or AIDS.

B. Being a male who has had unprotected anal intercourse with another male since 1975.

C. Having had unprotected anal intercourse with several partners.

D. Having been raped.

E. Having shared needles.

F. Having received a blood transfusion between 1978 and 1985.

Before being tested it is important that an individual receives pre-test counselling.

This should include the meaning of the test, an assessment of specific risk behaviors for having acquired HIV, the repercussions of a positive result, and how to prevent transmission of HIV through safer sex. Discussion of how an individual has coped with crisis in the past and available social support resources, is important in preparing the individual to deal with the potential crisis of a positive HIV test.

The test itself is very simple and painless. A sample of blood is taken from the individual and examined for antibodies, proteins produced in response to foreign invaders in the body. The ELIZA test is the most widely used method for detecting HIV infection. This method detects serum antibodies HIV. Sera that do not produce a reaction in the ELIZA are considered "negative". A negative test indicates that HIV antibodies were not detected and either the person being tested is not infected or testing was done too soon after HIV infection for sufficient production of antibodies. Wait for at least 14 weeks after suspected contact with the virus before taking the HIV test. Prior to that waiting period, antibodies may not have been produced by the body in sufficient quantity to be detected by the ELIZA test. The ELIZA is a highly

sensitive test which rarely fails to detect serum HIV antibodies when they are present. In Canada, positive results on the ELIZA, are always confirmed through a more specific Western blot test. Antibody testing is not 100% perfect but it is only on very rare occasions that "false-positive" results occur. A positive HIV test should be redone to ensure that it is correct.

The law in New Brunswick requires that a physician or clinic report a positive result for HIV antibodies. This report can be made using a code number. However, the law permits public health to ask for and require a particular person's name. The infected individual is required to notify former sexual partners that they may have come in contact with HIV, and should advise them to seek counselling and possible testing. They may require the assistance of their doctor or a public health nurse in doing so.

Individuals infected with HIV who wish to cross the border in to the United States may run into problems at customs. If a customs officer suspects that you have the disease they may ask you outright and/or search your car for AZT (a common medication taken by individuals with HIV infection). If they find out that you are HIV+ they will not let you cross the border. It is also difficult to acquire life insurance after testing HIV positive.

A positive test implies that you have been infected with HIV is a serious matter, this information will allow you to take better care of yourself through your diet, monitoring your immune system and early access to medication. It is important to understand that HIV infection is a lifelong disease and you must take care not to infect others by practicing safer sex techniques. Finding out that you have been in contact with HIV and may be infected with the disease will lead to feelings of depression and anxiety. Support can be obtained through AIDS New Brunswick or the UNB AIDS Program, in Room 120b MacLaggan Hall.

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## UNIVERSITY OF NEW BRUNSWICK

## AWARDS FOR EXCELLENCE IN TEACHING

**THE AWARD** is dedicated to the late Dr. Allan P. Stuart and is to honour persons who are representative of outstanding teaching achievement at the University of New Brunswick.

**ELIGIBILITY:** A candidate must teach at least one 3-credit hour undergraduate course during each term of the academic year at the University. It is not expected that the nominees should excel in all criteria listed on the nomination form, but they should be qualified in most categories. Individuals are not eligible if they have been previous recipients of the Award.

**NOMINATION:** Candidates for the Award are proposed and recommended to the Senate Committee on Quality of Teaching by students and faculty of the University.

The basic information required is contained on the Nomination Forms, which are available from the University Secretary, Fredericton; the Dean of Faculty, Saint John; the Student Council, Saint John or Fredericton; and Faculty offices. No one may nominate or support more than one candidate. The form must be signed by two nominators. The Committee places little value on long lists of signatures supporting a nomination. However, signed letters or paragraphs of support may be appended.

Send nominations to the University Secretary, Room 110, Old Arts Building, UNB Fredericton, or to the Dean of Faculty, UNB Saint John.



*...he tied his shoe laces quickly, then he turned to the trees. They seemed far away. He smiled at the old lady leaning against the tree trunk. She spilled orange juice and pulp all over her red spotted dress. She was giggling. She reached towards him with her sticky hands. He touched them softly, then tasted the fruit.*

*"Go on..." She said. The voice came from the earth, like a deep well bubbling. "go"*

*He stretched his hands upwards and flew... The sky swallowed him. Soon it was night.*

*It rained heavily.*

*The next morning tiny sprigs of grass sprouted about the woman's feet. She was still smiling, dew drops on her wrinkled hands.*

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