HIV ON TRIAL

TRIAL OF HIV-POSITIVE GAY MAN CONCLUDES

Decision expected May 7

Nathaniel Christopher

THE TRIAL OF AN HIV-POSITIVE gay man who allegedly failed to disclose his status before having unprotected sex with his boyfriend concluded on April 23, with a judgment expected on May 7.

In his closing argument, defence lawyer Jason Gratl argued that the accused did not expose the complainant to a significant risk of HIV transmission.

The boyfriend did not contract the virus.

"In this case, it is clear that the accused and the complainant entered into a safe-sex/condoms-only agreement," Gratl told the court.

"The accused testified, very plausibly, that the agreement was intended to ensure that the complainant was not exposed to a significant risk of HIV transmission," he said.

The complainant was aware of the risk of HIV transmission and entered into a safe-sex agreement in recognition of those risks, Gratl argued.

As for the risk of transmission, Gratl pointed to the previous week's expert testimony from Dr Richard Matthias, who said the risk of transmission was just 4 in 10,000 per act.

Crown counsel Brendan McCabe submitted that the 4 in 10,000 figure, as well as sex with low viral load and condom use, still constitutes significant risk of bodily harm.

"In the Crown's respectful submission, when you're looking at that question in the realm of contracting a deadly virus, that risk is noteworthy, important and consequential," McCabe argued. "It's not just about the numbers, it's about the harm."

Richard Elliott, executive director of the Canadian HIV/AIDS Legal Network, testified to the broad social implications of HIV disclosure laws on April 21.

But Justice Lauri Ann Fenlon ruled that his testimony was inadmissible as the Network had not applied to be an intervener in the case, nor had it challenged the constitutionality of the law. Elliott's testimony is not relevant to whether or not the Crown has proven the aggravated assault charge beyond a reasonable doubt, she ruled.

Elliott, who has worked in HIV/AIDS education for 20 years, testified there are challenges to HIV disclosure, including stigma and negative consequences.

"Rather than expect people to overcome those barriers in every circumstance and impose a criminal penalty when they don't, the emphasis should be on personal responsibility and risk reduction — a sensible, prudent strategy in the ability of all people," Elliott said.

"The emphasis should be on personal responsibility and risk reduction," testified Canadian HIV/AIDS Legal Network executive director Richard Elliott. NATHANIEL CHRISTOPHER PHOTO

On April 20, the accused told the court he withheld his HIV status from the complainant because he was still dealing with social stigma and prejudice. "I was mentally a mess," he said during his cross-examination.

He stressed that while he didn't disclose his status, he advised the complainant of the risk involved.

"I told him he needed to act as though I was HIV-positive until I got a test in hand. I believe that's a very common philosophy in the gay community — that everyone could have it," the accused testified.

Throughout the trial, both McCabe and the complainant stated that it was not the complainant who initially contacted police about this matter. At one point, the complainant stressed that it was the police who contacted him. The question of who initially contacted the police remains unanswered.

When asked outside court, McCabe told *Xtra*, "You don't want to go there. It's in the best interests of everyone if we don't go there. All I can say is that the police contacted [the complainant]."

Fenlon is expected to release her decision on Friday, May 7.

OUTGAMES 2011

Vancouver Outgames still on

Andre Beaucage

VANCOUVER'S OUTGAMES SEEM to be on firmer financial footing now, thanks to a pending civic grant that could open the door to further funding from the province as well.

On March 1, city staff recommended council approve a $100,000 Sport Hosting grant for the Outgames, pending resubmission of the event's budget and confirmation of its plans.

Staff described the Outgames as a "strong candidate" that "should meet the grant criteria once the outstanding details are confirmed."

"Our original budget was $2.9 million, and it has been adjusted slightly downwards, so we don't know if that will change the qualification level," says John Boychuk, celebration chair of the Vancouver Outgames bid. "We don't think it would, but we need to be ready just in case."

The Vancouver 2011 North American Outgames is a sports and cultural festival that showcases both queer and straight athletes. The Vancouver event is the precursor to the next World Outgames, scheduled for Antwerp in 2013.

"We know from the Olympic experience that Vancouver is ready for another party — the North American Outgames is the 2011 party!" says Team Vancouver president Dan Quon.

The Outgames, which are scheduled to take place here from July 25–31, 2011, were originally promised up to $400,000 by the province in October 2008. That promise has since dried up, and many thought the Outgames were about to shrivel up, as well.

Now, if the city grant comes through, the Outgames will be eligible for further help from Victoria as well.

"We will have the Games no matter what," Quon promises. "But rather than a small event, we could attract thousands [with provincial funding] and strut Vancouver on the world stage one more time."

"As we continue to expand our events, it will solidify some of our [provincial grant] applications," says Boychuk. "We will continue to work with the provincial government, and we'll just hope that money will become available."

A spokesperson for BC's Ministry of Housing and Social Development promised to look into the likelihood of provincial funding for the Outgames but did not get back to *Xtra* by press time.

Vancouver-West End NDP MLA Spencer Chandra Herbert believes the BC government should make events like this a priority due to the impact they can have on the city.

"The challenge right now is economic," says Chandra Herbert, who is gay. "The BC Liberals are making massive cuts to arts and culture investments, which are affecting festivals and performances all across the province. However, I think that the economics on this one alone should make the argument that it is deserving of some support."

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