

GLOBE AND MAIL Health officials lacked concern for mental suffering of HIV-positive man, defence argues

CHRISTIE BLATCHFORD October 24, 2008

HAMILTON -- A key question at the heart of the Johnson Aziga case, as his own lawyer put it yesterday, is, "What is making this man behave in this alleged way?" Mr. Aziga, of course, is the former Ontario bureaucrat who is pleading not guilty to a slew of charges in connection with sexually risky behaviour that allegedly saw him infect with HIV 11 Southern Ontario women, two fatally. He is charged with two counts of murder and 11 of aggravated sexual assault. The lawyer, Munyonzwe Hamalengwa, raised the central issue - Mr. Aziga's continued failure over at least two years to tell his many sexual partners that he was HIV positive or to wear condoms - during an aggressive cross-examination of Nancy LeMay, a Hamilton public-health nurse. Mr. Hamalengwa was focusing, for the second consecutive day, on what appears to be an emerging theory of the defence: that Mr. Aziga was cruelly treated by authorities who ignored his purportedly frail mental state while obsessing over his allegedly life-threatening sexual conduct. As Mr. Hamalengwa thundered once about the Hamilton public-health department issuing a written order against Mr. Aziga in the fall of 2002, "It was a one-sided operation without concerns for his [Mr. Aziga's] psychological makeup?" "I would totally disagree," Ms. LeMay said calmly, adding that Mr. Aziga was regularly attending a local HIV clinic where psychiatric services were available if he wanted them and that public-health staff were "always respectful and supportive" of him. "We went out of our way to help Mr. Aziga deal with his anger, his feelings of frustration." When Mr. Hamalengwa suggested Mr. Aziga may have been having difficulty understanding his legal responsibility to disclose his HIV-positive status to prospective sexual partners, Ms. LeMay snapped, "On the contrary. I found him to be very articulate, very able to comprehend; he was a very intelligent man."

Mr. Hamalengwa tried again: "Is it fair to say he may not have been comprehending what you were telling him [about disclosing his status, and safer sex practices]?" Ms. LeMay said: "No, I don't think so. I think he did comprehend." She added that Mr. Aziga seemed to understand perfectly well that what was at issue was "his reckless sexual behaviour. ... I think he did understand he was not to be behaving that way."

Therein lies the problem for Mr. Hamalengwa: But for the lawyer's own colourful references to Mr. Aziga's allegedly disturbed and traumatic past - and lawyers' remarks don't qualify as evidence - there is virtually nothing before the jurors to suggest that Mr. Aziga was psychologically disturbed, had any sort of mental illness or that he ever asked for psychiatric help until after his arrest on Aug. 30, 2003. True, his medical records are dotted with frequent references to "counselling" and "support," but these were made in connection with his HIV diagnosis, his anger about it, his worries about taking the powerful anti-retroviral drug cocktails that have

turned it into a chronic but manageable illness, and, in the critical period after his sexually dangerous conduct came to the attention of public health officials, his failure to adhere to the advice and ultimately the order given him. Mr. Aziga, now 52, was diagnosed in December of 1996. He was counselled about the disease and its implications, and then, for six years, appeared to be just a regular, safe-sex-practising, responsible client of the HIV clinic. But in October of 2002, one of Ms. LeMay's nurse colleagues got a call from the Toronto public-health department: A newly diagnosed HIV-positive woman had given Mr. Aziga's name as a sexual contact. Mr. Aziga, however, had not disclosed the woman as one of his sexual contacts, which meant he was having unprotected sex with a woman he'd not informed of his HIV-positive status. The Hamilton authorities were alarmed, and took out what's called a Section 22 order against Mr. Aziga: written direction, made within the medical context, that he report for counselling, disclose his status to prospective partners, wear a condom and report in full all his previous sexual contacts. Ms. LeMay phoned Mr. Aziga, as a courtesy, to tell him in advance, and in that call, he "acknowledged that ... he has had at least one sexual partner with whom he has not shared his status and not used condoms." What's more, he appeared to be stalling about delivering a complete list of his contacts. Then, on March 19 the next year, just five months later, a pregnant Hamilton woman tested positive for HIV in a prenatal screening, and again, Mr. Aziga was named as a sexual contact. The woman said Mr. Aziga did not share his status with her, and that she had unprotected sex with him from 2001 until the spring of 2002. The public-health authorities were already having frantic meetings, trying to decide what to do next, when on May 15, 2003, they learned that yet another woman with HIV, this one in Brant County, was naming Mr. Aziga as a sexual partner. That made three women within nine months who had named him as a sexual contact. Only in late August that year did the health authorities go before the courts and obtain a Section 102 order; within days of its issuance, Mr. Aziga was arrested. The jurors also heard yesterday that Mr. Aziga's own wife, from whom he is separated, was about three months pregnant with the couple's third child when he was diagnosed with HIV.