

THE BARRIE EXAMINER

[« Back](#)

New judge to handle sex case; HIV-positive victim forced to wear mask in court

Posted 16 hours ago

A man charged with sexually assaulting another man while they were inmates in jail is getting ready for a new trial with a new judge.

Lee Wilde, who is charged with sexual assault at the Central North Correctional Centre in Penetanguishene last March, made a brief court appearance in Barrie, yesterday.

His trial began last month, where the court heard the man he is alleged to have assaulted is HIV-positive. But it was brought to a grinding halt after the judge learned of the complainant's HIV status, and ordered him to be masked or testify electronically from another courtroom.

During the trial, the complainant, whose name is banned from publication, testified that he is HIV positive and also has hepatitis C. He admitted he did not reveal his HIV status to Wilde, whom he claims raped him three times in the prison cell.

But in mid-trial, upon learning of his HIV, trial judge Justice Jon Jo Douglas became alarmed.

"Either you mask your witness, and/or move us to another courtroom, or we do not proceed," Douglas said.

Immediately following a break, his court staff came out in blue rubber gloves and enclosed paper exhibits the witness had touched in sealed plastic bags.

In a locking of horns, Crown attorney Karen McCleave refused to allow her key witness, who is no longer an inmate, to be treated with such disdain and applied for a mistrial. The judge refused and ordered the trial to proceed with the witness masked.

The Crown then provided an Affidavit from Dr. Giulio DiDiodato, an expert in the field of infectious disease, who stated that neither HIV nor Hepatitis C posed a risk of infection unless there is direct exposure to the infected blood, vaginal fluid or semen.

Justice Douglas rejected the evidence.

The Crown again applied for several more mistrials and the judge refused. The Crown then applied to a higher court to have the judge removed from the trial over concerns of bias.

But the higher court dismissed the Crown's application, noting it is the trial judge's jurisdictional right to conduct safety precautions in the courtroom "even if his decision could be said to be wrong," wrote Superior court Justice Margaret Eberhard, who also noted "it might be wise not to continue," the trial under such conflicting circumstances.

In the end, Justice Douglas voluntarily removed himself in the interests of the integrity of the trial. But to the end he maintained his concern, stating, "have we not learned from the SARS fiasco?"

Now the trial will begin again under a new judge, but Wilde's defense lawyer, Angela McLeod, says she is not happy.

"My client is innocent and he is being held in custody all this time through no fault of his own," she said. "Meanwhile, the complainant is out walking free in the community."

McLeod, has argued Wilde is the real victim and that the complainant only cried sex assault as a pre-emptive strike to avoid being charged with the more serious offence of not disclosing his HIV status.

A new trial date is now set for Valentine's Day, Feb. 14.

Contact the writer at news@thebarrieexaminer.com