

# Canadian Coalition to Reform HIV Criminalization

## Developing a Community Consensus Statement on Ending Unjust Prosecutions for HIV Non-disclosure

### Background and Draft Consensus Statement for Discussion

The [Canadian Coalition to Reform HIV Criminalization](#) (CCRHC) is proposing to develop a Community Consensus Statement calling for various actions by federal, provincial and territorial governments to address the overly broad use of the criminal law in cases of alleged HIV non-disclosure. Such a statement, widely endorsed by organizations across the country involved in the response to HIV, would be an important part of building a common advocacy agenda aimed at limiting unjust prosecutions against people living with HIV. There are several issues to be addressed in any such statement. One important question is whether to advocate for amendments to the federal *Criminal Code* to narrow the scope of HIV criminalization (and if so, what those amendments might be).

To develop this Community Consensus Statement, the Coalition is consulting, in various ways, with people living with HIV, service providers, scientific experts, communities affected by HIV and over-criminalization, and others, across the country. This document provides some important background information to inform those consultations. It also presents an initial **draft** of a possible Community Consensus Statement as a basis for discussion and feedback. The Coalition is looking for input.

### BACKGROUND

Canada has the third-largest absolute number of recorded prosecutions for alleged HIV non-disclosure in the world (more than 200 separate documented prosecutions so far) and one of the higher per capita rates of prosecution given the number of people living with HIV in Canada. Advocates have been responding to this evolving situation in various ways, including advancing arguments in court to try to limit the scope of HIV criminalization, speaking out in the media, and calling for guidelines for prosecutors that would limit when and how they pursue prosecutions. They argue the law should be used much more narrowly, in line with the best available science about possibility of transmission, concern for human rights and public health, and international recommendations (including from UNAIDS) about limiting the scope of HIV criminalization.

### THE CURRENT STATE OF THE LAW

In 1998, the Supreme Court of Canada (SCC) decided that a person living with HIV or another sexually transmissible infection has a legal duty to disclose that fact to a sexual partner before having sex that poses a “significant risk of serious bodily harm.”<sup>1</sup> The Court said that in such circumstances not disclosing amounts to a “fraud” that invalidates the partner’s consent to sex. The result is that what was otherwise a voluntary, consensual sexual encounter becomes, according to the law, the crime of assault. Note that the Court

<sup>1</sup> *R. v. Cuerrier*, [1998] 2 SCR 371.

also said that there is a legal duty to disclose only if there is a “significant risk of serious bodily harm.” If there is no such risk, there is no legal duty to disclose.

The Court quickly concluded that HIV infection is a serious bodily harm, so the real question was when there might be a “significant risk” of causing this harm. Based on the facts of that case, the Court decided that penile-vaginal sex without a condom could pose a significant risk of the harm of transmitting HIV, and so not disclosing in that circumstance could amount to an assault. The Court suggested, but did not decide, that “careful use of a condom” *might* lower the risk of transmission enough that it is not legally “significant,” meaning there would be no duty to disclose in that case.

Fourteen years later, in 2012, the Supreme Court made the law harsher for people living with HIV. It reaffirmed its original statement that if there is a “significant risk of serious bodily harm,” there is a duty to disclose. But it went on to say that, specifically with respect to HIV, this “significant risk of serious bodily harm” exists when there is a “**realistic possibility of HIV transmission.**”<sup>2</sup> This means that before having sex that poses a realistic possibility of transmission, a person living with HIV must disclose their status to their partner. If they don’t, they could be convicted of the crime of *aggravated sexual assault*.<sup>3</sup>

In this decision, the Court said that it didn’t want to criminalize people in cases where there was a small or “speculative” possibility of transmission, but in practice that is what it did. As noted already, in its first decision, the Court suggested that using a condom might be sufficient to lower the risk of transmission so it is not “significant,” and so there would be no duty to disclose. However, in this later decision, it seems to have backtracked dangerously on this matter, suggesting that a condom may not be enough on its own to reduce the possibility of transmission adequately, and so there may still be a duty to disclose. The Court also looked at the issue of someone’s viral load: its decision suggests that just having a low or undetectable viral load may not be enough on its own to reduce the possibility of transmission, and a person would still have to disclose their HIV status to their partner despite this. These questions remain not fully answered at this time. The law continues to evolve, especially given the additional scientific evidence emerging about the effectiveness of anti-HIV drugs and the reality that the possibility of transmission from someone living with HIV with an undetectable viral load is effectively zero and the likelihood of transmission from someone with a “low” viral load is negligible.

The result is that the law is still not fully settled, courts are still reaching contradictory conclusions, and people living with HIV are still being prosecuted, for a very serious criminal offence, for not disclosing their HIV status even in cases where there is zero possibility or an exceedingly small possibility of transmission.

As a result of these Supreme Court of Canada decisions, in order to convict a person living with HIV for sexual assault for not disclosing their status to a sexual partner, the prosecution must prove beyond a reasonable doubt that

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<sup>2</sup> *R. v. Mabior*, 2012 SCC 47; *R. v. D.C.*, 2012 SCC 48.

<sup>3</sup> At the time of writing, the courts still consider HIV infection as something that “endangers life,” and so the charge will usually be *aggravated* sexual assault, the most serious form of sexual assault in the *Criminal Code*. This crime carries a maximum penalty of life imprisonment and, as with any sexual assault conviction, mandatory registration as a sexual offender for a minimum of 20 years.

- the HIV-positive partner (who knows their status) did not disclose this to their sexual partner (or they actively deceived the partner);
- in the circumstances of the sexual encounter, there was a “realistic possibility of transmitting HIV” to the sexual partner; **and**
- the partner would not have consented to the sexual encounter had they known that the other person is HIV-positive.

If the prosecution proves these things, they have established that the accused person living with HIV has obtained their partner’s consent to sex by “fraud.” Therefore, their partner’s consent to sex was not legally valid and they have committed a sexual assault.

### **When is there a “realistic possibility” of HIV transmission?**

The Supreme Court did not provide a complete answer to this question; it did not address the possibility of transmission associated with various sexual acts and under varying circumstances that might affect that possibility.

However, it did state that “as a general matter,” there is **no** realistic possibility of HIV transmission through **penile-vaginal sex** if

- (i) the partner with HIV had a “low” viral load at the time (which the court said meant under 1500 copies/ml) and
- (ii) a condom was used.

So, if a person with HIV has a “low” viral load **and** uses a condom for penile-vaginal sex, there is no duty to disclose their HIV status. Therefore, there is no “fraud” and no crime of sexual assault for not disclosing in that circumstance.

The rule is probably the same for **penile-anal sex** — that is, no duty to disclose if the HIV-positive partner has a low viral load **and** a condom is used.<sup>4</sup> The Court did not address the question of whether **oral sex** poses enough of a possibility of HIV transmission, and under what circumstances, to warrant a duty to disclose.

Advocates, and even some judges, have criticized the Supreme Court’s rulings, and many of the prosecutions that have occurred under those rulings, for extending the criminalization of HIV non-disclosure too far.

Despite the supposed requirement of a “realistic possibility” of transmission, charges are still being brought even in cases where, based on scientific evidence, the sexual activity effectively posed negligible to no risk of transmission.<sup>5</sup> These are also cases in which there was no intent to transmit HIV to a sexual partner and there was in fact no transmission.

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<sup>4</sup> The Supreme Court did not directly address whether there is a duty to disclose HIV-positive status if a condom is used, but it breaks. However, this seems the most likely interpretation of the Supreme Court’s approach, and it is also something the Manitoba Court of Appeal clearly stated in its ruling.

<sup>5</sup> In Canada, the vast majority of prosecutions have involved sexual assault charges based on allegations of HIV non-disclosure. However, some people have been charged and prosecuted for (non-sexual) assault in relation to spitting or biting, even though there is effectively zero risk of transmission in such cases. There is also one known case in which, in some rather unusual circumstances, a woman living with HIV faced charges for not disclosing her status to health-care workers during her second pregnancy (meaning that steps were not taken to reduce the possibility of transmission,

Scientific experts have been critical of the criminal justice system for not giving proper, adequate weight to the science, with nearly 80 leading Canadian HIV researchers and clinicians issuing a consensus statement in 2014 expressing this concern and reviewing the scientific evidence then available.<sup>6</sup> In early 2017, scientists reiterated this concern, given the ongoing prosecutions that, in their view, continued to disregard the science on HIV transmission.<sup>7</sup>

Since the Supreme Court's last ruling on HIV criminalization, there have been two cases in which trial judges have accepted that, even though no condom was used for penetrative sex, because the HIV-positive partner had a low (or undetectable) viral load, there was no "realistic possibility" of HIV transmission, given the evidence from scientific experts that was before those courts. They have, therefore, acquitted the accused person living with HIV of aggravated sexual assault. (One of those cases is currently under appeal.) This suggests that the Supreme Court's 2012 ruling is not necessarily the final word on the matter.

In December 2016, the federal Minister of Justice issued a public statement on World AIDS Day in which she stated that "the over-criminalization of HIV non-disclosure discourages many individuals from being tested and seeking treatment, and further stigmatizes those living with HIV or AIDS. Just as treatment has progressed, the criminal justice system must adapt to better reflect the current scientific evidence on the realities of this disease." She added: "Over the coming months, I intend to work with my provincial and territorial counterparts, affected communities and medical professionals to examine the criminal justice system's response to non-disclosure of HIV status. This could include a review of existing charging and prosecution practices, as well as the possible development of prosecutorial guidelines."<sup>8</sup>

## **HIV AND ITS TRANSMISSION**

Our knowledge about the possibility of HIV transmission, and the effectiveness of treatment for HIV, has changed dramatically since the SCC's first decision on HIV criminalization in 1998. The following is now clearly established, as articulated in a strong consensus among Canadian scientific experts:<sup>9</sup>

- "Overall, scientific and medical evidence clearly indicate that HIV is difficult to transmit during sex. Even activities generally considered risky, such as unprotected (i.e., without a condom) anal and vaginal sex, carry a per-act possibility of transmission that is much lower than is often commonly believed. It is our expert opinion that the actual per-act possibility of HIV transmission through sex, biting or spitting lies along a continuum from low possibility, to negligible possibility, to no possibility of transmission."

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including during delivery) and for breastfeeding the infant. To date, this is the only known prosecution of this sort in Canada.

<sup>6</sup> M. Loutfy et al., "[Canadian Consensus Statement on HIV and its transmission in the context of the criminal law](#)," *Canadian Journal of Infectious Diseases & Medical Microbiology* 25, 3 (2014): pp. 135–140.

<sup>7</sup> "Canada's HIV scientists express deep concern about overly broad criminalization," HIV & AIDS Legal Clinic Ontario, April 7, 2017. Available at <http://www.halco.org/2017/news/canadas-hiv-scientists-express-deep-concern-about-overly-broad-criminalization>.

<sup>8</sup> "Minister Wilson-Raybould Issues Statement on World AIDS Day," statement, Ottawa, December 1, 2016. Available at <https://www.canada.ca/en/department-justice/news/2016/12/minister-wilson-raybould-issues-statement-world-aids.html>.

<sup>9</sup> These points are taken from the Canadian scientific consensus statement: M. Loutfy et al.

- Penile-vaginal sex without any protective factors poses a “low” possibility of transmitting HIV. The estimate of the per-act probability of HIV transmission associated with penile-vaginal intercourse without a condom and without antiretroviral therapy is often cited as 1 in 1000. Estimates based on the most recent scientific studies range between four and eight instances of transmission per 10,000 sexual acts.
- Penile-anal sex without any protective factors poses a “low” possibility of transmitting HIV. The estimate of the per-act probability of HIV transmission associated with penile-anal intercourse without a condom and without antiretroviral therapy is often cited as 1 in 100 where the HIV-positive individual is the insertive partner and 1 in 1000 where the HIV-positive individual is the receptive partner. (The possibility of transmission decreases when ejaculation occurs outside the body.)
- An unbroken condom, used correctly, is 100% effective at stopping HIV transmission.
- With access to treatment, HIV is a chronic manageable illness. Treatment not only allows people to live long and healthy lives, but also helps prevent HIV transmission to sexual partners by reducing a person’s viral load.
- Vaginal or anal sex without a condom poses negligible to no possibility of transmission when the HIV-positive partner is on effective antiretroviral therapy.<sup>10</sup>
- There is no possibility of transmission through oral sex performed *by* an HIV-positive person, and at most a negligible possibility of HIV transmission through performing oral sex *on* an HIV-positive person.
- Being spat on by an HIV-positive individual poses no possibility of transmitting HIV.
- Being bitten by an HIV-positive individual poses a negligible possibility of transmitting HIV when the biting breaks the other person’s skin and the HIV-positive individual’s saliva contains blood. Otherwise, being bitten by an HIV-positive individual poses no possibility of transmitting HIV.

### **IMPACT OF OVERLY BROAD CRIMINALIZATION ON PERSONS LIVING WITH HIV**

People living with HIV continue to be criminally charged, prosecuted and imprisoned, including in cases where there was no intent to transmit HIV, the virus was not transmitted, and even when there is minimal to no possibility of HIV transmission. The smaller the possibility of transmission, the greater the discrimination based on HIV-positive status that such prosecutions represent. In the case where there is no possibility of transmission, criminal prosecution in no way rests on the possibility of harm to another and is simply discrimination against people for being HIV-positive.

HIV is singled out from other communicable diseases for criminal prosecution. The Supreme Court’s original decision in 1998 was not limited just to HIV; it contemplated that someone with another serious STI might be guilty of sexual assault for not disclosing to a sexual partner. There has been a handful of prosecutions for non-disclosure of other conditions (e.g., herpes, hepatitis C). But almost all the prosecutions have been for non-disclosure of HIV.

In practice, the use of non-HIV-specific criminal laws discriminates against, and profoundly stigmatizes, people living with HIV. The criminalization of HIV non-disclosure has other

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<sup>10</sup> For the most recent data on antiretroviral treatment and HIV risks of transmission, see A.J. Rodger et al., “Sexual activity without condoms and risk of HIV transmission in serodifferent couples when the HIV-positive partner is using suppressive antiretroviral therapy,” *Journal of the American Medical Association* 2015; 316(2): 171–181 (the PARTNER study). The study found zero transmissions from the more than 58,000 individual times that the couples, in which one partner was HIV-positive and the other was HIV-negative, had sex without condoms.

discriminatory dimensions as well. Available data indicates that among men who have been prosecuted, Black men are disproportionately represented,<sup>11</sup> and sensationalizing media coverage of prosecutions has disproportionately focused on racialized people, particularly accused persons who are Black and/or migrants.<sup>12</sup> Among women, marginalized women — including Indigenous women and women who have experienced intimate partner violence — appear to be over-represented among those prosecuted.<sup>13</sup> Gay men are the single largest group of people living with HIV in Canada, meaning they live with the threat of criminal prosecution for alleged non-disclosure, and a growing number of prosecutions have been against gay men or other men with male sexual partners.<sup>14</sup>

The scientific evidence has not shown that HIV criminalization has any significant HIV prevention benefit. At the same time, the research shows that HIV criminalization damages HIV prevention efforts by increasing HIV-related stigma, discouraging HIV testing for some individuals, hindering access to and eroding trust in voluntary approaches to HIV prevention (including HIV counselling), and spreading misinformation about the nature of HIV and its transmission. The current use of the criminal law also compromises the ability of people living with HIV to engage in the care they need to stay healthy, by preventing them from talking openly with health-care providers due to the fear that their HIV and other test results and discussions with medical professionals may be used as evidence against them in criminal proceedings.<sup>15</sup>

The criminalization of HIV non-disclosure has resulted in serious invasions of privacy (such as the use of medical records in criminal proceedings, and people's HIV status made public in the media, including through police press releases) and of bodily integrity (such as forced antiretroviral treatment as a condition of release on bail).

Conviction rates for sexual assault in cases involving coercive, clearly non-consensual sex are very low. But conviction rates are much higher in cases of sexual assault prosecutions based on HIV non-disclosure in the case of what are otherwise consensual sexual encounters — suggesting HIV stigma and discrimination are at play.<sup>16</sup> Yet the law of sexual assault is also a poor fit to address HIV non-disclosure. The law is extremely stigmatizing, with very severe implications for people living with HIV. Furthermore, while the law of sexual assault is an important tool to advance gender equality and address gender-based violence, its misuse and overuse is also undermining the integrity of the law,

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<sup>11</sup> C. Hastings, C. Kazatchkine and E. Mykhalovskiy, *HIV Criminalization in Canada: Key Trends and Patterns*, Canadian HIV/AIDS Legal Network, March 2017.

<sup>12</sup> E. Mykhalovskiy et al., "Callous, Cold and Deliberately Duplicious": Racialization, Immigration and the Representation of HIV Criminalization in Canadian Mainstream Newspapers." A report funded by a grant from the Canadian Institutes of Health Research Centre for Social Research in HIV Prevention, 2016. Online at SSRN: <https://ssrn.com/abstract=2874409>.

<sup>13</sup> *HIV Criminalization in Canada: Key Trends and Patterns*.

<sup>14</sup> *HIV Criminalization in Canada: Key Trends and Patterns*.

<sup>15</sup> S.E. Patterson et al., "The impact of criminalization of HIV non-disclosure on the health care engagement of women living with HIV in Canada: a comprehensive review of the evidence," *Journal of the International AIDS Society* 2015; 18(1): 20572; E. Mykhalovskiy, "The public health implications of HIV criminalization: past, current, and future research directions," *Critical Public Health* 2015; 25(4): 373–385.

<sup>16</sup> *HIV Criminalization in Canada: Key Trends and Patterns*.

prompting a growing number of feminist legal academics and service providers to voice concerns and support calls for restraint.<sup>17</sup>

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<sup>17</sup> See the perspectives articulated by women's rights advocates in the documentary film *Consent: HIV non-disclosure and sexual assault law* (Goldelox Productions and Canadian HIV/AIDS Legal Network, 2015). Available at [www.consentfilm.org](http://www.consentfilm.org).

# Canadian Coalition to Reform HIV Criminalization

*Note: The text below is an initial draft, by the Canadian Coalition to Reform HIV Criminalization (CCRHC), of a possible Community Consensus Statement on steps that should be taken by federal, provincial and territorial governments limit unjust HIV criminalization in Canada. The draft text below draws on a number of sources, including the earlier international [Oslo Declaration on HIV Criminalisation](#) that was prepared and endorsed in 2012 by a number of civil society organizations (including some Canadian organizations resisting unjust HIV criminalization). CCRHC is seeking input on this draft declaration, through a series of in-person consultations and [online survey](#). The Coalition will then prepare a final statement and circulate it for wide endorsement by as many Canadian HIV organizations (and other organizations responding to HIV) as possible. It will be used as a common position in ongoing advocacy with governments to get them to act to end unjust prosecutions against people living with HIV.*

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## Draft Consensus Statement for Discussion

1. People living with HIV continue to be singled out for criminal prosecutions, convictions and imprisonment in Canada even when there is minimal to no possibility of HIV transmission. The smaller the possibility of transmission, the greater the discrimination based on HIV-positive status that such prosecutions represent. The criminalization of HIV non-disclosure, as well as the media coverage of prosecutions, has also disproportionately affected Black men and Indigenous women in Canada.<sup>1</sup> Gay men are the single largest group of people living with HIV in Canada, meaning they live with the threat of criminal prosecution for alleged non-disclosure, and a growing number of prosecutions have been against gay men or other men with male sexual partners.<sup>2</sup>
2. Although there may be a limited role for criminal law in exceedingly rare cases in which someone intentionally infects another person, even in these rare cases interventions may prevent such a situation from arising. Such interventions require a non-punitive, non-criminal HIV-prevention approach centered within communities, where expertise about HIV issues is best found.
3. The criminal law must be a measure of last resort and limited in its scope and application. Federal, provincial and territorial governments, in consultation with people living with HIV, HIV organizations, service providers and scientific experts, must take steps, within their respective areas of jurisdiction, to ensure that any prosecution on the basis of HIV non-disclosure requires the following:
  - proof of an intent to harm;
  - conduct that is likely to result in that harm;
  - proof that the conduct of the accused in fact resulted in the alleged harm; and
  - punishment that is proportional to the actual harm caused by the conduct.
4. At a minimum, **criminal charges for HIV non-disclosure are not appropriate** in any case where a person living with HIV



- did not engage in activities posing a *significant risk* of transmission, including oral sex of any kind, anal or vaginal sex with a condom or other latex barrier, and anal or vaginal sex without a condom while having a low viral load;
  - did not know about their HIV infection;
  - lacked an understanding of how HIV is transmitted;
  - feared violence or other serious negative consequences would result from disclosing their HIV-positive status;
  - disclosed their HIV-positive status to a sexual partner or other person before any act posing a significant risk of transmission (or honestly and reasonably believed the other person was aware of their status through some other means); or
  - was forced or coerced into sex.
5. We call upon the federal and provincial Attorneys-General to develop sound **prosecutorial guidelines** to preclude unjust HIV prosecutions. Such guidelines must reflect current scientific knowledge and the principle of the least intrusive, most effective response.
6. We call upon the federal government to advance **reforms to the *Criminal Code*** to limit the overly broad and unjust use of the criminal law against people living with HIV.
- (a) Reforms must include removing HIV non-disclosure from the reach of sexual assault laws, including the current mandatory designation as a sex offender. The primary purpose of such laws is to address the trauma of coercive sex (which disproportionately affects women). It is wrong to prosecute situations of HIV non-disclosure among otherwise consenting adults (including women living with HIV) using sexual assault charges, particularly when sexual assault laws have been so ineffectively implemented in cases of coercive sex. Misrepresenting or not disclosing HIV-positive status should not be treated as “fraud” under the sexual assault provisions of the *Criminal Code*. (Reforms should preserve the possibility for prosecution for long-recognized frauds such as about a person’s identity or the nature of the act being engaged in.)
- (b) Reforms must also ensure that other provisions in the *Criminal Code* that might be used to prosecute HIV non-disclosure are appropriately limited in line with the principles stated above. This includes ensuring that conviction under any suitably limited provisions does not affect immigration status.
7. Misinformation, fear and stigma related to HIV are often at play through the criminal justice system. All actors in that system should be required to develop greater knowledge about HIV. Governments should support the development of **resources and training** to achieve this. Such training should be conducted by experts in HIV and be extended to judges, police, Crown prosecutors and prison staff nationwide.

*Reasons for concern about overly broad criminalization of HIV and to limit the criminal law*

- HIV criminalization is unjust, is bad public health policy and is fueling the epidemic rather than reducing it. A growing body of evidence suggests that the criminalization of

HIV non-disclosure, potential exposure and non-intentional transmission is doing more harm than good in terms of its impact on public health and human rights.<sup>3</sup>

- Rather than resort to criminal prosecutions, a better approach to HIV prevention is to create an environment that enables people to seek testing, support and timely treatment, and to safely disclose their HIV status.<sup>4</sup> Rather than being threatened with criminal prosecution, we prefer to see people living with HIV supported and empowered from the moment of diagnosis.<sup>5</sup>
- Sex, particularly sex without condoms, inherently carries a possibility of many eventualities – positive and negative – including the possibility of acquiring sexually transmitted infections such as HIV, although the per-act likelihood of HIV transmission is far lower than is commonly assumed. HIV epidemics are driven by undiagnosed HIV infections, not by people who know their HIV-positive status.<sup>6</sup> Given the high number of undiagnosed infections, relying on disclosure by others to protect oneself – and prosecuting people for not disclosing – is not sound HIV prevention strategy and should not be encouraged by the law. Furthermore, such an approach can and does undermine the message that it is the responsibility of all sexually active persons to take such safer sex measures as they can and want to take to manage risk, and leads to a false sense of security that no such measures are necessary in the absence of disclosure by a sexual partner.
- HIV-related stigma is one of the greatest barriers to testing, treatment uptake and disclosure. It is therefore a major barrier to a country successfully achieving internationally agreed targets for HIV prevention and treatment and, ultimately, to “getting to zero new infections, zero AIDS-related deaths and zero discrimination.”<sup>7</sup> Overly broad use of the criminal law for HIV non-disclosure reinforces and contributes to HIV-related stigma in multiple ways.
- Criminal laws do not change behaviour rooted in complex social issues, especially behaviour that is based on desire and affected by HIV-related stigma. Such behaviour is changed by counselling and support for people living with HIV that aims to achieve health, dignity and empowerment.
- Once a person’s HIV status has been involuntarily disclosed in the media, it will always be available through an internet search. People accused of HIV-related “crimes” for which they are not (or should not be found) guilty have a right to privacy. If previous partners need to be informed for public health purposes, protocols for confidential partner notification should be followed where this is feasible.<sup>8</sup>

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**Endorsed by:**

*[names of all organizations endorsing consensus statement to be inserted once final text adopted by Canadian Coalition to Reform HIV Criminalization and circulated for sign-on]*

## NOTES

<sup>1</sup> C. Hastings, C. Kazatchkine and E. Mykhalovskiy, *HIV Criminalization in Canada: Key Trends and Patterns*, Canadian HIV/AIDS Legal Network, March 2017.

<sup>2</sup> Ibid.

<sup>3</sup> UNAIDS, [Report of the Expert Meeting on the Scientific, Medical, Legal and Human Rights Aspects of Criminalisation of HIV Non-disclosure, Exposure and Transmission](#), February 2012.

<sup>4</sup> UNAIDS/UNDP, [Policy Brief: Criminalization of HIV Transmission](#), August 2008; Open Society Foundations, [Ten Reasons to Oppose the Criminalization of HIV Exposure or Transmission](#), fact sheet, December 1, 2008; IPPF, GNP+ and ICW, [HIV: Verdict on a Virus](#), 2008. See also IPPF, [HIV: Verdict on a Virus](#) (documentary film), 2011.

<sup>5</sup> The Global Network of People Living with HIV, [Positive Health Dignity and Prevention: A Policy Framework](#), January 2011.

<sup>6</sup> G. Marks et al., “[Estimating sexual transmission of HIV from persons aware and unaware that they are infected with the virus in the USA](#),” *AIDS* 2006; 20(10):1447–1450; H.I. Hall et al., “[HIV transmissions from persons living with HIV who are aware and unaware of their infection](#),” *AIDS* 2012; 26(7): 893–896.

<sup>7</sup> UNAIDS, [Getting to Zero: 2011–2015 Strategy](#), December 10, 2010.

<sup>8</sup> UNAIDS, [Opening up the HIV/AIDS epidemic: Guidance on encouraging beneficial disclosure, ethical partner counselling & appropriate use of HIV case-reporting](#), November 2000.