



HALCO
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Exploring Avenues to Address Problematic Prosecutions Against People Living with HIV in Canada

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THE LAW

Canada has the dubious distinction of being a world “leader,” after Russia and the United States, in prosecuting people living with HIV. In 1998, the Supreme Court of Canada (SCC), in *R. v. Cuerrier*, decided that people living with HIV had a legal duty to disclose their HIV-positive status to sexual partners before having sex that poses a “significant risk” of HIV transmission.¹ In 2012, in *R. v. Mabior*, the SCC ruled that people living with HIV had a legal duty to disclose before having sex that poses a “realistic possibility of HIV transmission,” which the Crown must prove. Commenting specifically in the context of a case involving penile-vaginal sex, the court stated that “as a general matter, a realistic possibility of transmission of HIV is negated if: (i) the accused’s viral load at the time of sexual relations was low **and** (ii) condom protection was used.”² The Crown also must prove that complainants would not have consented to sex if they had known about their partner’s HIV-positive status.

In Canada, people who face criminal charges related to HIV non-disclosure are typically charged with *aggravated sexual assault*, on the theory that the absence of disclosure renders a partner’s consent to sex invalid. Despite the ostensible requirement of a “realistic possibility” of transmission, charges are being brought even when people living with HIV have no intent to transmit HIV, engage in behaviours that, based on medical evidence, effectively pose negligible to no risk of transmission, and do not transmit HIV to their sexual partners. Aggravated sexual assault is one of the most serious offences in the *Criminal Code*: it carries a maximum penalty of life imprisonment and registration as a sexual offender for a minimum of 20 years. In Canada, people have been charged and prosecuted also in relation to spitting or biting, even though there is effectively zero risk of transmission via such means.

HIV AND ITS TRANSMISSION

The treatment and transmission of HIV have changed dramatically since the SCC’s decision in 1998, but the law has yet to catch up with the science. The following is now clearly established:

- HIV is a chronic manageable illness.
- Treatment not only allows people to live long and healthy lives, but also prevents HIV transmission.
- Vaginal or anal sex without a condom poses negligible to no possibility of transmission when the HIV-positive partner is under effective antiretroviral therapy.³
- An unbroken condom is 100% effective at stopping the transmission of HIV when used correctly.
- Oral sex poses no to negligible possibility of HIV transmission.
- 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.

In 2014, eminent Canadian scientific experts on HIV developed the “Canadian consensus statement on HIV and its transmission in the context of the criminal law,” out of a concern that the criminal law was being used in an overly broad fashion against people living with HIV because of, in part, a poor appreciation of the scientific understanding of HIV and its

transmission. The statement was published in the *Canadian Journal of Infectious Diseases and Medical Microbiology* and endorsed by nearly 80 scientific experts from across the country.⁴

WHY IS HIV CRIMINALIZATION HARMFUL?

- People living with HIV continue to be criminally charged, prosecuted and imprisoned when there is minimal to no risk of HIV transmission. The smaller the risk of transmission, the greater the discrimination against people based on HIV status; in the case of no risk of transmission, criminal prosecution is unadulterated discrimination against people for being HIV-positive.
- HIV is singled out from other communicable diseases for criminal prosecution. 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 discriminatory dimensions as well. Sensationalizing media coverage of prosecutions has disproportionately focused on racialized people, particularly accused persons who are Black or migrants.⁵ Among women, marginalized women — including Indigenous women and women experiencing intimate partner violence — appear to be over-represented. 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.
- The scientific evidence has failed to demonstrate that HIV criminalization has any significant HIV prevention benefit. At the same time, this 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.⁶
- The criminalization of HIV non-disclosure has resulted in serious invasions of privacy (e.g., use of medical records in criminal proceedings; people's HIV status made public in the media including through police press releases) and of bodily integrity (e.g., forced treatment as a bail condition).
- While conviction rates for sexual assault in cases of non-consensual, coercive sex are very low, convictions rates are much higher in cases of sexual assault prosecutions based on HIV non-disclosure in the case of otherwise consensual sexual encounters — suggesting HIV stigma and discrimination are at work. 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, prompting a growing number of feminist legal academics and service providers to voice concerns and support calls for restraint.⁷

Canadian public health authorities have begun to express concerns about the impact of HIV criminalization on public health. For example, in December 2016, the Winnipeg Regional Health Authority acknowledged the detrimental public health impact of HIV criminalization and called

for “using public health law rather than criminal law in non-malicious or non-intentional situations of non-disclosure and transmission,”⁸ among other measures.

In the neighbouring province, the Ontario Advisory Committee on HIV/AIDS, which advises the provincial Health Minister, identifies the criminalization of HIV non-disclosure as a “structural policy factor” and part of the “legal environment” that contributes to HIV stigma.⁹ A report the Committee published in 2016 recognizes that HIV criminalization has been particularly damaging to gay men and African, Caribbean and Black (ACB) communities, and that HIV criminalization interferes with HIV prevention counselling. It endorses the use of prosecutorial guidelines that reflect current scientific knowledge and the principle of the least intrusive, most effective response, and recommends the establishment of public health HIV case management models that help people living with HIV avoid criminal charges. The report further endorses cross-sectoral collaboration in the HIV response, calling for collaboration between the criminal justice system, public health and community organizations to develop an approach to HIV non-disclosure that is evidence based, consistent and free of stigma.

INTERNATIONAL GUIDANCE

In light of the numerous human rights and public health concerns associated with HIV-related prosecutions, the Joint United Nations Programme on HIV/ AIDS (UNAIDS), United Nations Development Programme (UNDP),¹⁰ UN Special Rapporteur on the right to health,¹¹ Global Commission on HIV and the Law,¹² and UN Committee on the Elimination of Discrimination against Women (CEDAW Committee),¹³ among others, have all urged governments to limit the use of the criminal law to cases of *intentional transmission* of HIV (i.e., where a person knows his or her HIV-positive status, acts with the intention to transmit HIV, and does in fact transmit it). Moreover, it is recommended that no prosecutions should take place when people used a condom, had a low viral load or practiced oral sex.¹⁴

In its November 2016 Concluding Observations on the periodic report of Canada, the CEDAW Committee stated that it

welcomes that [Canada] intends to review the use and application of criminal norms to certain HIV/AIDS issues. This review will include the concerning application of harsh criminal sanctions (aggravated sexual assault) to women for non-disclosing their HIV status to sexual partners, even when the transmission is not intentional, when there is no transmission or when the risk of transmission is minimal. The Committee recommends that [Canada] limit the application of criminal law provisions to cases of intentional transmission of HIV/AIDS, as recommended by international public health standards.¹⁵

HIV PROSECUTIONS IN CANADA

- More than 180 people have been charged to date for not disclosing their HIV-positive status, approximately half of them in Ontario.¹⁶
- The impact of prosecutions on African, Caribbean and/or Black (ACB) communities is of particular concern.¹⁷ Out of at least 35 men charged to date in Canada who are Black and/or of African or Caribbean descent, 23 were charged in Ontario (66%).
- While most of the cases are against men who have sex with women, cases against gay men are increasing.



- In 2015 and 2016, at least 12 individuals were charged in Canada (including 8 in Ontario); 5 were Black men and 5 were gay men.
- At least 18 women have been charged to date with HIV non-disclosure, 6 of whom are Indigenous (33%).
- The criminalization of HIV non-disclosure is of particular concern to Indigenous and ACB communities that are facing alarming rates of HIV and continue to experience systemic discrimination, as well as disproportionate rates of incarceration in Canada.

ENGAGEMENT AT THE PROVINCIAL LEVEL

In Canada's constitutional federation, the criminal law is federal and uniformly applicable throughout the country, but provincial governments are responsible for its administration and enforcement. The Legal Network has therefore joined several groups across the country to call on provincial Attorneys General to develop guidelines for Crown prosecutors. Guidelines cannot change the law, but they can affect how the law is applied: they can help the police and Crown prosecutors handle HIV-related criminal complaints in a fair and non-discriminatory manner, and they can limit unjust criminalization by ensuring that decisions about when, whether and how cases are pursued are informed by current scientific evidence, by consideration of human rights questions and by the social realities of living with HIV.

Since 2010, the Ontario Working Group on Criminal Law and HIV Exposure (CLHE), consisting of people living with HIV, representatives from many community-based AIDS organizations from across Ontario, lawyers, academics and activists, has called on the Ontario Ministry of the Attorney General to develop sound prosecutorial guidelines, such as those it recommends.¹⁸ For many years, however, the Ministry has refused to engage in a meaningful consultation with the HIV community and other stakeholders, and the province has yet to develop useful guidelines.¹⁹ Similar efforts to develop prosecutorial guidelines are taking place in British Columbia²⁰ and Quebec,²¹ but have not progressed.

DEVELOPMENTS AT THE FEDERAL GOVERNMENT LEVEL

On December 1, 2016, Minister of Justice Jody Wilson-Raybould issued a statement recognizing the ongoing problem of overly broad, unjust criminalization of people living with HIV, and signaled the federal government's intent to address this critical issue.²² Minister of Health Dr. Jane Philpott had previously met with civil society organizations on this issue, and has noted that HIV criminalization in Canada is both a problem and a priority for the government to address.²³

In October 2016, the Canadian Coalition to Reform HIV Criminalization (CCHCR) was officially launched. The CCHCR is a group of people living with HIV, including people with lived experience of HIV criminalization, community workers, lawyers and academics working across the country towards ending unjust prosecutions related to HIV in Canada.

EXAMPLES OF PROBLEMATIC PROSECUTIONS AND PRACTICES

- Since the SCC released its decision in *Mabior* in 2012, we have seen at least 11 cases involving a low or undetectable viral load, 10 of which occurred in Ontario.
- People continue to be charged for oral sex. In 2013, for example, Crown prosecutors refused to drop charges against a woman living with HIV in Barrie, Ontario. J.M. was notably charged for receiving oral sex while her viral load was undetectable. The Crown's expert testified that "you have a better chance of having a piano fall on your head than you do contracting HIV through oral sex."²⁴ Despite public protests, and following a consultation with senior personnel within the Ministry of the Attorney General, the prosecutor was instructed to pursue a conviction on this count. J.M. was eventually acquitted on the oral sex charge.
- People living with HIV continue to be charged with aggravated assault for spitting and biting despite the effectively zero risk of transmission — or at most, negligible risk in the most extreme, unusual circumstances.
- Some people have been placed under extremely strict bail conditions, including mandatory HIV treatment or an obligation to inform authorities about potential new sexual partners.

POSITIVE DEVELOPMENTS POST-*MABIOR* THAT NEED TO BE GENERALIZED

Although the number of people charged with aggravated sexual assault for HIV non-disclosure continues to grow, including in circumstances where the risk of transmission is zero or negligible, there also have been some positive developments *post-Mabior* that prove alternatives are possible. These important developments should be generalized.

- A lower court in Nova Scotia concluded, based on the expert scientific evidence before it, that having a low viral load is sufficient to negate a "realistic possibility of transmission."²⁵
- In at least one Ontario case involving condomless sex with an undetectable viral load, the Crown invited the judge to enter an acquittal.
- In at least two cases involving an undetectable viral load in Ontario, charges were withdrawn before the trial.
- In one recent case in Ontario involving condomless sex, an accused plead guilty to "false pretense" and received an absolute discharge.

MEASURES TO BE TAKEN AT BOTH FEDERAL AND PROVINCIAL LEVELS

In consultation with the community, federal and provincial governments must take action to limit HIV criminalization and bring the law in line with international recommendations, science and human rights as follows:

- Explore possible options for legislative reform.²⁶
- Develop sound prosecutorial guidelines at a provincial level.
- Explore alternatives to criminal charges and prosecutions, including restorative justice approaches.
- Provide support to potential complainants in cases of HIV non-disclosure.
- Develop HIV awareness training and resources for police, Crown prosecutors and prison staff.
- Take measures to address violence, harassment, stigma, discrimination and intimate partner violence against women, including women living with HIV.
- Protect Indigenous and racialized people from systemic discrimination, including disproportionately high rates of incarceration.



APPENDIX

UPDATED RECOMMENDATIONS FOR PROSECUTORIAL GUIDELINES

Guidelines should:

- ensure HIV-related prosecutions are conducted with restraint and caution.
- ensure HIV-related prosecutions are informed by complete, accurate and comprehensive understanding of the science surrounding HIV, risks of HIV transmission and the reality of living with HIV.
- exclude the use of the criminal law against people living with HIV who used a condom OR engaged in condomless sex with a low or undetectable viral load, OR performed or received oral sex.
- limit the use of the criminal law in cases of HIV non-disclosure that do not include malicious intent to transmit HIV *and* actual transmission
- prevent an accused's HIV-positive status being taken into account in prosecutions related to spitting or biting.
- limit the use of the law of sexual assault in cases of HIV non-disclosure.
- provide potential complainants with the support they need (both in terms of counselling and medical care).
- protect the rights of people living with HIV to be free from discrimination. Their rights to privacy, to liberty and security of the person, to sexual and reproductive health and physical integrity must also be protected.
- protect people living with HIV, particularly women living with HIV, against violence, harassment and domestic abuse.

To that effect, guidelines should be informed by the following considerations:

General considerations

- The criminal law is a blunt instrument to deal with HIV non-disclosure, exposure or transmission and should only be used in last resort.
- Prosecutions relating to HIV non-disclosure to sexual partners are highly sensitive and very complex. Prosecutions should be conducted with restraint and caution. In particular, there should be strong presumption against prosecutions in the absence of alleged intentional transmission. Prosecutions for alleged HIV non-disclosure are not warranted when
 - there is no evidence of a realistic possibility of transmission
 - the person did not know they were HIV-positive
 - the person did not understand how HIV is transmitted
 - the person did not disclose their HIV-positive status because of fear of violence or other serious negative consequences
 - the person took reasonable measures to reduce the risk of HIV transmission, such as practicing safer sex through using a condom or engaging in oral sex or other non-penetrative sexual activity, or had a low or undetectable viral load
 - the person knew they could not transmit HIV given effective treatment or low viral load

- Crown prosecutors should consider the availability and efficacy of interventions by public health authorities under the public health statutes, as an alternative to criminal prosecution, especially where the accused was not previously subject to public health case management.
- Crown prosecutors should prioritize access to support both in terms of counselling and medical care for complainants over prosecutions.
- Crown counsel must take care not to prosecute cases in a manner that would reinforce societal prejudices, preconceptions, and irrational fears regarding HIV, or undermine public health efforts to prevent the spread of HIV and other sexually transmitted infections (STIs).
- Crown counsel must take care not to prosecute cases in a manner that would place people living with HIV, especially women, at increased risk of violence, harassment and domestic abuse.

Science and HIV

- Prosecutions must be informed by complete, accurate and comprehensive understanding of the science surrounding HIV, risks of HIV transmission, and the reality of living with HIV.
- In any cases of alleged HIV non-disclosure, the Crown must, at the very least, establish a “realistic possibility of HIV transmission.”
- When transmission is alleged, Crown counsel must bring forth scientific or medical evidence and additional evidence, including evidence of past sexual contacts of the complainant, in order to establish actual transmission.
- Crown counsel must have an obligation to seek out, at the earliest possible occasion, an expert scientific opinion on the risks of transmission from a properly qualified expert based on the best available evidence.
- When prosecuting cases involving non-disclosure of HIV or other STIs, Crown counsel should be mindful of the recommendations of inquiries into the importance of ensuring accurate scientific evidence underpinning prosecutions (e.g., the Report of the Inquiry into Pediatric Forensic Pathology in Ontario, also known as the Goudge Inquiry).
- Scientific knowledge of the sexual transmission of HIV is complex and evolving. However, there is significant scientific consensus on certain key issues:
 - HIV is a chronic manageable illness.
 - Treatment not only allows people to live long and healthy lives, but also prevents HIV transmission.
 - Vaginal or anal sex without a condom poses negligible to no possibility of transmission when the HIV-positive partner is under effective antiretroviral therapy.²⁷
 - An unbroken condom is 100% effective at stopping the transmission of HIV when used correctly.
 - Oral sex poses no to negligible possibility of HIV transmission.
 - 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.
- Prosecutions are not warranted against people living with HIV who used a condom OR practiced oral sex OR engaged in condomless sex with a low or undetectable viral load.



Based on current scientific evidence, someone with an undetectable viral load is effectively non-infectious, and there is therefore no realistic possibility of transmission.

- An accused's HIV-positive status should not be taken into account in prosecutions related to spitting or biting.

Intent to transmit

- Cases of intentional transmission are extremely rare.
- Intent to transmit HIV cannot be presumed or solely derived from knowledge of positive HIV status or non-disclosure of that status.
- Intent to transmit HIV cannot be presumed or solely derived from engaging in sex that poses a realistic possibility of transmission.
- Proof of intent to transmit HIV should at least involve (i) knowledge of positive HIV status, (ii) deliberate action that poses a significant risk of transmission (e.g., repeated exposure to a significant risk of HIV transmission) and (iii) proof that the action is done for the purpose of infecting someone else.
- Intent to transmit cannot be presumed from active deception. The context and circumstances in which the alleged deception occurred — including the mental state of the person living with HIV and the reasons for the alleged deception — should be taken into consideration.

Sexual assault

- HIV and other STI non-disclosure prosecutions are distinct from other sexual assault prosecutions involving coercion, force and violence because the sexual activity involved was consensual if not for the alleged non-disclosure. When lack of consent results from non-disclosure, Crown counsel should strongly consider proceeding with a *Criminal Code* offence that does not include a sexual element.

Public interest factors

- Crown counsel should consider public interest factors that are specific to cases of alleged non-disclosure of HIV and other STIs, including
 - the absence of transmission of HIV (or other STI) to the complainant, which has been the case in the majority of prosecutions to date.
 - a limited number of encounters posing a realistic possibility of transmission.
 - non-disclosure was an isolated incident and there was no evidence of a history of non-disclosure placing sexual partners at a significant risk of serious bodily harm.
 - compromised physical and mental health of the accused, especially an accused living with HIV.
 - the availability and efficacy of interventions by public health authorities under public health statutes as an alternative to criminal prosecution, especially where the accused was not previously subject to public health case management.
 - the potentially unduly harsh or oppressive consequences of prosecutions and a conviction for the accused; in particular, the health and safety risks that incarceration poses for people living with HIV and the impact of a criminal conviction on someone's immigration status.
 - the possible power imbalance in intimate relationships, where the accused was in a position of lower power.

- the potentially unduly harsh consequences of prosecutions for alleged non-disclosure for women living with HIV at increased risk of violence, harassment or domestic abuse. HIV criminalization can be used as a coercive tool by vindictive partners. It can also discourage women living with HIV to report sexual assault.
- the staleness of the alleged offence in situations where past sexual partners come forward alleging non-disclosure.
- Prosecutions in cases where a condom was used, the viral load of the HIV-positive person was low or undetectable, or oral sex was practiced are unlikely to meet the public interest requirement. Prosecution in these circumstances are not warranted.

Privacy

- Crown counsel should keep in mind the negative impacts of publicly disclosing a person's HIV-positive status given the high level of stigma experienced by people living with HIV. Crown counsel should ensure that the privacy of both the accused and the complainant, including with regard to their HIV status, is respected to the greatest extent possible.

Bail and sentencing

- Given the constitutional presumption in favour of bail ("judicial interim release") and the disproportionate health consequences for people in custody who are living with HIV, the Crown should strongly consider consenting to the release of people charged with offences involving HIV non-disclosure. Only in rare cases should the Crown oppose bail. Crown counsel should ask for bail conditions that are proportionate and rationally linked to the alleged offence. Bail conditions should not disproportionately violate an accused's right to privacy, sexual and physical integrity.
- Criminal prosecutions can have a severe impact on the accused's health, including depression or interruption of HIV treatment. Crown counsel should consider the offender's health at the time of bail and sentencing, and potential negative health and safety consequences of incarceration.

Others

Measures should be taken to ensure that Crown counsel has access to properly qualified experts and receives training to support the implementation of prosecutorial guidelines, and that the guidelines are regularly reviewed.



¹ *R. v. Cuerrier*, [1998] 2 S.C.R. 371.

² *R. v. Mabior*, 2012 SCC 47 and *R. v. D.C.*, 2012 SCC 48.

³ For the most recent data on 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* 316,2 (2016): pp. 171–181 (the PARTNER study). The study found zero transmissions from over 58,000 individual times that people had sex without condoms.

⁴ M. Loutfy, M. Tyndall et al., "Canadian consensus statement on HIV and its transmission in the context of the criminal law," *Canadian Journal of Infectious Diseases and Medical Microbiology* 25,3 (2014): pp. 135–140. Available at <http://www.aidslaw.ca/site/wp-content/uploads/2014/06/Canadian-statement.pdf>.

⁵ E. Mykhalovskiy, C. Hastings, C. Sanders, M. Hyman and L. Bisailon, "'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. Available at SSRN: <https://ssrn.com/abstract=2874409>.

⁶ 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* 18, 1 (2015): 20572; E. Mykhalovskiy, "The public health implications of HIV criminalization: past, current, and future research directions," *Critical Public Health* 25,4 (2015): pp. 373–385.

⁷ See the perspectives articulated by women's rights advocates in the documentary film *Consent: HIV non-disclosure and sexual assault law* (Goldelox Productions & Canadian HIV/AIDS Legal Network, 2015). Available at www.consentfilm.org.

⁸ Winnipeg Regional Health Authority, *Position Statement on Harm Reduction*, December 2016. Available at <http://www.wrha.mb.ca/community/publichealth/files/position-statements/HarmReduction.pdf>.

⁹ Ontario Advisory Committee on HIV/AIDS, *HIV/AIDS Strategy to 2026: Focusing Our Efforts – Changing the Course of the HIV Prevention, Engagement and Care Cascade in Ontario*, December 2016. Available at http://www.health.gov.on.ca/en/pro/programs/hivaids/docs/oach_strategy_2026.pdf.

¹⁰ UNAIDS/UNDP, *Policy brief: Criminalization of HIV Transmission*, August 2008. Available at <http://www.aidslaw.ca/site/wp-content/uploads/2014/02/1.UNAIDSUNDPposition.pdf>.

¹¹ UN General Assembly, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, Human Rights Council, Fourteenth session, Agenda item 3, A/HRC/14/20, April 27, 2010.

¹² Global Commission on HIV and the Law (UNDP HIV/AIDS Group), *HIV and the Law: Risks, Rights & Health*, July 2012. Available at <http://www.hivlawcommission.org/index.php/report>.

¹³ UN Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, CEDAW/C/CAN/CO/8-9, November, 18, 2016, para. 43.

¹⁴ UNAIDS, *Ending overly broad criminalisation of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations*, 2013. Available at http://www.unaids.org/sites/default/files/media_asset/20130530_Guidance_Ending_Criminalisation_0.pdf.

¹⁵ UN Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, CEDAW/C/CAN/CO/8-9, November, 18, 2016, para. 43.

¹⁶ Colin Hastings, Cécile Kazatchkine and Eric Mykhalovskiy, *HIV Criminalization in Canada: Key Trends and Patterns*, Canadian HIV/AIDS Legal Network, 2017. Available at www.aidslaw.ca/site/hiv-criminalization-in-canada-key-trends-and-patterns.

¹⁷ The impact of HIV-related prosecutions on ACB communities is reinforced by the media coverage of cases involving Black men. A pioneering study of Canadian media, focusing on the newspaper coverage of HIV non-disclosure and transmission cases, has identified a clear pattern of racism towards Black men in Canadian mainstream newspaper articles from 1989 through 2015: E. Mykhalovskiy et al., "Callous, Cold and Deliberately Duplicious."

¹⁸ Ontario Working Group on Criminal Law and HIV Exposure, *Consultation on Prosecutorial Guidelines for Ontario Cases Involving Non-disclosure of Sexually Transmitted Infections: Community Report and Recommendations to the Attorney General of Ontario*, June 2011. Available at <http://clhe.ca/wp-content/uploads/CHLE-guidelines-report.pdf>.

¹⁹ Please see <http://clhe.ca/advocacy-timeline> for the history of the written record of discussions.

²⁰ Positive Living B.C., *The Need for New Charge Assessment Guidelines: HIV Non-Disclosure in British Columbia*, position paper, June 11, 2014.

²¹ COCQ-SIDA, *Recommandations pour une directive sur la non divulgation du VIH ou d'une autre ITSS*. Updated in January 2013.

²² Government of Canada, "Minister Wilson-Raybould Issues Statement on World AIDS Day," 2016. Available at <http://news.gc.ca/web/article-en.do?nid=1163979>.

²³ R. Easton, "An exclusive interview with Health Minister Jane Philpott," *PositiveLite*, December 1, 2016. Available at www.positivelite.com/component/zoo/item/an-exclusive-interview-with-health-minister-jane-philpott.

²⁴ T. McLaughlin, "'Extremely low' chance of getting HIV through oral sex: Expert," *Toronto Sun*, July 10, 2013. Available at www.torontosun.com/2013/07/10/extremely-low-chance-of-getting-hiv-through-oral-sex-expert.

²⁵ *R. v. J.T.C.*, 2013 N.S.P.C. 105 (Nova Scotia Provincial Court).

²⁶ The Canadian HIV/AIDS Legal Network, on behalf of the Canadian Coalition to Reform HIV Criminalization, is convening a Think Tank to be held in May 2017 to examine in depth the specific question of reform to the federal *Criminal Code* as one possible strategy, among others, for ending the unjust, overly broad criminalization of HIV non-disclosure.

²⁷ For the most recent data on treatment and HIV risks of transmission, see the PARTNER study.

