



Responding to the media

How to make your voice heard on the criminalization issue

- **Letters to the editor** and **opinion editorial pieces (or “op-eds”)** are great ways for you and/or your organization to share your position and knowledge on the criminalization issue with the broader public and policy-makers. Government officials regularly track and monitor the opinion pages of both national and local publications to learn more about issues of concern to their communities, and so these media pieces can make an impact well past their publication date.
- For both of these proactive media relations techniques, please ensure that you are clear on your **key messages** around the criminalization of HIV non-disclosure. For guidance on crafting these key messages, contact the Legal Network at info@aidslaw.ca.

Writing a letter to the editor

Most newspapers, magazines and online publications across Canada print letters on any subject but will reserve the right to edit them. In particular, **local community papers** are a great way to broadcast your position to your community and these news outlets are often underutilized and are in need of good, publishable letters.

- **Find a “hook”** by tying the letter to current events in the news (locally or nationally) that are attracting public attention and can be linked to the criminalization issue. Direct some of that attention your way by tying it directly to what you want to say. This greatly increases the chances of your letter being published.
- **Keep it short.**
 - First, check the website of the news outlet to which you plan to submit your letter — many will expressly state their desired and maximum length for publication. By sticking to a word count of approximately **150 words**, you will reduce the likelihood of your letter being edited and some of your key points being removed.
 - Be catchy, snappy and, if possible, conclude your letter with a call to action (i.e., to lawmakers, policy-makers, etc.). The best letters make a single point and are succinct and convincing. Editors like creative, concise and insightful commentary.

- If you can't say what you want in 150 words or less, you might consider writing an opinion editorial, or op-ed, as this will allow you to develop more in-depth arguments on the topic (see "Writing an opinion editorial" below).
- Again, always check the submission guidelines for a particular publication. You will likely need to include your name, mailing address and daytime phone number. Your details, other than name and possibly your city, will not be published. You do not need to worry about giving a title to your letter. Normally, the editor will do this for you. Also note that for most letters, you will not receive a confirmation if your letter is chosen for publication or not; just keep watching the publication itself.

Here is an example of a letter to the editor submitted to *The Globe & Mail* in response to an article about criminalization of HIV:

The Globe's editorial on May 8 ("*The HIV risk in sexual assault can't be eliminated*") desperately requires some counterbalance, but first a bit of context:

In 1998, the Supreme Court of Canada ruled that a person living with HIV must disclose his/her HIV status before engaging in sexual activity that poses a "significant risk" of HIV transmission. There is no need to have an intention to do harm, or for a partner to be infected for a person to be convicted of HIV non-disclosure in Canada. Partly due to an inconsistent interpretation of the legal test of what, exactly, constitutes "significant risk," Canada now has the dubious honour of being the second highest prosecutor worldwide of HIV non-disclosure cases. People living with HIV are already vulnerable to discrimination that affects every aspect of their lives.

We know that condom use is the most efficient tool in preventing HIV transmission; criminal law is not. Prosecuting people without taking into account risk reduction – and without clarification of "significant risk," as is currently the legal case in Canada – means ignoring science, good public health practice, and human rights.

Our criminal law cannot be rooted in fear and prejudice. The Supreme Court can now clarify "significant risk" and rule on a limited, fair and evidence-based use of criminal law in cases of HIV non-disclosure.

Writing an opinion editorial

An op-ed is an opinion piece that presents an informed view on a newsworthy topic, emphasizing the writer's insight and unique expertise. Op-eds tend to be a bit more formal than letters to the editor, but should still maintain a conversational tone to appeal to the average reader. These are an excellent tool for you and/or your organization to gain greater visibility for arguments that address some of the stigma and misconceptions surrounding people living with HIV and the criminalization of HIV non-disclosure issue writ large.

- **As with a letter to the editor, find a “hook.”**
 - Op-eds are a great way to clarify or correct statements made in news articles or in other opinion pieces, to provide expert commentary that isn't offered elsewhere on an issue capturing public attention, or to call for further action.
 - The ideal length for an op-ed piece is **700–800 words**, but publications often have more detailed submission guidelines.
 - Editors are looking for clarity, brevity and newsworthiness, as well as controversial views expressed in a reasonable and unique way by someone with some expertise, whether personal or professional, making them the ideal person to provide commentary.

- **Make your strongest point in the first paragraph** and then use the rest of the space to build your case by providing facts, statistics and informed anecdotes. The writing style should have a clear message and be lively and provocative. Be a voice of reason and avoid clichés and jargon or hyperbole. Don't be afraid to use strong, colourful language to catch the editor's attention and lend support to your argument. Aim to provide insight and understanding. You want to educate readers without being preachy. Towards the end, clearly restate your position and issue a call to action.

- **Always check the publication's website for submission guidelines. Explore as many publication options as you can** — but remember that most media outlets will ask that you do not offer the op-ed to multiple outlets simultaneously. Local papers and online magazines are a good way to share your position with a wider audience and provide a greater chance your op-ed will be published.

Here is an example of an op-ed published on “The Mark” website on August 15, 2011. This particular publication accepts op-eds of 1000 words or less.

Why criminalizing HIV-exposure discourages disclosure and does little to protect the public.

By Richard Elliott, *Executive Director, Canadian HIV/AIDS Legal Network*

Last week, Edmonton police took the unprecedented step of issuing a “wanted” notice with the name and photograph of a teenage girl who they alleged is HIV-positive and had unprotected sex with two men without disclosing her status. Two days after issuing the notice, and following tips from the public, police arrested her. Denied bail, she remains in custody facing at least two charges of aggravated sexual assault. Her identity and the allegations made are forever in the public domain, despite the basic principle (as outlined in the Youth Criminal Justice Act) that such information should be protected in the case of young people accused of crimes.

This sensational case has further cemented Canada's status as a world leader in

resorting to prosecutions for alleged HIV exposure, with approximately 130 such cases to date. But the police action and this prosecution have done nothing to truly protect public health. Like others before it, this sad case invites consideration of the bigger societal questions at stake — and whether the criminal-justice system is really the best way to deal with the public-health challenge of HIV in Canada.

There is no HIV-specific criminal law in Canada, but the Supreme Court ruled in 1998 that individuals must disclose their HIV status to sexual partners before engaging in activities that pose a “significant risk,” and that, if they don’t, they may face aggravated-assault charges. Ever since this ruling, the legal envelope has continually been pushed, often by the kind of exaggerated sense of HIV risk evident in the Edmonton case – to the point that people living with HIV have faced some of the most serious charges in the Criminal Code, even in cases where there is no significant risk of transmission. Nor has the law been applied fairly or consistently; courts have reached wildly varying conclusions about how to apply what is supposed to be the same law across the country.

But let’s take a step back. First, it is difficult to use the law to draw reasonable, enforceable lines between criminal and non-criminal sexual behaviours. Most people would agree that a person who maliciously transmits HIV should be criminally liable. At the other end of the spectrum, however, how could prosecution be justified against someone who is unaware that he or she has HIV? The difficulty comes in dealing with many of the circumstances between these extremes — precisely where many real-life sexual encounters fall.

There is also a very real concern about using the criminal justice system — a system based on after-the-fact retribution, not on prevention — in dealing with an issue of public health.

If the threat of criminal charges caused individuals (who would not have otherwise revealed their status to prospective sexual partners) to disclose their status and discuss preventive measures, then prosecutions might arguably be beneficial. But there is no evidence to suggest the threat of criminal charges has this effect. In fact, the proliferation of criminal cases contributes to the stigma surrounding HIV, making it more difficult for people to openly discuss HIV, get tested, and take appropriate precautions.

Meanwhile, according to the Public Health Agency of Canada, more than 65,000 Canadians are currently living with HIV, and more than one-quarter of them do not know it — making it all the more important to encourage, rather than discourage, testing and disclosure. Between 2,300 and 4,300 people are newly diagnosed with HIV each year. Treatment has improved dramatically in recent years, but there is no cure. Yet criminal charges against an individual homeless teenager, and attendant media coverage feeding a characterization of people with HIV as a “public danger,” eclipse any serious attention to the broader factors that fuel the epidemic, such as poverty, violence, addiction,

stigma, discrimination, and lack of information and services, among others.

As there is little reason to think that criminal prosecutions play any significant role in protecting public health, prosecutions need to be restricted to the rare and extreme cases where retribution is appropriate. In all cases, the broader public interest demands that we also consider whether the use of the law will do more harm than good overall, including when it comes to efforts to prevent the spread of HIV.

As cases come before them, courts have the opportunity to clarify this area of law. For one thing, the Supreme Court of Canada needs to confirm clearly what it merely suggested more than a decade ago: There is no legal obligation to disclose one's HIV-positive status when practicing safe sex, because the risk of transmission is not "significant" for the purposes of the criminal law. The use of condoms dramatically reduces the risk of transmitting HIV; it is counter-productive and unwarranted to prosecute people who are doing exactly what they should be doing to prevent the spread of infection.

Similarly, the law has to evolve as science evolves: We now know that successful treatment with AIDS drugs can reduce a person's "viral load" so significantly that it is considered "undetectable," and there is a correspondingly dramatic reduction in the risk of transmitting HIV.

More broadly, guidelines for prosecutors are needed — in every province — so that the application (or lack thereof) of criminal law in cases of HIV non-disclosure is clear, consistent, and considers both individual and public interests.

Whatever the outcome of this latest tragedy unfolding in Edmonton, the issue of prosecuting people for not disclosing their HIV status needs rational, careful consideration. The best way to prevent HIV is to treat the virus as an issue of public health and ask people to take responsibility for their own bodies – not to resort to enforcing a criminal law that cannot possibly reflect the complexities of human sexuality.

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