



POSITION STATEMENT ON HIV CRIMINALIZATION

Background

Under the Canadian law, a person living with HIV/AIDS may be found guilty of a crime for not disclosing his or her HIV-positive status before engaging in sexual activities that, according to the Canadian courts, pose a significant risk for HIV transmission¹. The crime is exposure without disclosure whether or not HIV transmission actually occurs¹. In recent years, there has been an increase in both the number of prosecutions and the severity of the charges laid against people living with HIV/AIDS in such cases. The following charges have been laid against people living with HIV/AIDS: assault, aggravated assault, sexual assault, aggravated sexual assault, common nuisance, criminal negligence causing bodily harm, murder, and attempted murder². As of February 2011, there had been a total of 115 prosecutions in which a person living with HIV/AIDS was accused of not disclosing his or her HIV-positive status before engaging in sexual activities that carry (or are perceived to carry) a significant risk for HIV transmission².

Position Statement

The Canadian Association of Nurses in AIDS Care (CANAC) believes that the criminal law is an ineffective and inappropriate tool to prevent HIV exposure and transmission. The use of criminal law impedes HIV prevention efforts by dissuading people from accessing needed HIV diagnostic and treatment services. It also compromises the ability of people living with HIV/AIDS to openly and honestly communicate with nurses. Furthermore, it places the responsibility of HIV prevention solely on people living with HIV/AIDS, and undermines the public health message that HIV prevention is a responsibility shared by all individuals regardless of HIV status. HIV affects individuals, families, communities, and populations; it must therefore be addressed as an individual and public health issue, not through the blunt instrument of the criminal law. Strategies to address HIV prevention, treatment, and care should focus on the health and human rights of people living with HIV/AIDS, and must acknowledge that this population already faces complex health, interpersonal, family, and social challenges. In light of the current situation in Canada, we recommend that nurses advocate for the rights of people living with HIV/AIDS, and practice in line with their provincial professional and ethical standards.

References

[1] Canadian HIV/AIDS Legal Network (2011). Criminal Law and HIV: Info sheets.
<http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=847>

[2] Canadian HIV/AIDS Legal Network (2011). Criminal law and HIV non-disclosure in Canada: Questions and Answers.
<http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=1222>