

OUR VOICES:



HIV, RACE AND THE CRIMINAL LAW
AN ACCHO SPECIAL REPORT
SEPTEMBER 2013

**HIV disclosure:
one woman's story**

**When do I need to
disclose my HIV
status before sex?**

**What does the
new legal standard
mean for African,
Caribbean and
Black people living
with HIV?**

CACVO
Conseil des Africains
et Caraïbéens sur le
VIH/sida en Ontario



ACCHO
African and Caribbean
Council on HIV/AIDS
in Ontario



What does the African, Caribbean and Black (ACB) community think about the criminalization of HIV non-disclosure?

Good question! There is no consensus, no single community perspective. There is however a shared sense of unease, anxiety, frustration and anger. There are also many questions and concerns.

Here are some of our voices:

“Each way you turn with this issue there is stigma, and it’s the multiplicity I think of all those stigmas working together that really create huge burdens.”

“The reasons why people do not disclose in specific ethnic minorities permeate so deep into something so different, like into culture, upbringing. Stigma’s associated with this issue, and it is socialized into people from a family, community and societal level.”

“Most infections take place when people don’t know their status. The reality is that people living with HIV have been incredibly vigilant, have been incredibly cautious and fearful of transmitting or passing the virus. The public perception doesn’t reflect this reality.”

“Criminalization creates a fertile environment for HIV to continue spreading.”

“We expect people to just go and disclose, without really helping them understand what the process of disclosure looks like. If you hear Public Health calls you, to say you just tested HIV-positive, and a couple weeks later they are following you. Have you told your sexual partners? Can we contact and follow-up? And stuff like that. Not recognizing that disclosure is a process, it’s a process that works well when people have dealt with the losses that surround an HIV diagnosis. When they have come to accept that they are HIV-positive and willing to actually move forward. And this is a state that can take years.”

“Should people be charged? Yes, in some cases, in the minority of cases.”

“What criminalization does is that it makes that disclosure [in personal relationships] even harder, right? It doesn’t make it easier.”

“I have had experience with Black women who will plead guilty before they go to court, just because it’s easier, you know, you won’t have your story plastered all over the place. The other part is, one woman, I know before they picked her up, she chose to go back home. You know she left, she chose to go back. She had come here as a refugee, but she chose to go back, and face what she was fleeing. That seemed to be a better option for her than to actually end up in jail.”

“A lot of newcomers fear this issue messing with their whole immigration process, so they isolate themselves, so they are lonely and that causes depression.”

“The images that we often see, the ways that Black sexuality has always been depicted as uncontrollable, you know the notions of wild and savage, we can’t control our libidos, and from the start of HIV we were considered vectors of the disease. So that way of thinking and talking about Black people continues.”

“The reality is the way we’ve been framed in the media around this issue, really contributes to us being more at risk of HIV. I think it pushes people from having a conversation about HIV in our community, I think it pushes people from our community from the possibility of getting tested.”

Contents

Love, sex, & disclosure	4
When do I need to disclose my HIV status before sex?	5
ACCHO research report: the impact of criminalization of HIV non-disclosure on African, Caribbean and Black communities in Ontario	8
What does the new legal standard mean for African, Caribbean and Black people living with HIV?	10
HIV disclosure: one woman's story	11
From the soul: one man's story	12
Race, the media and crime reporting	14
Letters to the Editor	15
OPINIONS: Reflections	16
Dear ACCHO	20
Classifieds	23

OUR VOICES: HIV, RACE AND THE CRIMINAL LAW

In Canada, there is a legal obligation for people living with HIV to tell their sex partners that they are HIV-positive before having sex that poses a “realistic possibility” of HIV transmission. The legal standard of “realistic possibility” is not necessarily the same as the HIV prevention information provided by medical and public health professionals. **Nothing in this report regarding the legal obligation to disclose HIV status should be taken as HIV prevention advice.**

The legal obligation to disclose one's HIV-positive status applies only to people who know or suspect that they are living with HIV. *But HIV prevention is everyone's responsibility.* For information regarding HIV transmission and prevention, contact your local AIDS service organization (see listings at the end of this magazine) or public health office. For legal questions regarding HIV disclosure, exposure or transmission, contact the HIV & AIDS Legal Clinic Ontario (HALCO) (also see listing at the end of this magazine).

The information contained in this report is information about the law, but it is not legal advice. Only a lawyer can give you legal advice.

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Love, sex, & disclosure

WOW – THERE SHE IS. FUNNY, PRETTY, INTERESTING, ... HOW WILL I GET HER ATTENTION? WILL SHE BE INTERESTED IN ME? HOW MUCH SHOULD I TELL HER ABOUT MYSELF?

We've all been there. Whether young, old, man, woman, straight, gay, Black, brown or white, ... We have all felt that attraction and wondered what to do, what to say to the person we are interested in. Maybe we've taken some risks, put ourselves out there. Maybe we have approached someone we are interested in and openly introduced ourselves. Or maybe we've held back and waited until we got to know the person better before revealing much about ourselves. A little mystery is good at the beginning of a relationship, right?

Most of us have been in the position of meeting new people and initiating romantic relationships, but not everyone has had to include their HIV status in their pick-up lines. Not everyone has had to face the possibility of passing on a serious infection like HIV to a partner they care about. Not everyone has had to face rejection, isolation or condemnation when their new partner finds out about their health status. Most people don't worry about *going to jail* if they keep intimate details about their health and personal life private.

For African, Caribbean and Black (ACB) people in Ontario, the criminal law is an ever-present reality. The possibility of criminal charges for non-disclosure has become a big obstacle for many ACB men and women who are looking for healthy sexual relationships. Even those who are not HIV-positive or do not know their HIV status may feel some effects of this law at times.

There are HIV non-disclosure cases where criminal charges are appropriate, but those cases are few and far between. What we have now is a law that is being used against far too many people in a wide range of circumstances.

So what's a person to do? Commit to a life of celibacy? Avoid all romantic relationships? NO! *Get informed* – know your rights and your responsibilities. Then get involved – we need to work together to end discrimination so that everyone can have a healthy sexual life; eliminate stigma so that everyone can safely disclose their HIV status when necessary; and, change the laws and how they are enforced to minimize their negative impacts and ensure that only those who really should be prosecuted face charges.

The criminalization of HIV exposure affects all of us. Together, we can empower ourselves, our partners and our community.

WHEN DO I NEED TO DISCLOSE MY HIV STATUS BEFORE SEX?

Nowhere in Canada's *Criminal Code* are HIV disclosure requirements explained. So we asked Alison Symington, Senior Policy Analyst with the Canadian HIV/AIDS Legal Network, to explain the current laws to us. Here is our interview with Alison.

ACCHO: There is no HIV-specific law in the *Criminal Code*. So why can people living with HIV (PHAs) face criminal charges for not telling their sexual partners that they are HIV-positive?

Alison: In the mid-1990s, a prosecutor in British Columbia charged an HIV-positive man with aggravated assault for not telling two women, with whom he had unprotected intercourse, that he was HIV-positive. The prosecutor believed that what the man had done by exposing these women to HIV without their knowledge fit the definition of "aggravated assault". (Note: neither of the women was infected with HIV.)

The Supreme Court of Canada – the highest court in the country – agreed that in these circumstances, not revealing his HIV-positive status (what we call "HIV non-disclosure") did indeed meet the definition of aggravated assault, so that became the law throughout the country. The rule that the Supreme Court established is that a PHA must reveal his or her HIV status to a sexual partner before any sexual encounter with a "significant risk" of HIV transmission. This legal obligation applies to all PHAs, whatever their age, gender, sexual orientation or personal circumstances.

ACCHO: What does that mean? When does sex pose a "significant risk" of HIV transmission?

Alison: The Supreme Court did not provide a list of the types of sexual activity that require HIV disclosure, resulting in a lot of confusion. In October 2012, the Supreme Court released two more rulings on this issue with more specific guidance. In these decisions, the Court explained that a "realistic possibility" of HIV transmission is what triggers the requirement to disclose. According to the Court, to eliminate the "realistic possibility" of transmitting HIV when having vaginal sex, a PHA needs to use a condom and have a low or undetectable viral load.

Therefore, the legal rule in Canada is now: **for vaginal intercourse, you must tell your partner that you are HIV-positive before having sex, unless you have a low or undetectable viral load and use condoms.** If you do not, you can be charged with aggravated sexual assault. That means that every time you have unprotected sex,

regardless of your viral load, you are expected to disclose beforehand (according to the criminal law). And if your viral load is not low or undetectable, you are expected to disclose every time, even if you use condoms (according to the criminal law). This is a very harsh outcome, but it is now the law in Canada.

ACCHO: The Supreme Court only looked at vaginal intercourse. Is disclosure required before oral sex and anal sex too?

Alison: For issues that were not addressed by the Supreme Court, we cannot say for sure what the legal obligations will be. Uncertainty remains about the legal requirements for oral sex and anal sex.

Generally speaking, oral sex is low risk for HIV transmission so based on the "realistic possibility" test there may not be a legal duty to disclose before oral sex. The courts could decide however that PHAs who do not have a low or undetectable viral load must disclose before oral sex without a condom or latex barrier. We cannot be sure until courts look at the evidence and rule on this issue.

Anal sex is a riskier sexual activity for HIV transmission so we expect that the legal disclosure obligation is at least as strict as for vaginal sex (in other words, that you must tell your partner that you are HIV-positive before having sex, unless you have a low or undetectable viral load and use condoms). At this time, we cannot say for sure if using a condom and having a low viral load will be enough to avoid convictions for non-disclosure before anal sex. We cannot be sure until courts look at the evidence and rule on this issue.

We also cannot yet say for sure how the courts will treat cases where a condom was used but it broke or slipped.

ACCHO: What the Supreme Court has said about a "realistic possibility" of transmission is different than what some people report their doctor and/or counsellor have told them about HIV prevention. Why is that?

Alison: The Supreme Court establishes legal rules. The legal rules do not always match the safer sex advice of health professionals and AIDS service organizations (ASOs). For health information and safer sex advice, you

should talk to doctors, nurses and HIV counsellors. Your legal obligations, which are different, are described in legal information resources. If you have legal questions, speak with a legal organization or lawyer who is knowledgeable about HIV, such as the HIV & AIDS Legal Clinic Ontario (HALCO) (see the listings at the end of this magazine).

ACCHO: What factors determine whether there is a “realistic possibility” of HIV transmission in a court case?

Alison: No matter what crime is alleged, courts look at the evidence presented by both the defense lawyer and the prosecutor when making a decision about whether the accused person broke the law. To determine whether there was a “realistic possibility” of HIV exposure in the specific circumstances that lead to the criminal charges for non-disclosure, courts can take into consideration evidence from scientific and medical experts. They also look at what other courts have decided in similar cases.

ACCHO: What is “a low or undetectable viral load”?

Alison: Viral load refers to the amount of HIV in a person’s body. It is measured with a blood test. “Undetectable” means that the amount of HIV in the blood is so low that the test does not even detect it, although the person still has HIV. “Low viral load” means that the amount of HIV in the blood is at the low end of the scale, but that the test can still detect it. The goal of antiretroviral therapy (ARVs) is to lower the viral load to undetectable.

The Supreme Court did not say exactly what would be considered a “low” viral load for legal purposes. Based on the Court’s decisions, at least any viral load below 1,500 copies per millilitre should be considered “low” but we do not yet know for sure what the cut-off point will be.

ACCHO: What can PHAs do to protect themselves from criminal charges?

Alison: There is no guaranteed way to avoid being accused of non-disclosure. Some of the things that you can do before you have sex to protect yourself against charges are:

- tell your sexual partners that you are living with HIV and make sure they understand what that means in terms of the possibility of HIV transmission;
- keep evidence that you have disclosed to your partners, such as:
 - » copies of letters, emails, text messages (Some people choose to disclose their HIV-positive status by email, in their on-line dating profile or through social media. While these can be

effective ways to disclose and can provide proof of disclosure, once your HIV status is out in the electronic realm you may lose control of it so this can be a risky strategy.);

- » disclose in front of a reliable witness, such as a friend; have the witness write down the date and what was said and send it to you for safe keeping;
 - » have a couples counselling appointment together with your doctor or ASO counsellor and clearly disclose to your partner at the appointment; the doctor or counsellor can explain HIV transmission and prevention to your partner and document the discussion in your file;
 - » have your partner sign and date a document stating that they knew that you were HIV-positive before they had sex with you; and
 - » record a video of your partner clearly stating that he or she knew that you were HIV-positive before having sex with you (e.g., using your phone); download and save the video (Note that you should not share it with anyone else or post it on the Internet because you could face legal repercussions for doing so without their permission);
- instead of anal or vaginal sex, have other types of sex with a lower risk of passing on HIV;
 - use latex condoms; and
 - See your doctor regularly and work together to keep your viral load as low as possible. Ask your doctor to test your HIV viral load on a regular basis.

ACCHO: Can PHAs face criminal charges for not disclosing their HIV status in circumstances other than sex?

Alison: Most of the time, if HIV is an issue in a criminal case it is in relation to non-disclosure before sex. One woman in Ontario faced some charges when she did not tell the health care providers who attended to her labour and delivery that she was living with HIV. She also did not follow the protocol to prevent mother-to-child transmission of the virus. Many PHAs have faced charges for spitting at or biting police officers or prison guards, and a few for using things such as syringes as weapons during robberies (threatening that the syringe contained HIV infected blood). In theory, charges could also be laid for non-disclosure prior to sharing drug injection equipment, but I do not know of any such cases. As well, charges can be laid for non-disclosure of other sexually transmitted infections (STIs), but so far there have only been a handful of cases that were not about HIV.



HIV PREVENTION

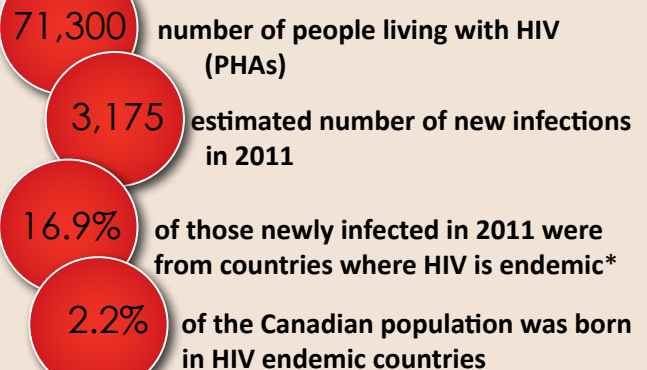
HIV is a virus. HIV can be found in blood, genital fluids and breast milk. HIV transmission occurs when a sufficient quantity of a bodily fluid carrying the virus gets into someone else's bloodstream and starts a new infection. There are various ways that a person can become infected with HIV, including through unprotected sexual intercourse or sharing drug use equipment with an HIV-positive person, contact with infected blood (e.g., a needle-stick injury), and from an HIV-positive mother to an infant during pregnancy, delivery or breastfeeding.

While there is no vaccine, there are many effective HIV prevention techniques. Using condoms consistently and correctly for sexual intercourse and choosing sexual activities that do not involve exchanging sexual fluids or blood greatly reduces the risk of HIV transmission during sex. Always using clean needles to inject drugs is an effective means to prevent HIV transmission through drug use. Treatment with antiretroviral drugs also greatly reduces the chance of HIV transmission, including from a mother to an infant.

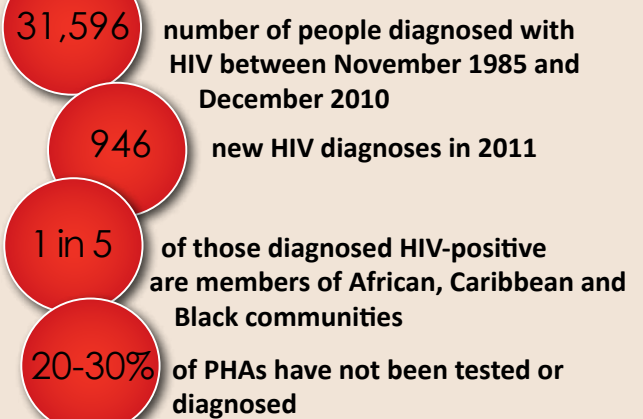


BY THE NUMBERS

CANADA:



ONTARIO:



* HIV-endemic means that there is a high HIV prevalence and the majority of the infections result from heterosexual sexual relations. Most countries of the Caribbean and sub-Saharan Africa are HIV-endemic. The vast majority of people living with HIV from HIV-endemic countries are Black.

Sources:

Public Health Agency of Canada, *Summary: Estimates of HIV Prevalence and Incidence in Canada, 2011*

R. Remis, C. Swantee & J. Liu, *HIV/AIDS in Ontario: Preliminary Report 2012*

OCHART, *View from the Frontlines 2012*

| ACCHO RESEARCH REPORT: THE IMPACT OF CRIMINALIZATION



OF HIV NON-DISCLOSURE ON AFRICAN, CARIBBEAN AND BLACK COMMUNITIES IN ONTARIO | ACCHO RESEARCH REPORT :

For some time, many in the community have expressed concern that the criminalization of HIV non-disclosure was having disproportionate and negative impacts on African, Caribbean and Black (ACB) people in Ontario. The media coverage of ACB people living with HIV (PHAs) who have been charged is particularly troubling. Given this urgency, the African and Caribbean Council on HIV/AIDS in Ontario (ACCHO) undertook to inform and mobilize the community.

As Valérie Pierre-Pierre, ACCHO's Director, explains, "ACCHO has taken up the issue of criminalization of HIV non-disclosure because although it has been the topic of much debate lately, not enough attention has been given to how it is affecting members of African, Caribbean and Black communities." She further notes that "the HIV cases that receive the most attention in the media are those involving members of our communities, further stigmatizing individuals and whole communities as well. The work of ACCHO on HIV and the criminal law is intended to highlight the very specific issues that affect

members of our communities, and raise awareness about the realities of people's lives."

As a result, ACCHO undertook an agenda-setting research project on the criminalization of HIV non-disclosure in Ontario and the specific concerns of ACB persons. In August and September 2010, the experiences and opinions of community members were gathered through focus groups, interviews and discussion sessions. Participants included support workers, directors of non-governmental organizations and AIDS service organizations, journalists, a lawyer, researchers, community leaders, and the AIDS Bureau (of the Ontario Ministry of Health and Long-Term Care). Both male and female PHAs contributed. Media coverage of the cases and literature relevant to the topic were also reviewed.

Akim Adé Larcher, one of the researchers on the criminalization project, describes the project as *trail-blazing*. "The report is critically important. It is the first analysis of criminalization of HIV non-disclosure as it is experienced by ACB communities. It therefore adds an

important element to the conversation and advocacy efforts going on in Ontario.” He was also thrilled to be able to include such a diverse group in the preparation of the report. “Throughout this project, we were able to speak in-depth with over thirty people about the law, the media, racism and HIV-related stigma. We were also guided by a thoughtful and well-informed Advisory Group. The research was truly community-based and community-informed, and as a result the report provides a very intimate account while also charting out a plan for strategic future actions.”

"ALTHOUGH DISCLOSURE IS THOUGHT TO BE A MEANS TO STOP THE TRANSMISSION OF HIV, IT IS A PROCESS THAT REQUIRES ADEQUATE SUPPORT..."

ACCHO’s report is entitled *Criminals and Victims? The Impact of the Criminalization of HIV Non-Disclosure on African, Caribbean and Black Communities in Ontario*. As suggested by the title, a central question in the report is whether those living with HIV should be thought of as “criminals” and/or “victims,” as the criminal law approach to HIV exposure suggests. The report ultimately denounces this approach.

The report begins with a discussion of ACB communities in Ontario, vulnerability to HIV, and the personal and community dynamics associated with HIV disclosure. The discussion makes clear that while all people living with HIV experience the effects of stigma and find disclosure difficult, ACB PHAs face particular challenges. In the words of one interviewee, “There is some uniqueness to the fears of confidentiality, disclosure, gender-power imbalances, and cultural nuances that exist within ACB communities.” With respect to HIV disclosure, another interviewee noted that “It’s not just a personal ramification, but about how your immediate family is treated later, your extended family here, your extended family back home and your entire community. ... The ripple effect actually goes far beyond the individual, and that’s what people think of. This doesn’t only impact me, it impacts my whole family.”

The report then looks at the criminalization of HIV non-disclosure in Ontario, paying attention to issues of race and the criminal justice system in Canada. Deep-seated racism has long been a feature of ACB peoples’ interactions with police, courts and prisons. Dating back to the slavery era, racist beliefs and practices have been part of criminal justice institutions. Today, the relationship between police and Black people is troubling, especially in urban areas. The Canadian criminal justice system tries to dispense “justice” regardless of race, but it does not always deliver on its promises of equality.

Next, *Criminals and Victims?* explores how the criminalization of HIV non-disclosure affects PHAs and ACB communities. It shows that this crime does not fit with how the community understands rights and responsibilities in sexual relationships. There are also questions about who is bringing HIV non-disclosure allegations to police, and why. Immigration issues are also important. The additional burden on organizations serving ACB populations that are dealing with criminalization is another element in the report.

The report also looks at how the media covers these trials and the impact of that reporting on ACB communities. In the words of one of the people interviewed for the project, “People are being tried and convicted in the media.”

The report concludes with a list of opportunities to respond. Included are various actions to be undertaken by different people in collaboration with ACCHO. As Valérie Pierre-Pierre notes, “Although disclosure is thought to be a means to stop the transmission of HIV, it is a process that requires adequate support, and is not easily done, especially given the stigma (and other issues) members of our communities face. This is further complicated by the lack of clarity around the circumstances under which PHAs are expected to disclose their status. Hopefully ACCHO’s work will help raise awareness of the challenge of disclosure, and the need for policy that is clear in its intent.”

In the time since ACCHO published *Criminals and Victims?*, the law has become even more onerous on people living with HIV. ACCHO has therefore renewed its focus on this issue. ACCHO is a member of the Ontario Working Group on Criminal Law and HIV Exposure, participates in the campaign for prosecutorial guidelines in Ontario, and has brought together its members to discuss the legal reality for PHAs in Ontario. ACCHO has also committed to developing a position statement, to be a voice for ACB PHAs who are so harshly affected by the overly broad criminalization of HIV non-disclosure.

Criminals and Victims? The Impact of the Criminalization of HIV Non-Disclosure on African, Caribbean and Black Communities in Ontario is available from ACCHO (www.accho.ca) and many of the findings are included in this magazine.



- A disproportionate number of charges will be brought against members of our communities, resulting in more HIV-positive Black men and women facing criminal investigation and long trials. Ultimately, more members of our communities will be sent to prison. Imprisonment has enormous personal consequences but is also very difficult for families, especially children, and communities more broadly. The media coverage of these cases will increase the stigma against our communities as Black people living with HIV are inaccurately portrayed as irresponsible sexual predators, infecting “innocent” Canadians.
- Decisions about when to begin treatment will become more difficult as we can no longer focus solely on what is best for our health, but now will also consider the need for evidence to protect ourselves in case of a non-disclosure allegation. Near perfect adherence and regular access to laboratory testing could mean the difference between freedom and incarceration.

WHAT DOES THE NEW LEGAL STANDARD MEAN FOR AFRICAN, CARIBBEAN AND BLACK PEOPLE LIVING WITH HIV?

In October 2012, the Supreme Court of Canada released two new HIV decisions. Many newspaper and TV reports said that the Supreme Court had reduced the obligations on people living with HIV (PHAs) to tell others about their HIV status, but this was incorrect. The Court had in fact expanded the range of circumstances where a PHA might be charged for HIV non-disclosure. It quickly became clear that the new legal standard — that PHAs have to tell their sexual partners that they are HIV-positive unless they use condoms and have a low or undetectable viral load — is not good news for the community.

Only time will tell for sure, but here is what we predict this decision will mean for our communities:

- Members of our communities will face greater stress, anxiety and depression. We have a lot of fear about others finding out that we are living with HIV and we experience a great deal of stigma related to HIV, sexuality, race and other characteristics. These broad disclosure obligations with such severe penalties are a significant additional mental health burden.

- There will be more violence against members of our communities. Women and others in coercive relationships will be required by law to disclose their status, even in circumstances where the risk of HIV transmission is minimal. Emotional and physical violence will ensue in some situations. Abusers may also threaten to report their HIV-positive partners to police for non-disclosure. Even if the allegations are false, the resulting investigation and possible charges could be devastating for the PHA.

HIV rates are much higher in our communities than in the general Canadian population, and levels of stigma and misinformation are also high. We also face challenges in accessing HIV treatment, other healthcare and support services. Many within our communities also have difficulties negotiating the type of sex they want to have. Together, these factors increase the likelihood of charges against members of our communities. At the same time, the over-criminalization of HIV non-disclosure will undermine our ability to address these issues together. The Supreme Court’s decision is a disaster for our communities and our HIV response. We therefore must stand together, support one another and oppose this law.

HIV DISCLOSURE: ONE WOMAN'S STORY



It was the doctor who had conducted Aisha's (not her real name) immigration medical assessment who told her that she was HIV-positive. Just like that, with no counselling or support, he dropped that news on her. Aisha had recently immigrated to Canada. She had no family here, and now she had to deal with a major health issue on her own in a strange country. It was a lot to handle. "I felt that my HIV status would affect my immigration case, I didn't know why I was doing the medical, why did I have to do an HIV test." "After I tested positive," she wondered, "maybe I would be sent back."



As if dealing with the immigration process, finding accommodation, making friends, getting a doctor, and understanding her HIV infection wasn't enough, one day she received a phone call from Public Health that added yet another challenge. "It was a nurse from Public Health who gave me the referral to an ASO [AIDS service organization]" which was very helpful, she recounted. On the other hand, it was this same Public Health nurse who explained that "if I were to be engaged in any sexual relationship I had to disclose my status and if I don't disclose my status, I could be charged -- and that freaked me out!"

Over the past few years, she has settled into her new Canadian life and has come to understand and accept her HIV+ status. But it hasn't been easy. And disclosing her HIV+ status to friends and boyfriends has been one of the challenges. At first, she told her friends that it was a chronic health condition that had been diagnosed at her immigration medical, and that the doctor's appointments and medications were for that condition. It was a difficult situation.

Now that she has her own apartment and is more empowered about her status, she is able to disclose to people who she thinks should know. But the fears many people living with HIV (PHAs) express about what will happen once they have disclosed have certainly been confirmed in her experience. Aisha notes that although she has disclosed to most of her friends who are by and large accepting, a small number of others have indicated that her company isn't always welcomed. She recalls one of her long-time female friends, for example, who took it upon herself to reveal Aisha's HIV status to her boyfriend (Aisha had already told the boyfriend). Another time, an ex-boyfriend was angry with her and tried to get back at her by revealing her HIV status to her new boyfriend. The same ex-boyfriend also threatened to reveal her status to other people in the community.

She describes HIV disclosure as a process, "like travelling a mile". She doesn't blurt out her status right

away, but instead tests the person a bit first by mentioning "HIV" or "ASOs" to see what the reaction is. She is worried about the possibility of false allegations leading to an investigation, so she has developed methods to protect herself. For example, she takes her boyfriends to her doctor appointments, she takes them to her talks at ASOs and to places where HIV+ people go to seek services. She believes that if a person later tried to deny that he knew about her HIV+ status, these encounters will be her proof that he did in fact know.

While she always discloses her status to her partners, she says that she believes that everyone should take responsibility to protect themselves. The criminalization of HIV non-disclosure puts her in a difficult position. Fear of prosecution is always a factor, but also fear of how people will respond when she discloses to them: "you never know what is going to happen."

Based on her personal experience as an HIV+ woman living in Ontario, she believes that the criminal law should be used in cases of rape and abuse, not HIV non-disclosure in consensual sex. If a person is taking their medications, has an undetectable viral load, or always practices safer sex, why should they be subjected to criminal prosecution? It doesn't make sense to her. She hopes that the law will soon be changed.

While she notes that HIV+ women face a lot of challenges – violence, deportation, discrimination, their children being taken away or discriminated against by other kids, plus the worry of having their picture all over the media – she is doing well now. Her health is good and she has a great support network that includes ASOs that have helped her make decisions about disclosure. "The ASOs have empowered me to disclose, support groups have helped," she says with a smile. "When you see that other people are facing similar things, you don't feel alone."



FROM THE SOUL: ONE MAN'S STORY

Jail

When I arrived the other inmates already knew. They don't miss the news. 6:00 CityTV – it's like a tradition. They get all the information of the guys who are coming in next. They get a picture of you and what you're coming in for.

And then my picture comes on. I'm watching myself on TV. So now the whole jail knows my situation, and everyone turned and looked at me. I didn't have to tell them anything. CityTV made sure.

I felt like my soul was on the table, you know, they were not just looking at me, they were looking inside of me, because everything about me was out there. They just didn't talk about my HIV, they talked about my wife, people that I may have infected... The story ran for 3 or 4 days.

Delroy (not his real name) had been convicted of aggravated sexual assault for not disclosing his HIV-positive status to two girlfriends. Neither of them was infected.

The diagnosis

Delroy had moved to Canada in the early '90s. He had a job, a wife, and things seemed to be going well until

he ended up in the hospital. He was shocked when the doctor informed him that he was infected with HIV.

He didn't know anything about HIV or anyone living with HIV. He had never used a condom before. His family didn't know anything about HIV either. As far as they knew, he was dying of AIDS.

I was determined not to die from HIV number one, and I couldn't believe it. I mean, all my dreams for coming to Canada, having my family, ... All that just seemed to fall through in a heartbeat. My world was crumbling and I was fighting to hold it together.

His wife tested positive too. Then the blaming and fighting began. Delroy moved out of the house and was completely alone with his HIV. Reflecting on that time, he remembers the denial.

It was like self-preservation kicked in. I went into that safe spot that I needed.

While he understood the diagnosis, he could not believe it. He went to get a second opinion. Part of him started to believe that if he thought of positive things, positive things would happen. He felt that it wasn't really happening to him, that he didn't really have HIV.

He found no support from friends or family. Delroy's sister couldn't bring herself to even say "HIV". When he went to her home, she served him with separate utensils, a separate cup. She didn't know any better and he felt as if he was no longer welcome in her house.

My whole life became a lie, in essence. I couldn't tell anyone I had HIV.

The diagnosis overwhelmed him and he hit rock bottom. He stopped going out. He stopped eating. After about two weeks a neighbour checked up on him, having not seen him around the building and noticing that his car had not moved in weeks. Delroy was rushed to the hospital.

Thankfully, a chance encounter with a support worker at the hospital turned things around. She told him about local AIDS service organizations (ASOs) and helped him get the care that he needed to regain his health. More importantly, she helped him find the motivation to get back on track.

Facing charges

By the time he came to terms with his diagnosis, the damage had already been done. A family member reported to police that he was spreading HIV. He faced charges for not disclosing his HIV-positive status to several women.

Police investigated him and his family in Ontario. They also questioned his family back home, leading to media coverage there as well. Everyone knew. One old friend unexpectedly expressed her sympathy for what he was going through, but most of the people he had called friends just disappeared.

The judge found him guilty as charged. He had never been incarcerated before.

I was scared. They put me in a full cell. I was the last one coming in so I got the floor. I didn't want any trouble, but I remember my doctor saying that if I got pneumonia again I would die. I was scared to hell, sleeping on the cold floor. Even the walls were freezing cold.

I wasn't made for a hostile environment. That played a role in my fear. Every day I had to protect myself, physically and mentally. I was living by my wits. I was worried about my medical condition, about my family, and about my safety.

Living with HIV

If people were to experience living with HIV just for one day, maybe then, and only then, they would act with empathy. Maybe then they would act upon it and see what we are living with as HIV-positive people.

It's like living in limbo, living with shame. That is why people don't come to [the ASO]. People might see them and connect the dots. It's in the whole community – in the doctor's office, the dentist's office, the school, the church, ... it's one big secret.

After completing his sentence, Delroy found a support network through two local organizations. By volunteering, he believed that he could help others to understand more about HIV and also help those who were newly diagnosed to see that they can be healthy and happy. The people at the organization became like his family. The organizations provided him with a safe space where he could relax and escape the daily pressures of living with HIV. But living with HIV remained very, very difficult for him.

It's like living a lie. If you come to my house, I have to make sure that everything that has HIV on it is hidden.

People don't want to keep secrets. We all want to have a partner. We all want to feel liked. But being HIV-positive, when you get rejected, it's like double. You get shot down. We just want to be like everybody else, to have somebody to love, so we don't have to feel lonely and not worth anything. To be made to feel worthless, that kills you worse than HIV.

Perhaps one day he'll write an autobiography, he muses, to tell his story from his soul.

POET'S CORNER

**I ponder the reason why
Lost forever in the complexity of many words
My essence of life, my very being
Was caught up in the mix**

**Crossing paths of bodies of law
Crossing paths of laws on bodies
I stood frozen in what to say
What not to say**

**Like a seesaw the echoes grew louder
The law now torments me
When do I break free?
When does this end?**

**I choose to respond
I choose to fight
I choose to live
I choose to be free**

Anonymous

8th April, 2011



EDITORIAL

RACE, THE MEDIA AND CRIME REPORTING



Canadian newspapers, radio and TV news continues to portray a generally negative image of African, Caribbean and Black (ACB) people. The stories about and photos of ACB people are often not empowering or flattering. ACB people are often portrayed as “outsiders” or second class citizens within Canada.

Crime reporting is especially problematic. Racism is everywhere in crime reporting. Crimes that are allegedly committed by ACB people are over-reported. And when a crime is allegedly committed by an ACB person, the reporters focus unnecessarily on the accused person’s race, ethnicity and immigration status. All of these stories in the news about Black people committing crimes lead the public to think that Black people are criminally inclined. They create fear and hostility towards ACB people generally. If that is the general trend in crime reporting, what happens when an ACB person is accused in an HIV non-disclosure case? Sex, disease and possible deception, ... journalists have all the elements to tell enticing stories. There is lots of dramatic language and sexual imagery. The stories create a sense of danger, panic and fear. All of the complainants become “innocent victims”. And all of the accused people living with HIV come across as sexual predators, out hunting for victims to infect.

Let’s stand up and be clear: We are people living with HIV, not “innocent victims of HIV” and “AIDS criminals”. We will write letters to the editor. We will correct misinformation and emphasize HIV prevention messaging. We will speak with strong and united voices. We will collaborate with our community papers to inform and empower our communities. Just as the law must change, so too must the stories portrayed in the media.

■ Uniquely challenging for teenagers

As a woman living with HIV with an HIV-positive teenage son, I am terrified about the criminalization of HIV exposure. The teenage years are a time of rebellion and experimentation. My son has dyed his hair blonde, defied his curfew, avoided church service, and skipped exams at school. He even stopped taking his ARVs for a short while. All of this is to be expected from a teenager. But when he starts discovering and experimenting with sexuality, he will have so much more to deal with. The possibility of criminal charges for not revealing his positive status to his first sexual partners (even if they are lying) could destroy his future! I pray that the police, prosecutors and judges will see that charging a youth living with HIV won't help anyone.

A panicking mother

■ The law and reality of disclosure don't match

I am a counsellor at an organization that provides services to HIV-positive women. I help women through the process of coming to terms with their diagnoses, learning what it means to live with HIV. And I support them in disclosing to the important people in their lives. An HIV-positive woman doesn't just announce "I'm HIV-positive" to everyone. The process takes time and requires support, for both people. Disclosure can take many forms, involve different steps, and have distinct outcomes (sometimes including emotional or physical violence). The harsh criminal penalties for not disclosing simply do not reflect the complex reality of HIV disclosure.

A support worker living in the real world

■ Call it what it is

The criminalization of HIV non-disclosure is having devastating impacts on people living with HIV,

on our communities, and on the fight against HIV. But there is one part of the issue that we never seem to have the courage to discuss – that is how sexism, homophobia and the lack of honest discussion in our community play a role in the number of Black men charged. Until we can name discrimination for what it is, until we can all be empowered to ask for condoms and be active, equal partners in sexual relationships, we will never be able to effectively respond to HIV in our community or to the criminal charges.

A warrior in the daily battles for equality

■ People living with HIV are deeply puzzled about criminalization

As a Black person living with HIV for almost 15 years, I am so confused and conflicted about criminal charges for HIV exposure! Like most people living with HIV (PHAs), I would NEVER want to risk exposing someone else to this virus. I always use condoms for intercourse and make sure my partners understand what HIV is and how it is transmitted. I wouldn't wish this virus on anyone! So when I read in the newspaper about how scared and angry the people in these cases are when they find out that they were exposed without knowing, I sympathize. My stomach does a flip just thinking about it! But on the other hand, how does it help to send PHAs to jail?! I know disclosure is not always possible, and safer sex is possible even if the person hasn't disclosed. I've seen PHAs who are in denial, or simply do not yet understand what it means to live with this virus. I've seen those struggling with mental health issues and addictions. I've also known so many PHAs over the years who have been terrified, abused, depressed, desperate, and at real risk of violence. And I've witnessed the attitudes by some of our community leaders, reproducing old myths about condoms being unnatural and reinforcing silence about sexuality. How is a person to make sense of all of this? Where does the criminal law fit into this messed up situation?

Not quite sure what to think

■ Services for heterosexual men are needed

I know community organizations continually struggle to provide many services with limited resources. I'm a straight Black man and I just have to say that it's hard to find volunteer opportunities and services that address my needs. I mean, my neighbourhood community centre doesn't address HIV. The ASO doesn't have a straight guys' support group. I don't think I have an answer, but my community is going to have to take a stand and speak up if we really want to stop the spread of HIV.

Straight, Black and Positive

■ Both sexual partner and sexual health educator

Maybe it is my ethical and legal duty to tell my sexual partners that I am HIV-positive, but do you have any idea how difficult that is when most people know so little about what HIV is, how to prevent transmission, and that it is a now treatable chronic illness? Disclosing to a person who knows nothing about HIV, or has bought into the myths and stereotypes, is risky — who knows how they might react! But disclosing to a person who knows nothing about HIV is also a big responsibility. All of a sudden I'm no longer their love interest but their sexual health educator, reciting statistics, explaining how the virus works, and teaching them about safer safe practices. Really, it is not a role I signed up for.

HIV Prevention 101

■ Stigma is at the Centre

Everywhere you turn with this issue there is *stigma*. And it is all of the different types of stigma working together that really create huge burdens. It is not just about HIV status, but also race, religion, sexuality, sex, where we came from, what kind of work we do, whether we have kids, if we do drugs, ... As a community, we've got our work cut out for us! We have to fight back against stigma in the media, in government services, in the courts, in churches and mosques, in schools, and in our neighbourhoods. But it is worth it!

Living Positively

IT IS OUR FIGHT TO WIN

By Shannon Thomas Ryan
Black Coalition for AIDS Prevention (Black CAP)



In 2012, the Supreme Court of Canada, the highest office of justice in Canada, offered an especially unjust decision that negatively impacts all Canadians living with HIV or AIDS. This decision further criminalizes people living with HIV and will have an overly harsh impact on Black, African and Caribbean people. This is

an important time for us to reflect on the specific impact of this decision and to recognize it as yet another example of how Canada's criminal justice, public health system and media have failed Black communities.

We have experienced great victories against HIV and witnessed incredible advances in treatment, prevention and programming for people living with HIV. But sadly, African, Caribbean and Black people have also experienced great losses – millions of our brothers and sisters around the world have lost the fight against HIV. At this moment, we are also losing the fight on other fronts. One of these ongoing battles is against the excessive criminalization of Black people living with HIV.

Over the past several years, the Canadian criminal justice system has become much more vigorous in its pursuit of those who have not disclosed their HIV status to sexual partners. We have seen an increase in the number of people charged for non-disclosure and increasingly serious charges and sentencing. The sad reality is that about one in three of all men charged are Black, and the Black men seem to face the most serious charges, including murder, attempted murder, sexual assault and aggravated sexual assault.

The fact that Black people are disproportionately charged for these crimes is especially troubling, but not especially surprising. As Black Canadians, we know that justice is not always blind. When we look at the inequalities in this system, such as the especially high incarceration rates of Black youth and women, we begin to see the roles that race and racism play. Unfortunately the recent Supreme Court decision continues this tradition.

While the broader HIV movement has worked to address such inequities in our criminal justice system, we

have not yet seen the involvement of Canada's broader Black communities. Canada's Black communities have a long history of mobilizing to create social change. We should be so proud of the political force exerted by our communities and the many civil rights advances we've fought for, now is the time for us to exert similar force against the criminalization of Black bodies.

CAN A VIRUS BE RACIST?

By Rinaldo Walcott
Ontario Institute for Studies in Education (OISE)

We are now more than thirty years into the HIV epidemic. It is important that we remember the panic that greeted the arrival of the virus and the ways in which the communities thought to be carriers of the virus were treated. What later became known as HIV/AIDS was initially greeted with hysteria. First it was thought to be a gay disease, and many people therefore saw it as God's punishment for "unnatural acts". Then it was seen as a Haitian disease, and many saw it as evidence of the degeneracy of Black peoples. Those two examples remind us that the history of HIV is littered with discriminatory practices, but also, with communities refusing to be discriminated against and taking a firm stand for their rights.

As we continue to try and reign in this epidemic, we should be reminded that HIV/AIDS continues to be a disease that is over-burdened with moral, political, cultural and social baggage. This leads to all kinds of stigma, and therefore those affected by HIV have very complicated and complex responses to their own positive status. HIV/AIDS is much more than a disease. It forces us to contend with what we mean by life and what we would be willing to do to protect all life. Thus HIV is a fundamental social, cultural and political issue, as well as a health issue. It is a crucial ethical issue. In that sense, we are all affected by the pandemic, HIV-positive or not.

Thirty years ago, some people in the USA wanted people infected with the virus to be quarantined and placed in isolation on Ellis Island. Thankfully, more sensible solutions and responses prevailed. But now the criminalization of HIV forces us to confront another irrational proposal of how to deal with HIV.

Can a virus and its transmission be considered a crime? Can a disease be racist? When it appears or is perceived that Black people are disproportionately represented in the media as the source of the HIV problem, what questions and concerns do we face, beyond the legal concerns?

Given the long legacy of Black peoples being represented as wrongdoers, as criminals, criminalizing HIV poses a special problem for Black people. Each time a person is arrested for allegedly exposing someone else to the virus, a panic arises that is similar to the history of Black peoples as less than human, as acting only from innate impulses. As we move forward and figure out how to respond to the criminalization of HIV, we cannot forget the history that blamed Haitians and Africans for the virus. We cannot separate the issue of criminalization from the project of making cheaper generic anti-retroviral drugs available in Africa and the Caribbean. We cannot separate HIV criminalization from the broader ways in which Black peoples are criminalized in North America. Our failure to work towards ending the criminalization of HIV non-disclosure will make the virus a racist virus, if it is not that already.



A VIRUS, NOT A CRIME

“... [C]riminalisation increases stigma. From the first diagnosis of AIDS..., HIV has carried a mountainous burden of stigma. This has been for one over-riding reason: the fact that it is sexually transmitted. No other infectious disease is viewed with as much fear and repugnance as HIV. Because of this, stigma lies at the heart of the experience of every person living with HIV.

It is stigma that makes those at risk of HIV reluctant to be tested; it is stigma that makes it difficult – and often impossible – for them to speak about their infection; and it is stigma that continues to hinder access to the life-saving antiretroviral therapies...

Legislators, bewildered, baffled, or at a loss as to how to respond effectively to the epidemic, may be seduced into taking recourse to criminalisation, because it seems attractive, effective, and media-friendly. But it is not prevention- or treatment-friendly. It is hostile to both.

This is because, tragically, it is stigma that lies behind the drive to criminalisation. It is stigma, rooted in the moralism that arises from the sexual transmission of HIV, which too often provides the main impulse behind the enactment of these laws.

Even more tragically, such laws and prosecutions in turn only add to the fires of stigma. Prosecutions of HIV transmission and exposure, and the chilling content of the enactments themselves, reinforce the idea of HIV as a shameful, disgraceful, unworthy condition, requiring isolation and ostracism.

But HIV is a virus, not a crime. That fact is elementary, and all-important. Law-makers and prosecutors overlook it. We must fight this new burden of moralising stigma and persuade them of how wrong their approach is.”

— Edwin Cameron, Scott Buris and Micheala Clayton, “HIV is a virus, not a crime: ten reasons against criminal statutes and criminal prosecutions” (2008)

TRIVIA:

True or False:

In serodiscordant relationships (where one person is HIV-positive and the other is HIV-negative), the negative partner always becomes infected eventually.

False. Many serodiscordant couples have happy and healthy sex lives, and the HIV-negative partner remains negative. Engaging in low risk sexual activities, using condoms, and adhering to treatment are effective ways to prevent HIV transmission.

True or False:

If you use condoms, you do not need to disclose your HIV+ status to your sexual partners.

False. Even if you use condoms, you may still be legally required to disclose your HIV-positive status to sexual partners before having intercourse. See the section entitled “When do I need to disclose my HIV status before sex?” earlier in this magazine for more details.

True or False:

Avoiding HIV testing is an effective way to avoid criminal prosecution.

False. If there is reason to believe that you have been exposed to HIV, then you could still be charged if you do not inform your partner, before having sex, that you may have HIV. Get tested for your health!

Developing guidelines for prosecutors

Prosecutors are lawyers that work for the government. They bring cases to court against people accused of committing crimes. Documents called Practice Memorandum (more commonly called “prosecutorial guidelines”) instruct prosecutors on how to handle different sorts of cases. In December 2010, the Ontario Working Group on Criminal Law and HIV Exposure (CLHE) was pleased to receive the Ontario Attorney General’s commitment to develop a Practice Memorandum on HIV non-disclosure. If the guidelines are well formulated, they could help to reduce the number of cases in Ontario.

CLHE has consulted with people living with HIV, communities affected by HIV, legal, public health and scientific experts, health care providers, sexual assault service providers, and community organizations about possible guidelines. CLHE submitted recommendations on what prosecutorial guidelines should include to the Attorney General.

CLHE continues to work towards guidelines for prosecutors based on science, not fear and prejudice. Join the campaign at <http://www.clhe.ca>



Support for women living with HIV to disclose their status

Women’s Health in Women’s Hands Community Health Centre, in partnership with Africans in Partnership Against AIDS, the Black Coalition for AIDS Prevention, Casey House, the People with AIDS Foundation, the Teresa Group and VOICES of Positive Women, has developed a model to help women from African, Caribbean and Black communities who are HIV-positive to disclose their HIV status to their children, partners, family members, service providers and others on their own terms. Peer support workers provide individualized support to women living with HIV as they work through a series of steps in preparation to tell others about their HIV infection. The peers also provide referrals and information to the women and the people to whom they have disclosed.

Women looking for assistance with disclosure, and service providers wanting to support their clients through the disclosure process, can contact Women’s Health in Women’s Hands for further information.

416-593-7655 or info@whiwh.com



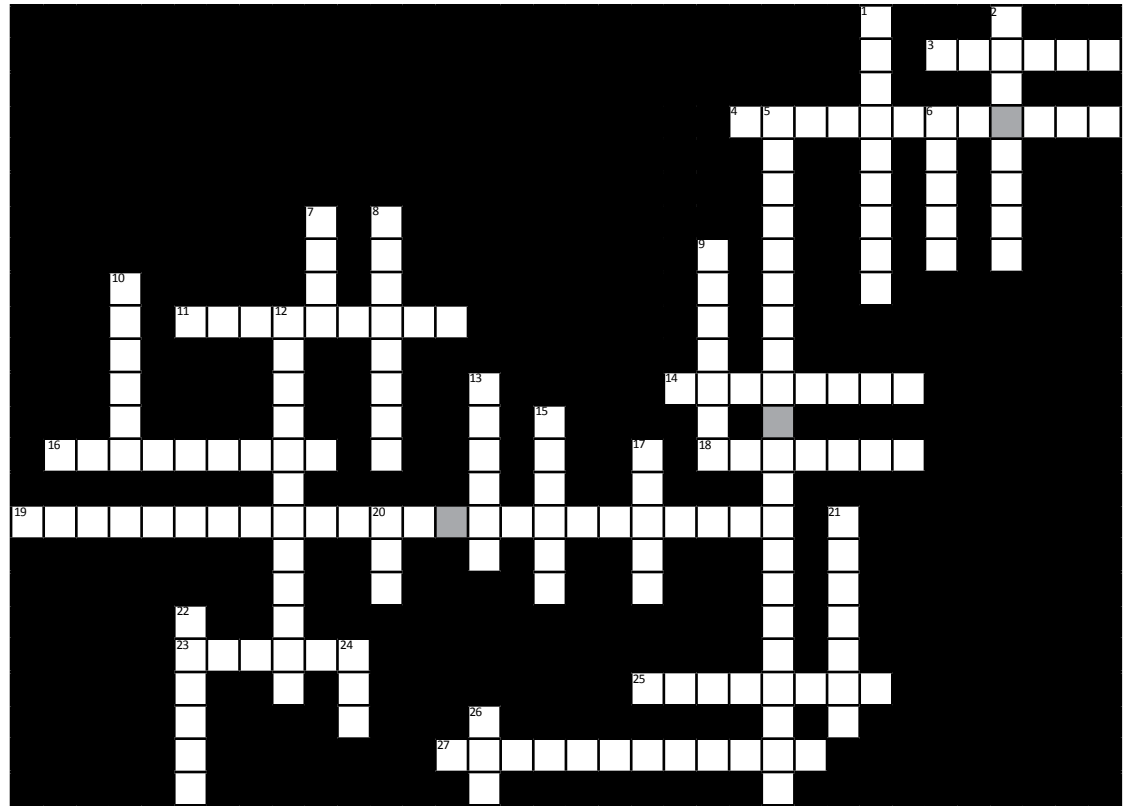
New workshop: an innovative approach to disclosure

This day-long workshop provides a safe, non-judgemental and respectful environment for people living with HIV to practice disclosure. Its goal is to help participants negotiate disclosure styles, build disclosure skills and confidence, learn ways of externalizing stigma-based negative responses, and have better disclosure experiences. The workshop uses role playing and theatre to provide unthreatening avenues to face fears around disclosure, providing thought provoking questions which challenge HIV associated stigmas. A Facilitator’s Guide steers the semi-structured, humorous activities that break barriers, demystify sex for positive people and help participants negotiate their own levels of comfort around disclosure.



The Canadian Treatment Action Council (CTAC) launched this workshop for service providers across Canada in 2013. If you are interested in hosting this workshop, or to find out if we have one planned in an area near you, contact Jolene@ctac.ca or visit www.ctac.ca/positive-sex

by Akim Adé Larcher



ACROSS

- 3. Social disapproval of personal characteristics or beliefs perceived to be against cultural norms.
- 4. If you break this type of law, you can go to jail. (2 words)
- 11. Having or showing realization; conscious of something.
- 14. To reveal, to tell some information.
- 16. A social, ethnic, religious, occupational, or other group sharing common characteristics or interests.
- 18. To give someone power or authority.
- 19. The Ontario Working Group on Criminal Law and HIV Exposure is calling on the Ontario Attorney General to develop these, in order to help prosecutors apply the law with respect to HIV non-disclosure fairly and consistently. (2 words)
- 23. This is the world's second-largest and second most-populous continent. It is home to rich and diverse cultures.
- 25. Being equal, having the same rights, free from discrimination.
- 27. The unfair practice of treating people differently because of their race, gender, sexuality, health status, immigration status, disability, religion, age, political beliefs, or other personal characteristics.

DOWN

- 1. This region consists of many islands. It is famous for its fabulous cuisine and lively music.

- 2. Regardless of what symptoms a person may or may not have, the only way to know if a person has HIV is by getting one of these. (2 words)
- 5. Under Canadian law, a person living with HIV may be guilty of a crime for not disclosing his or her HIV-positive status before engaging in behaviours that pose a _____ of HIV transmission. (2 words)
- 6. This is the acronym for the Ontario Council which is made up of organizations and individuals committed to HIV prevention, education, advocacy, research, treatment, care and support for African and Caribbean communities in Ontario.
- 7. The acronym for the Ontario Working Group that is advocating for prosecutorial guidelines.
- 8. Scientific, scholarly and community-based investigations to deepen the understanding of issues.
- 9. The outcome of a legal proceeding that is just, impartial and fair.
- 10. A _____ can prevent pregnancy. It also helps protect you from sexually transmitted infections (STIs).
- 12. The state of being connected to another, based on common interests, feelings or emotions.
- 13. To actively involve people or engage their commitment to something, especially a political cause.
- 15. Which case established the legal requirement to disclose HIV-positive status before sexual activities that pose a "realistic possibility" of transmitting HIV?
- 17. A charitable not-for-profit community-based legal clinic which provides free legal assistance to people living with or affected by HIV in Ontario.
- 20. The acronym for African, Caribbean and Black people and communities.
- 21. To give knowledge or develop abilities through teaching.
- 22. The belief that race is a primary determinant of human traits and capabilities.
- 24. The acronym used when referring to community-based organizations that provide support and services to people living with HIV.
- 26. The acronym for the virus that causes AIDS.

Crossword Answers
 1. Caribbean; 2. HIV Test; 3. Stigma; 4. Criminal Law; 5. Realistic Possibility; 6. ACCHO; 7. CLHE; 8. Research; 9. Justice; 10. Condom; 11. Awareness; 12. Relationship; 13. Engage; 14. Disclose; 15. Mabior; 16. Community; 17. HALCO; 18. Empower; 19. Prosecutorial Guidelines; 20. ACB; 21. Educate; 22. Racism; 23. Africa; 24. ASO; 25. Equality; 26. HIV; 27. Discriminate

DEAR ACCHO



“To us this issue is about the pathologizing of Black men, the criminalizing of Black men, the profiling of Black men as dangerous sexual predators and criminalizing of their condition, and this was systemic in nature.”

“I think we have a police system that is very conservative and racist. We have a media that loves this issue and loves to portray Black men as predators, without even realizing that they are doing it. We have a PHA community that is really divided on this issue. I think we as the Black community are also divided on this issue, because there is so much stigma there. There are a lot of contradictory factors at play that make it hard and difficult to find a solution.”

“HIV non-disclosure is not like assault cases, it’s totally different. The sad thing is that this is a complainant-driven process but not complainant-controlled. Once you make the call, a whole system gets set in motion and it’s out of your hands.”

■ Dear ACCHO,

A few months ago, I was in a relationship with a man. We had sex a bunch of times and then broke up after we started fighting a lot. I just found out through a friend of mine that he has HIV. I am so furious! I can’t believe that he didn’t tell me! I never would have had sex with him if I’d known. I’ve seen reports on TV about guys who have gone to jail for hiding their HIV status. What should I do?

Angry and confused

■ Dear Confused,

You need to make some important decisions. We recommend that you speak with a counselor at an AIDS service organization (call ASO 411 to find an organization near you or see the classified ads at the end of this magazine) and a lawyer to help you understand your options. You may decide that you do not want to involve the legal system at all, or that you want to start a law suit or apply to the Criminal Injuries Compensation Board rather than going to the police. You should understand what you will be asked to do and what can happen to him before you go ahead with any legal avenue of redress. You might want to wait a few weeks or months before you take any action, giving yourself time to be sure of what is the best decision for you.

If you decide to report your ex to the police, you will need to go in to your local police station or call them to arrange to make a report. Once you have made your report to the police, the case will be out of your hands. They will work with Crown prosecutors who will decide whether or not to charge him, and how to move ahead with the investigation and trial. Even if you

change your mind and do not want to go through with it, you cannot force the police or the prosecutor to stop the case.

If he is charged, the police will ask you a lot of questions about your intimate life, including details about your sexual relationships. If the case continues to court you will likely have to testify in court, telling details about your personal relationships, sexual encounters and health. There may be some confidentiality protections for you as the complainant, such as a ban on the media publishing your name, but people may be able to figure out who you are from the circumstances and the court will be open so people can attend and hear the evidence.

The whole process can take many years. You should have support throughout this process. If he is found guilty of not disclosing his HIV-positive status prior to engaging in a sexual activity that posed a realistic possibility of HIV transmission, (regardless of whether or not there was actual transmission of HIV) he will most likely be sentenced to serve time in jail.

ACCHO

■ Dear ACCHO,

Do I have to disclose my HIV-positive status to my boyfriend if I have an undetectable viral load and we always use condoms for sex? I have told him that I am not on the pill and he really doesn’t want to be a father, so he is very careful about always using condoms. Most of my family do not know that I am living with HIV and news travels so quickly in this community. I do not want to tell him unless the relationship becomes serious.

Always careful

■ **Dear Careful,**

In Canada, the law requires people living with HIV to disclose their HIV status to their sexual partners if there is a “realistic possibility” of HIV transmission. Under the law, vaginal sex is thought to pose a “realistic possibility” of HIV transmission unless you have a low or undetectable viral load and use condoms. In the circumstances you describe therefore, you should not be legally required to disclose before oral or vaginal sex. (For anal sex, the answer is not yet certain.)

For free legal advice specific to your situation, call the HIV & AIDS Legal Clinic Ontario (HALCO) or a criminal defense lawyer knowledgeable about HIV (see classified ads at the back of this magazine).

ACCHO

■ **Dear ACCHO,**

It seems that every time someone is charged for HIV non-disclosure in Ontario it's a Black man. Why? And what can we, as the Black community, do about it?

Alarmed Black Man

■ **Dear Alarmed,**

We are only beginning to understand what is going on with criminal charges for HIV non-disclosure in African, Caribbean and Black (ACB) communities in Ontario. Some factors to consider are that a) racism in the criminal justice system may be contributing to a disproportionate number of charges against Black men; b) the way that the media reports on crimes allegedly committed by Black people may be contributing to the disproportionate public

attention given to HIV cases against Black men; and c) stigma, sexism and homophobia may lead some Black men living with HIV to conceal or deny their HIV status to sexual partners.

We do know that these charges are devastating for the PHAs who are charged, and for PHAs who live in fear of being charged. They make it more difficult for some people to disclose, more difficult for AIDS service organizations to do their work, and are undermining HIV prevention initiatives. They contribute to racism against ACB communities and stigma against people living with HIV.

So what to do? Build alliances to oppose overly broad criminalization, educate others about the issue, conduct research to better understand the impacts of criminalization, respond to the media coverage, and develop guidelines for prosecutors, public health officials, physicians and police officers. There is a lot of work to be done. Let's get started, together.

Contact ACCHO to become involved: www.accho.ca or 416-977-9955.

ACCHO

■ **Dear ACCHO,**

I've got HIV. A guy I hooked up with last summer has been sending me threatening emails and texts for the last few weeks, saying he is going to report me to the police for not telling him my HIV status. Yesterday the messages stopped and a friend of his tells me he went to the police. What should I do?

Anxiously awaiting a knock on my door

■ **Dear Anxious,**

If the police contact you, remember that you have a right to remain silent and you do not have to answer their questions before getting advice from a lawyer.

You should try to speak with a criminal defense lawyer right away. She or he will be able to assess the situation and advise you on what you should do. The lawyer can also help you to put the pieces in place to apply for bail right away if you are arrested and held in custody. You can also ask the lawyer about the harassment you have been experiencing; you may be able to do something about that too.

The Legal HIV & AIDS Clinic Ontario (HALCO) is a legal clinic that provides free legal advice specifically for PHAs in Ontario. The Canadian HIV/AIDS Legal Network is a research, policy and advocacy organization working on HIV-related legal issues. HALCO, the Legal Network or a local AIDS service organization may be able to help you find a lawyer who is knowledgeable about HIV-related prosecutions. HALCO and the Legal Network can also provide you and your defense lawyer with information about this area of law and defense strategies. See the classified ads in this paper for their contact information (both accept collect calls).

ACCHO

■ **Dear ACCHO,**

I was diagnosed HIV-positive a few years ago, but so far my health has been pretty good. I eat well, exercise every day and get lots of rest. My doctor has not yet advised that I begin antiretroviral treatment

(ARVs). Does the Supreme Court's decision mean that I need to start treatment?

Not yet

■ **Dear Not yet,**

Whether to take HIV treatment and what sort of treatment to take is a personal medical decision. You should make your medical decisions in consultation with your doctor or nurse, not your lawyer.

ACCHO

■ **Dear ACCHO,**

I know that the law requires me to disclose my status before unprotected intercourse, but do I need to disclose if I am just having unprotected oral sex?

Still unclear

■ **Dear Unclear,**

It is difficult to give you a specific answer about disclosure and oral sex because the Supreme Court did not talk about oral sex in its October 2012 decision. The legal question is whether oral sex without a condom poses what the Court calls "a realistic possibility of transmission." Oral sex is usually considered a very low risk for HIV transmission, so you might expect that a person living with HIV would not have to disclose before oral sex. However we do not yet know what the courts will decide about disclosure and oral sex. Check with

HALCO or the Legal Network after some time has passed to see if there is any further clarity of how the law will apply to oral sex. (see classified ads at the back of this magazine)

ACCHO

■ **Dear ACCHO,**

A few weeks ago I met a woman who I really dig. I haven't told her yet that I have HIV but our relationship is moving pretty quickly. I would like to have intercourse with her. At what point do I need to tell her about my status? I think it would be easier if I wait until I am sure that she loves me.

Afraid to reveal my secret

■ **Dear Secret,**

The law in Canada is clear that you must disclose your HIV-positive status before engaging in any sexual activity that poses a "realistic risk of HIV transmission", otherwise your girlfriend's consent to have sex with you wouldn't be considered valid and you could be charged with aggravated sexual assault. We know that in reality, telling someone that you are HIV-positive and making sure that they understand what that means is difficult and complex. In some relationships, disclosure does not happen before sexual activity begins. But if you want to act in compliance with the law and protect yourself from prosecution, you need to disclose before you

have vaginal sex *unless* your viral load is low or undetectable and you use a condom. (The law is less clear about anal and oral sex. See "When do I need to disclose my HIV status before sex?" earlier in this magazine for more details.) Your local ASO or one of the organizations mentioned in the announcements at the end of this publication may be able to help you with disclosure.

ACCHO

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NEED INFORMATION ON HIV TRANSMISSION, SUPPORT AND REFERRALS, OR ASSISTANCE WITH DISCLOSURE?

AIDS SERVICE ORGANIZATIONS
IN ONTARIO

ASO411

www.aso411.ca

* If you do not see your community listed below, visit ASO411 to find your local services.

AIDS Committee of Cambridge, Kitchener, Waterloo & Area (ACCKWA)

2B - 625 King Street East
Kitchener, ON N2G 4V4
519-570-3687 / 1-800-770-3687

www.acckwa.com

AIDS Committee of Durham Region (ACDR)

22 King Street West, Suite 202
Oshawa, ON L1H 1A3
905-576-1445

www.aidsdurham.com

AIDS Committee of Guelph and Wellington County (ACG)

Unit 115 - 89 Dawson Road
Guelph, ON N1H 1B1
519-763-2255

www.aidsguelph.org

AIDS Committee of Ottawa (ACO)

251 Bank Street, Suite 700
Ottawa, ON K2P 1X3
613-238-5014

www.aco-cso.ca

AIDS Committee of Toronto (ACT)

399 Church Street, 4th Floor
Toronto, ON M5B 2J6
416-340-2437

www.actoronto.org

AIDS Committee of Windsor

511 Pelissier Street
Windsor, ON N9A 4L2
519-973-0222

www.aidswindsor.org

The AIDS Network

140 King Street East, Suite 101
Hamilton, ON L8N 1B2
905-528-0854 / 1-866-563-0568

www.aidsnetwork.ca

AIDS Niagara

120 Queenston Street
St. Catharines, ON L2R 2Z3
905-984-8684

www.aidsniagara.com

Africans in Partnership Against AIDS (APAA)

314 Jarvis Street, Suite 101
Toronto, ON M5B 2C5
416-924-5256

www.apaa.ca

Black Coalition for AIDS Prevention in Ontario (Black CAP)

20 Victoria Street, 4th Floor
Toronto, ON M5C 2N8
416-977-9955

www.black-cap.com

Peel HIV/AIDS Network (PHAN)

160 Traders Blvd East, Unit 1
Mississauga, ON L4Z 3K7
905-361-0523 / 1-866-896-8700

www.phan.ca

PASAN (Prisoners' HIV/AIDS Support Action Network)

314 Jarvis, Suite 100
Toronto, ON M5B 2C5
416-920-9567 / 1-866-224-9978

www.pasan.org

Regional HIV/AIDS Connection (Serving Elgin, Oxford, Perth, Huron, Lambton and Middlesex)

#30-186 King Street
London, ON N6A 3C1
519-434-1601 / 1-866-920-1601

www.hivaidconnection.ca

NEED INFORMATION ABOUT YOUR LEGAL RIGHTS AND RESPONSIBILITIES, OR HELP FINDING A LAWYER?

LEGAL INFORMATION & RESOURCES

HALCO (HIV & AIDS Legal Clinic Ontario)

65 Wellesley St. E., Ste. 400
Toronto, ON M4Y 1G7
416-340-7790 / 1-888-705-8889

www.halco.org

Canadian HIV/AIDS Legal Network

416-595-1666

www.aidslaw.ca

Global Network of People Living with HIV (GNP+)

www.gnpplus.net

Ontario Working Group on Criminal Law and HIV Exposure (CLHE)

www.clhe.ca

NEED TO GET TESTED?

Call the AIDS Hotline to find a testing site near you (including rapid and anonymous HIV testing).

(English and several other languages)

Toll-free from anywhere in Ontario:
1-800-668-2437

In the Toronto area:
416-392-2437



African and Caribbean Council on HIV/AIDS in Ontario (ACCHO)

The African and Caribbean Council on HIV/AIDS in Ontario (ACCHO) provides leadership in the response to HIV and AIDS in African, Caribbean and Black communities in Ontario. It is an Ontario-based coalition of organizations and individuals committed to HIV prevention, education, advocacy, research, treatment, care and support for African, Caribbean and Black communities. ACCHO and its members strive to reduce the incidence of HIV among African, Caribbean and Black people in Ontario, and to improve the quality of life for those living with and affected by HIV/AIDS through the coordination and monitoring and evaluation of the implementation of the *Ontario HIV/AIDS Strategy for African, Caribbean and Black Communities 2013-2018*, research and advocacy, and the promotion of the greater and meaningful involvement of people living with HIV/AIDS from African, Caribbean and Black communities.

Thank you!

Thank you to all of the community members who contributed their thoughts, experiences and opinions to this Special Report. Special thanks to Fanta Ongoïba and Patrick Soje, Africans in Partnership Against AIDS; Rinaldo Walcott, University of Toronto; Ryan Peck, HIV/AIDS Legal Clinic Ontario; Maureen Owino, Committee for Accessible AIDS Treatment; and Shannon T. Ryan, Black Coalition for AIDS Prevention, for their support.

This Special Report was written by Akim Adé Larcher, Director of the The Larcher Group, and Alison Symington. It was copy-edited by Vajdon Sohaili. Translation (English to French) by Jean Dussault and Josée Dussault. Design by Phoenixx Creative.

Nos voix : le VIH, la race et le droit criminel, Un rapport spécial du CACVO est également disponible en français.

This Special Report is adapted from *Criminals and Victims? The Impact of the Criminalization of HIV Non-Disclosure on African, Caribbean and Black Communities in Ontario* (ACCHO, 2010), available on-line at www.accho.ca. Please refer to *Criminals and Victims?* for citations, methodology, further details, and recommended actions.

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