

Thank you for including me in this crucial event.

I will be speaking to the most pressing legal issue facing people with HIV in Canada – the criminalization of HIV non-disclosure. However, I'd first like to briefly comment on nature of HIV today as well as attitudes toward the illness and people living with it.

There are roughly 75 thousand people with HIV in Canada, with approximately 20% undiagnosed (I note this upfront as there is a concern that the current use of the criminal law provides a disincentive to testing).

While there remains no cure for HIV, the current medical response is as good as it has ever been. Treatment, if available, has never been better – I say “if available” because there remain serious access issues throughout Canada. With treatment, however, people can and do live long, happy and productive lives with HIV. In fact, newly diagnosed

individuals *with access to medications* have more or less the same life expectancy as those who are HIV-negative. Knowledge of prevention strategies is also better than it has ever been – it is much harder to transmit HIV than generally supposed (the risk is actually zero if a condom is used properly and does not break, or if a person is being successfully treated). This means that even if a person has sex without a condom, as long as they are being successfully treated, which can happen as short as a few months after commencing medications, the risk of transmission is zero. This science is now certain with the release of results from the European PARTNER study which found that there were zero incidents of transmission after 56,000 sex acts, anal and vaginal, between Gay and Straight serodiscordant couples (one living with HIV and one not) when the person with HIV had an undetectable viral load (viral load is the amount of HIV virus contained in a person's blood – undetectable means that the virus cannot be found).

This is beautiful news. Unfortunately, social attitudes toward the illness, and people living with it, have not kept pace with science. Stigma and accompanying discrimination remain pervasive. It is shameful that, based on a 2012 study commissioned by the Public Health Agency of Canada,

- 15% of Canadians feel afraid of people with HIV
- 69% believe that people would not be willing to tell others they have HIV and 38% agree that people are unwilling to be tested for HIV due to stigma associated with the illness
- 24% feel uncomfortable wearing a sweater once worn by a person living with HIV, and
- 22% feel uncomfortable shopping at a small neighbourhood grocery store owned by someone living with HIV

Such attitudes influence action, public policy, and law. It is somewhat strange that as HIV becomes more manageable, and as transmission risks spike downward, Canada remains a **world leader** in prosecuting people with HIV, with at least 195 prosecutions since the late 80s. Amongst all illness, HIV is being singled out. It is essentially the only disease attracting criminal consequences.

In short, the law is unjust. People with HIV are facing charges of aggravated sexual assault, normally designed to respond to the most horrific of forced sex acts, for engaging in consensual behaviours that pose little to no risk of HIV transmission. For example, a woman not too far from Ottawa was charged and prosecuted for aggravated sexual assault when she had an undetectable viral load and a man performed oral sex on her. Transmission is impossible in such circumstances. It is an outright travesty that she was prosecuted. The law is also uncertain – it is not entirely clear what behaviours can lead to significant jail time (and registration on sex offender lists). And then there is fear, which is unfortunately not unwarranted, that a vindictive partner will lie to the police.

While the use of the criminal law would not be unwarranted in certain circumstances (for example, malicious intent), the current law, which flows from a 2012 Supreme Court of Canada decision, criminalizes people with HIV even if they had no intent to harm their partner, where

the risk of transmission is negligible or zero (i.e., a condom is used OR the person with HIV had a low viral load), and HIV was not transmitted. Some people have been also charged in relation to spitting and biting.

While the majority of cases are against men who have sex with women, there is an increase in cases against Gay men. HIV criminalization also has a disproportionate impact on women, Indigenous peoples, migrants, and African/Caribbean/Black communities. For example, there is great concern that women with HIV who are in abusive relationships will face aggravated sexual assault charges in situations where they are engaging in behaviours that pose little to no risk of HIV transmission but cannot safely impose condom use nor disclose their HIV status to sexual partners.

The current criminal law approach also creates additional barriers to disclosure and undermines HIV-related treatment, care, support and prevention by creating disincentives for individuals to seek HIV testing

and to talk openly with health care providers, due to the fear that one day their test results and/or discussions with medical professionals will end up as evidence against them in a criminal court.

The Canadian approach is significantly out of step with science and human rights. It runs counter to international norms, and was recently lambasted by a leading jurist at the worldwide AIDS conference in South Africa. Even before the release of the PARTNER study, Canadian scientists were speaking up - in 2014 over 70 leading scientists working in the field of HIV expressed serious concern with the law in their *Canadian consensus statement on HIV and its transmission in the context of criminal law*. Canadian Feminists are speaking up – deep concern is being raised about the use of sexual assault law to prosecute women, and others, with HIV.

It is high time for reform. I ask the Ministries of Health and Justice to take note of this situation and to work with the HIV community to

ensure both universal access to HIV medications and that law and policies are in line with up-to-date science and do not perpetuate stigma and discrimination against people with HIV.

Thank you, Merci, Megwetch.