



## **Response to the Canadian Human Rights Commission – Proposed Application Rules Changes**

August 4, 2022

## I. INTRODUCTION AND OVERVIEW OF SUBMISSIONS

As an organization that advocates for the human rights of people living with HIV in Ontario, including by representing clients in applications to the Canadian Human Rights Commission, we write to comment on the Canadian Human Rights Commission (the “Commission”) Complaint Rules Update consultation.

Because of the persistence of HIV stigma and discrimination, we highlight the importance of allowing individuals living with HIV to control and limit the disclosure of information about their HIV positive status and will focus our submission on proposed Rules 7.4 and Rule 12.12 which seek to enhance complainant privacy. We agree with the Commission’s practice of removing information that may put a person at risk of discrimination, harassment, violence and/or trauma, if the information is not relevant to the complaint and with the person’s consent. While the change highlights the harms that can arise from the disclosure of the existence of a deadname, or an actual deadname, we encourage the Commission to apply such protections to any other information that, if disclosed publicly, may put a person at harm, such as information about a person’s HIV positive status.

### HIV & AIDS Legal Clinic Ontario

The HIV & AIDS Legal Clinic Ontario (HALCO), founded in 1995, is the only legal clinic in Canada devoted to the HIV community. HALCO staff provide legal advice and representation and engage in public legal education, community development and law reform activities.

### Issue Overview: HIV-Stigma, Discrimination, Racism and System Inequities

Disclosure of information about a person’s HIV positive status<sup>1</sup> may be harmful because HIV-related stigma and discrimination remain pervasive.

Based on the most recent attitudinal studies commissioned by the Public Health Agency of Canada in 2012<sup>2</sup> and 2018<sup>3</sup>:

- 24% of people in Canada feel uncomfortable wearing a sweater once worn by a person living with HIV;
- 22% feel uncomfortable shopping at a small neighbourhood grocery store owned by someone living with HIV;

---

<sup>1</sup> This includes all HIV-related information as it may disclose that the person is living with HIV.

<sup>2</sup> Public Health Agency of Canada (PHAC) (2012). 2012 HIV/AIDS Attitudinal Tracking Survey (Final Report). EKOS Research Associates Inc.

<sup>3</sup> Public Health Agency of Canada (PHAC) (2018). Canadians’ Awareness, Knowledge and Attitudes Related to Sexually Transmitted and Blood-Borne Infections: 2018 Findings Report. EKOS Research Associates Inc.

- 15% feel afraid of getting HIV when they are near someone with HIV;
- 25% believe that individuals may not get tested because they fear people finding out and treating them differently; and
- 71% per cent believe that someone would hide their HIV status from others because of fear of the stigma associated with HIV.

For many people living with HIV, anti-Indigeneity, anti-Black and other forms of racism, sexism, homophobia, transphobia, xenophobia and anti-immigrant and refugee attitudes regularly intersect with HIV-related stigma. Such intersections impose additional and compounding barriers to equitably securing employment, housing, medical care and treatment, and other essential and basic necessities of life. Below are some of the realities of HIV and living with HIV:

- Data show that HIV disproportionately affects Indigenous, Black and racialized people, as well as individuals who identify as gay, trans, bisexual or other men who have sex with men and people who use injection drugs.<sup>4 5 6 7 8 9 10</sup>
- A large proportion of new diagnoses are in newcomers, many of whom are refugees facing significant health and social disparities.<sup>11</sup>
- Black, Indigenous and racialized people in Ontario face significant HIV-related stigma, compounding other impacts of racial discrimination and social and systemic inequities.<sup>12</sup>
- HIV stigma and discrimination, especially when experienced in combination with other forms of stigma and discrimination, limit the ability to engage in work and

---

<sup>4</sup> Bourgeois, A. C., Edmunds, M., et al. (2017). HIV in Canada—Surveillance Report, 2016. Canadian Communicable Disease Report, 43(12), 248-256.

<sup>5</sup> Ontario HIV Epidemiology and Surveillance Initiative (OHESI). (2018). HIV care cascade in Ontario by sex, age and health region: Linkage to care, in care, on antiretroviral treatment and virally suppressed, 2015.

<sup>6</sup> Pellowski, J. A., Kalichman, S. C., et al. (2013). A pandemic of the poor: social disadvantage and the U.S. HIV epidemic. American Psychology, 68(4), 197-209.

<sup>7</sup> African and Caribbean Council of HIV/AIDS in Ontario (ACCHO). (2013). Ontario HIV/ AIDS strategy for African, Caribbean and Black Communities 2013–2018.

<sup>8</sup> Public Health Agency of Canada (PHAC). (2014). HIV and AIDS in Canada: Surveillance Report to December 31, 2013. Minister of Public Works and Government Services Canada.

<sup>9</sup> Desir, F. A., Lesko, C. R., et al. (2018). One Size Fits (n)One: The Influence of Sex, Age, and Sexual Human Immunodeficiency Virus (HIV) Acquisition Risk on Racial/Ethnic Disparities in the HIV Care Continuum in the United States. Clinical Infectious Diseases, 68(5).

<sup>10</sup> Ontario HIV Epidemiology and Surveillance Initiative (OHESI). (2021). HIV Diagnoses in Ontario, 2019.

<sup>11</sup> The OHTN Cohort Study (OCS). (2020).

<sup>12</sup> Loutfy, M. R., Logie, C. H., et al. (2012). Gender and Ethnicity Differences in HIV-related Stigma Experienced by People Living with HIV in Ontario, Canada. PLoS One, 7(12).

community life, and disrupts wellness including HIV management.<sup>13 14 15 16 17</sup>

- Stigma and discrimination compound difficulties finding and maintaining housing, and correlate strongly with lower treatment adherence.<sup>18 19 20 21</sup>

## Privacy and the Adjudicative Process

Information about a person's HIV positive status may become publicly accessible if included in documents associated with adjudication processes such as before the Canadian Human Rights Tribunal (the "Tribunal"). In fact, a member of the public can access Tribunal decisions online as they are available and searchable<sup>22</sup> electronically at both the Tribunal's website<sup>23</sup> and on database sites such as CanLII.<sup>24</sup> In addition, the Tribunal's Official Record, which includes the complaint and other forms and disclosures, is publicly accessible. The harm is amplified because the publication and availability of such information is not time-limited, thereby placing a person at ongoing risk of harm. The extent of this harm can be exceedingly broad, given the increasingly common practice of friends, family members, acquaintances, as well as prospective and actual employers, landlords and service providers, searching for information about people on the internet.

The only way to protect against such disclosures is by bringing a motion to request a confidentiality order under s.52 of the Act.<sup>25</sup> Such an order is not easily accessible nor guaranteed. It is legally complex for the unrepresented complainant, costly for the represented complainant, and is subject to Tribunal discretion.

---

<sup>13</sup> Rueda, S., Mitra, S., et al. (2016). Examining the associations between HIV-related stigma and health outcomes in people living with HIV/AIDS: a series of meta-analyses. *BMJ Open*, 6(7).

<sup>14</sup> Loutfy, M. (2015). Coercive sex as a mode of HIV-acquisition among a cohort of women in Canada: an under-recognized public health concern. *IAS Conference on HIV Pathogenesis, Treatment and Prevention*.

<sup>15</sup> Earnshaw, V. A., Bogart, L.M., et al. (2013). Stigma and racial/ethnic HIV disparities: moving toward resilience. *American Psychology*, 68, 225-36.

<sup>16</sup> Djiadeu, P., Nguemo, J., et al. (2019). Barriers to HIV care among Francophone African, Caribbean and Black immigrant people living with HIV in Canada: a protocol for a scoping systematic review. *BMJ Open*, 0.

<sup>17</sup> Ion, A., Wagner, A.C., et al, & HIV Mothering Study Team. (2017). HIV-related stigma in pregnancy and early postpartum of mothers living with HIV in Ontario, Canada. *AIDS Care*. 29(2), 137-144.

<sup>18</sup> Rueda, 2016.

<sup>19</sup> Canadian Treatment Action Council (CTAC). (2018). Identifying and Plugging the Leaks: Gaps and Policy Barriers to Engagement with the HIV Cascade of Care.

<sup>20</sup> Liu, Y., Canada, K., et al. (2012). HIV-related stigma acting as predictors of unemployment of people living with HIV/AIDS. *AIDS Care*, 24(1), 129-35.

<sup>21</sup> Sweeney, S. M., & Venable, P. A. (2016). The Association of HIV-Related Stigma to HIV Medication Adherence: A Systematic Review and Synthesis of the Literature. *AIDS and Behavior*, 20, 29-50.

<sup>22</sup> It is important to note that both of the electronic databases mentioned are searchable by Complainant's name.

<sup>23</sup> <https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/en/nav.do>

<sup>24</sup> <https://www.canlii.org/en/ca/chrt/>

<sup>25</sup> *Canadian Human Rights Act* (R.S.C., 1985, c. H-6).

The removal of such information with the consent of complainants, if not relevant to a claim, is a proper role for the Commission to play to help complainants<sup>26</sup> avoid the need to bring motions for confidentiality orders if and when matters are referred to the Tribunal. Ultimately, it helps complainants avoid an *unnecessary* risk of harassment, violence, trauma and other harms of disclosure.

## II. RESPONSE TO PROPOSED AMENDMENT

### **Rule 7.4 Complaint Form**

HALCO agrees with the proposed amendment which provides context that some personal or private information may cause harm if disclosed, and with the inclusion of examples of such information.

We recommend, however, that the Commission adopt wording that emphasizes the applicability of the rule to any information not relevant to the Complaint that could give rise to harm if disclosed.

We also recommend that the person affected by the disclosure be given notice and that the Commission seek their consent to the removal of the information. This consent should be informed and as such, we agree with the requirement, included in this rule, to ensure that the complainant understands that the Complaint Form will be available to the public if the complaint is referred to the Tribunal for a hearing.

Suggested additional wording is underlined below:

7.4 A Complaint Form that contains:

a. personal or private information that may cause harm if disclosed, such as a person's deadname, social insurance number, personal health information, or other confidential information not relevant to the complaint, or,

b. references or hyperlinks to other documents, websites or attachments,

is not in a form acceptable to the Commission for the purposes of section 40(1) of the Act.

Some personal or private information, if disclosed, can put a person at risk of further discrimination, harassment, violence, and trauma. This is particularly so in relation to stigmatized conditions and characteristics. For example, revealing the existence of a deadname, or an actual deadname, can place a transgender or gender-diverse person at risk of harassment, violence and/or trauma. Similarly, for stigmatized health conditions, such as

---

<sup>26</sup> We would also recommend that any similarly harmful but irrelevant information about the respondent(s) be subject to the same vetting and removal.

HIV or mental health medical conditions, revealing a person's health status can place the person at risk of harassment, violence, and other traumas. As a result, the Commission will black out or remove such information, references or attachments from the Complaint Form prior to the acceptance of the complaint by the Commission.

The Commission will seek consent from the Complainant or victim to remove the information. The Commission will not take such action if the Complainant or the representative confirms to the Commission that they want the information kept in the Complaint Form instead of describing it, and understand that the Complaint Form will be available to the public if the complaint is referred to the Canadian Human Rights Tribunal for a hearing.

**Note:** Additional relevant information may be provided during the assessment of the complaint.

### **Rule 12.12 Respectful Conduct**

Similarly, HALCO agrees with proposed amendment requiring the removal of a complainant's deadname or associated pronouns but recommends to broaden the requirement to include the removal of any personal or private information not relevant to the Complaint that could give rise to harm if disclosed.

Suggested additional wording is underlined below:

#### **12.12 Respectful Conduct**

- i. The Commission will not tolerate violent or harassing behavior. The parties shall, in all their dealings and communication with the Commission, act in a courteous and civil manner. Failure to do so will result in appropriate action by the Commission including but not limited to the immediate termination of the meeting or discussion, and a requirement that all future communications from or to the party be in writing. Please [refer to the Commission's Right to Respect Policy](#) for more information about the Commission's expectations during our complaint process.
- ii. Parties are required to use the name, gender and pronouns that individuals use to identify themselves in all communication with the Commission and the other parties, including in all forms and submissions.
- iii. Regardless of grounds alleged in the complaint, before a Respondent discloses a relevant document which contains a Complainant or victim's personal or private information that may cause harm if disclosed, such as a person's deadname and associated pronouns, social insurance numbers, personal health information, or other confidential information not relevant to the complaint, the information is to be blacked out and the document must have a covering note indicating what the redactions are related to, e.g. use of the Complainant's deadname.

- iv. All documents submitted must be provided in accordance with the accommodations identified in the notification letter or any other communication received from the Commission.

## Summary

We agree with the Commission's proposed changes to the above rules, but recommend the adoption of wording that emphasizes the broader applicability of the rules and the requirement for consent to remove information.

We further recommend that if information which could give rise to harm is disclosed and is relevant to the claim, that the complainant be advised of the availability and function of confidentiality orders and of the process of requesting such an order.

Finally, if a complainant is a person living with HIV in Ontario, please refer them to HALCO for free legal advice, including in relation to confidentiality orders:

<https://www.halco.org/>.

Amy Wah  
Policy Lawyer  
HIV & AIDS Legal Clinic Ontario  
[waha@lao.on.ca](mailto:waha@lao.on.ca)

Ryan Peck  
Lawyer/Executive Director  
HIV & AIDS Legal Clinic Ontario  
[peckr@lao.on.ca](mailto:peckr@lao.on.ca)