

Resisting HIV criminalization:

Legal strategies beyond the courts

**Lawyers for HIV & TB Justice:
Strategic Litigation, Legal Defence & Advocacy Training**

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Perpetuating injustice

“What a terrible irony that we have come to a place where the medications we fought for will allow us to live a relatively ‘normal’ quality of life and now we are going to go to jail for doing so.”

— Canadian HIV activist Louise Binder, “No test, no arrest: criminal laws to fuel another HIV epidemic,”
OpenDemocracy.net, July 27, 2012

“combination resistance”

- Legislative reforms &/or new legal interpretations by courts
- Education of justice system actors
- Prosecutorial and police guidelines



- Know your laws, legal processes
- Know the science
- Media engagement – the “court of public opinion”
- Change the frame/narrative (e.g. “Think Twice” campaign)
- Meaningful involvement of, and leadership by, PLHIV
- Support to criminalized PLHIV, including those inside
- Voices of scientists, clinicians, public health
- Voices of women’s rights advocates, service providers
- Links to movements for racial, gender and migrant justice, and human rights of other communities affected by HIV and/or criminalization

End Unjust HIV Criminalization

Community Consensus Statement

November 2017

- Canada's approach to HIV criminalization is unscientific, unjust and undermines public health.
- The criminal law must be used only as a measure of last resort and must be limited in its scope and application.
- In accordance with international guidance, criminal prosecutions should be limited to cases of actual, intentional transmission of HIV.
- Criminal charges should never be used in certain circumstances.

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HIV-related criminal charges are **not appropriate** where PLHIV:

- did not understand how the virus is transmitted;
- disclosed their status to their sexual partner or reasonably believed their sexual partner was aware of their status through some other means;
- did not disclose their status because they feared violence or other serious negative consequences would result from such disclosure;
- was forced or coerced into sex; or
- engaged in activities that, according to the best available scientific evidence, posed no significant risk of transmission, including:
 - oral sex;
 - anal or vaginal sex with a condom;
 - anal or vaginal sex without a condom while having a low viral load;
- spitting and biting.

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CALL TO ACTION

1. Prosecutorial guidelines

2. *Criminal Code* reforms

- remove HIV non-disclosure from the reach of sexual assault laws, including the current mandatory designation as a sex offender
- prohibit prosecutions for sexual assault where HIV non-disclosure takes place in the context of sex among otherwise consenting adults
- ensure that other provisions in the *Criminal Code* are not used to further stigmatize people living with HIV and are appropriately limited in accordance with the principles stated above
- criminal conviction based on HIV non-disclosure must not affect immigration status.

3. Resources and training

- for judges, police, Crown prosecutors and prison staff nationwide.



STOP THE WITCH-HUNT

People living with HIV are not criminals

THINK TWICE
Before You Prosecute



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