

# THE CANADIAN COALITION TO REFORM HIV CRIMINALIZATION : 5 YEARS OF COMMUNITY-LED STRATEGIES, ADVOCACY AND CONSENSUS-BUILDING

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## BACKGROUND

Canada has one of the world's highest number of recorded HIV-related criminal cases. This is due to broad judicial interpretations of sexual assault provisions in the Criminal Code.

In 2012, the Supreme Court of Canada found that non-disclosure before sex that poses a “realistic possibility of HIV transmission” amounts to “fraud” invalidating consent.

Since 2012, the “realistic possibility” criteria has been interpreted by prosecutors and courts as always requiring both condom use and a low viral load (<1500). Whether there is an obligation to disclose in other circumstances (oral sex, undetectable viral load, condom use) is less clear.

The restrictive interpretation of this criteria has led to prosecutions at odds with the international scientific Expert Consensus Statement released at AIDS 2018, recommendations of the Global Commission on HIV & the Law, and the Global AIDS Strategy.

People living with HIV in Canada have been charged and convicted even in cases where no HIV transmission occurred, when they used a condom or had an undetectable viral load.

Aggravated sexual assault is the charge most commonly used in cases of alleged HIV non-disclosure. Conviction for this offence carries a maximum penalty of life imprisonment, mandatory registration as a sex offender and risks of deportation.

Analyses by Justice Canada and NGOs highlight a disproportionate impact on Black, Indigenous and gay communities.

## DESCRIPTION

In 2016, a number of organizations and advocates, including people with lived experience of HIV criminalization, created the Canadian Coalition to Reform HIV Criminalization (CCRHC) to change Canada's approach to HIV criminalization.

In 2017, CCRHC conducted its first national community consultation on HIV criminalization. This consultation led to the launch of CCRHC's Community Consensus Statement. This widely endorsed document is the basis upon which the CCRHC's advocacy is based on. It makes specific demands to the federal and provincial governments to limit HIV criminalization, including:

- Sound prosecutorial guidelines to preclude unjust HIV prosecutions;
- Legal reform to remove HIV cases from the reach of sexual assault laws;
- Development of resources to address HIV misinformation, fear & stigma.

## COMMUNITY ENGAGEMENT LED TO RESULTS SUCH AS...

**2016**

Attorney General commits to studying the over-criminalization of HIV

**2017**

Justice Canada report recognizes the over-criminalization of HIV

**2018**

Attorney General of Canada adopts a federal prosecutorial directive

**2019**

Standing Committee on Justice and Human Rights says approach to HIV criminalization must change

**2022**

MoJ remains committed to exploring options for legal reform

## LESSONS

Involving people with lived experience and adapting strategies to shifting (political and social) landscapes are key to the CCRHC's work, and led to concrete, positive developments.

**2017:** Following the release of the CCRHC's Community Consensus Statement, Justice Canada made recommendations to both federal and provincial officials to limit HIV criminalization. Most of these recommendations were in line with the CCRHC's. Some provinces also begin to adopt policies or directives to limit HIV-related prosecutions.

**2018:** Following a renewed call for action by the CCRHC, the Attorney General of Canada issued a directive for federal prosecutors based on Justice Canada's recommendations.

**2019:** CCRHC members testified before the Standing Committee on Justice and Human Rights on the issue of HIV criminalization. The Committee's majority report concluded that Canada's approach is too broad, too punitive and unscientific and recommended limiting the use of criminal law in cases of HIV non-disclosure, including through legal reform.

**2021:** CCRHC launched a second community consultation on legal reform advocacy. The results of that consultation led to a new Community Consensus Statement, to be launched in July 2022.

## CONCLUSIONS

While significant, these developments remain insufficient to end the overbroad criminalization of people living with HIV in Canada.

CCRHC's second community consultation around Criminal Code reform will inform advocacy strategies at the federal level. As such, the type and substance of the reform the CCRHC will once again reflect community consensus.

CCRHC will continue to demand concrete actions from all levels of government to implement recommendations to limit HIV criminalization.

≈50%

people charged between 2012-16 for whom race is known were black men

≈1/3

people charged in 2017-18 were gay men

38%

women charged for whom race is known are indigenous