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Ending Canada's HIV trials

In October 2009, police in New Westminster, British Columbia, arrested a 21-year-old man following a complaint from one of his former sexual partners that he had not revealed his HIV status. "[The] accused had been informed by his physician that he was HIV-positive and failed to disclose this information prior to engaging in unprotected sex with the victim," alleged the police in a statement with the accused's name. Charged with aggravated sexual assault, he was jailed pending trial.

In Canada, despite remarkable medical advances that have made HIV/AIDS a manageable illness, recent years have seen an escalation in the number of people prosecuted for allegedly exposing sexual partners to the virus. Canada now ranks among the world leaders in the rate of such prosecutions.[1] An upcoming case being heard in February 2012 at the Supreme Court of Canada will likely set a new legal precedent to guide police and prosecutors. While some aspects of this case may well deserve a full and fair prosecution, there is no evidence that criminal prosecutions for HIV-nondisclosure protect individuals from infection.[2] It is imperative that an issue often presented by authorities as a matter of public safety include perspectives from science and public health.

Highly active antiretroviral therapy (HAART), which was introduced in 1996, has dramatically transformed HIV treatment and prevention. HAART has been conclusively shown to reliably suppress viral replication, rendering viral load in the blood of people living with HIV/AIDS undetectable. This allows the immune system to recover, avoiding disease progression and AIDS-related death. In other words, long-term use of HAART puts HIV disease into full, long-term remission. More recently, it has become clear that as HAART drives the HIV viral load in blood to undetectable levels, the HIV viral load in semen and cervicovaginal fluid also becomes undetectable. Thus, HAART-treated patients become dramatically less likely to transmit the infection. Definitive evidence of the ability of HAART to prevent sexual transmission of HIV was provided earlier this year when the HPTN 052 randomized trial found a 96% decrease in the risk of HIV transmission with immediate HAART.[3] The evidence is consistent with the consensus statement from the Swiss Federal Commission for HIV/AIDS that people living with HIV/AIDS on effective HAART treatment for six months without other genital tract infections pose a negligible risk of transmitting HIV, and therefore these people should not be found guilty for exposing sexual partners to HIV.[4]

Despite these advances, stigma continues to be attached to HIV infection, which hinders prevention and treatment efforts. High-profile prosecutions reported in mainstream media may deter individuals from HIV testing. In some cases, information shared in counseling sessions between health care providers and people living with HIV/AIDS has been subpoenaed and entered into evidence in criminal trials.[1] Just as the criminalization of illicit drug users contributes to the spread of HIV by disrupting access to harm reduction services, criminalization of HIV exposure stigmatizes and discourages access to HIV education, testing and treatment.

Criminalization of HIV exposure was enacted, not without controversy, at a time when HIV and AIDS were poorly understood and the infection was considered to be a short-term fatal illness. Today, HAART has changed HIV/AIDS into a chronic manageable condition and has emerged as the most powerful strategy to prevent new infections through vertical, blood-borne or sexual routes. The best way to conquer the pandemic is to deploy a combination prevention strategy, which is primarily centred on the promotion of HIV testing, followed by the immediate initiation of HAART among those who are medically eligible.[5] This can only be successfully implemented if we can protect people living with HIV/AIDS and persons most at risk of HIV infection from stigma and discrimination. The Criminal Code should not further stigmatize or discriminate against those living with HIV. Canada's criminal statutes have appropriate measure to deal with people with HIV who are aware of this status and act with intent to harm others.

Today, there is strong scientific basis to eliminate routine prosecutions for HIV nondisclosure. Furthermore, these criminal prosecutions generate stigma and discrimination that interferes with best medical practices and, as such, has multiple unintended negative consequences. Prosecutions put the life of people living with HIV/AIDS at risk, increase the risk of HIV transmission and health care costs, and ultimately place the public at higher risk. It is time to embrace the scientific evidence, recognize the ability of HAART to virtually eliminate the transmission of HIV, and do away with criminal prosecutions for HIV nondisclosure.

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For references, see Appendix 1, available at www.cmaj.ca/lookup/suppl/doi:10.1503/cmaj.111848/-/DC1.

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