

How women living with HIV react and respond to learning about Canadian law that criminalises HIV non-disclosure: 'how do you prove that you told?'

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ABSTRACT

The Women, ART and the Criminalization of HIV Study is a qualitative, arts-based research study focusing on the impact of the HIV non-disclosure law on women living with HIV in Canada. The federal law requires people living with HIV to disclose their HIV-positive status to sexual partners before engaging in sexual activities that pose what the Supreme Court of Canada called a 'realistic possibility of transmission'. Drawing on findings from seven education and discussion sessions with 48 women living with HIV regarding HIV non-disclosure laws in Canada, this paper highlights the ways in which women living with HIV respond to learning about the criminalisation of HIV non-disclosure. The most common emergent themes included: the way the law reproduces social and legal injustices; gendered experiences of intimate injustice; and the relationship between disclosure and violence against women living with HIV. These discussions illuminate the troubling consequences inherent in a law that is antithetical to the science of HIV transmission risk, and that fails to acknowledge the multiple barriers to HIV disclosure that women living with HIV experience. Women's experiences also highlight the various ways the law contributes to their experiences of sexism, racism and other forms of marginalisation in society.

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Introduction

Since the identification of the human immunodeficiency virus (HIV) in the 1980s, HIV infection has been met with significant moral judgement. The increasing use of criminal laws to regulate activities associated with HIV risk is a global phenomenon with detrimental implications for public health, HIV prevention efforts and human rights (Swiffen 2015). Biomedical scientific advances in HIV monitoring and optimisation of

treatment and care have resulted in effectively no risk of HIV transmission to sexual partners when the person living with HIV is on treatment and has an undetectable plasma viral load (Cohen et al. 2016; Rodger et al. 2016; Samandari et al. 2017). Yet in many parts of the world, including Canada, legal action can be initiated if prosecutors feel there is potential HIV exposure or transmission. Despite scientific advance with respect to HIV prevention and treatment, Canadian criminal law is still being used to charge and/or prosecute people living with HIV who do not disclose their known HIV-positive status prior to consensual sex (Canadian HIV/AIDS Legal Network [CHLN] 2017a; French 2015; Swiffen 2015).

In the Canadian context, the use of criminal law with respect to sexual HIV exposure gained momentum following the Supreme Court of Canada's ruling in *R. v. Cuerrier* (1998), which used the law of aggravated assault to establish a requirement that people living with HIV must disclose their HIV serostatus in situations of 'significant risk of serious bodily harm' (*R. v. Cuerrier* 1998, para. 373; Symington 2009). The Supreme Court of Canada restated and expanded its earlier HIV ruling in October 2012 with the decisions in the companion cases of *R. v. Mabior* and *R. v. D.C.*, in which a unanimous Court ruled that people living with HIV are legally required to disclose their HIV-positive status to sexual partners before engaging in sexual activities that pose what the Court called a 'realistic possibility of transmission' (*R. v. Mabior* 2012, para. 5). The Court stated that 'as a general matter, a realistic possibility of transmission of HIV is negated if (a) the accused's viral load at the time of sexual relations was low (defined by the Court as a plasma viral load <1500 copies/mL) and (b) condom protection was used' [emphasis added] (*R. v. Mabior* 2012, para. 94). As a result, people who do not disclose their HIV-positive status to a sexual partner in situations where the Court has deemed HIV transmission a 'realistic' possibility risk a charge of aggravated sexual assault, which carries a maximum sentence of life imprisonment and mandatory registration on the national sex offender registry¹ (CHLN 2017b). Given the significant period of time since this criminal requirement was established, and the severity of the implications of being charged with respect to HIV non-disclosure to a sexual partner, one might expect that all people living with HIV in Canada are now well-versed regarding their obligations under this law. However, our research with women living with HIV suggests that something is amiss when it comes to awareness and understanding of the criminalisation of HIV non-disclosure in Canada (Patterson, Nicholson, et al. 2017).

Gendering the criminalisation of HIV non-disclosure law

Thanks to incredible scientific advances in the last two decades and the resilience and leadership of people living with HIV throughout the country, women living with HIV are not necessarily defined by their HIV status any more. As a community, however, we know that the harsh application of sexual assault law with respect to HIV disclosure by the Canadian criminal justice system, and the attendant sensationalised media coverage of cases including exaggerations of HIV risk, have fuelled HIV-related stigma and discrimination experienced by women living with HIV. Moreover, a gendered analysis of the current law in Canada suggests that the law does little to protect women

from acquiring HIV and, instead, creates substantial harm (CHLN 2017b). HIV-related stigma and discrimination and the complexity and risk surrounding HIV disclosure to family, friends and sexual partners have negative consequences for women living with HIV, particularly those facing poverty, racism, sexual violence, transphobia and homophobia, disability, the historical impact of colonisation and insecure immigration status (Allard, Kazatchkine and Symington 2013).

Challenges with disclosure among women are augmented by various forms of social and structural marginalisation. Women from African, Caribbean, Black and newcomer communities experience the harsh blow of the criminal law as yet another form of racial oppression and sexism (Tharao, Muchenje and Mehes 2013), particularly in Ontario where African, Caribbean, Black and immigrant and refugee women constitute the majority of women living with HIV, and account for 39% of new female diagnoses (Liu and Remis 2007; Remis and Liu 2013). Furthermore, Indigenous peoples across Canada have a 2.7 times higher incidence rate for HIV infection compared to non-Indigenous peoples, with high rates of HIV diagnoses occurring in young Indigenous women (CATIE 2014; Public Health Agency of Canada [PHAC] 2010). Of the women charged with HIV non-disclosure between 1989 and 2016 whose ethnicities were known, 42% were Indigenous. This disproportionate use of the criminal law against Indigenous women is troubling given the connection between gender-based violence and HIV. In fact, many women do not feel that they can safely disclose their HIV status for fear of intimate partner violence (CHLN 2017c).

Given that women are less likely than men to meet the legal criteria that remove the obligation to disclose before intercourse (i.e. condom use and having a low viral load) (Patterson et al. 2016), the current legal test may be putting an increasing number of women at risk for prosecution and conviction. Furthermore, Canadian data from 2015 to 2017 reveal that although 73% of women enrolled in the national CHIWOS cohort study (chiwos.ca) were aware of the law, only 27% had a reasonably complete understanding of the legal requirements to disclose (Patterson, Nicholson, et al. 2017; Patterson, Kaida, Ogilvie, et al. 2017). Little nuanced work has focused specifically on women's experiences of the legal requirement to disclose their HIV status. Through the Women, ART and the Criminalization of HIV (WATCH) Study, we have begun to explore and better understand women's knowledge and experiences of HIV criminalisation. The purpose of this paper is to demonstrate how the law, when examined in the context of the lives of women living with HIV, results in socially unjust consequences, and to use these findings in ongoing knowledge mobilisation and advocacy activities to contribute to national and global efforts for legal reform.

Theoretical framework: community-based research

The WATCH Study was developed in response to the laws that criminalise HIV non-disclosure and the impact that this law has on women living with HIV in Canada. In line with the principles of community-based research (Israel et al. 1998) and the meaningful involvement of women living with HIV in community-based research (Loutfy et al. 2016), the research team comprised women living with HIV as lead investigators and research associates in addition to academic researchers, legal advocates and front-line

social service professionals. Community-based research is a well-recognised approach to doing research that is aimed at improving the health of marginalised individuals and communities (Cahill 2007; Olshansky et al. 2005; Israel et al. 1998; Patterson, Jackson and Edwards 2006). It has also become an established way of doing HIV research in Canada due to a broader commitment to ensuring the greater involvement of people living with HIV (UNAIDS 1999) by including people living with HIV in all aspects of the research process. Importantly, the principles of community-based research go beyond recognising the power differential that exists between researchers and community members by ensuring that processes are put into place that work towards mediating these power imbalances (Mendenhall and Doherty 2007) and that challenge status quo assumptions about knowledge production (McIntyre et al. 2007). Subsequently, women living with HIV were at the forefront of all stages of the research process including the identification of salient local concerns, the collection and analysis of data, writing and reviewing scholarly papers and community reports and presenting the research findings at academic conferences and community-based forums. This paper focuses on women's reactions and responses to developing their knowledge of the law that criminalises HIV non-disclosure in Canada and the ways the law reproduces and reinforces HIV stigma, sexism, racism and violence against women living with HIV.

Methodology

Recruitment

Forty-eight women from Ontario (N = 16), Manitoba (N = 4), Saskatchewan (N = 14) and British Columbia (N = 14) participated in seven arts-based workshops. Recruitment was supported by local co-investigators, women living with HIV employed as peer research associates, collaborators and community partners. Information about the study was shared online, through social media and at community-based HIV organisations and clinics used by women living with HIV. Interested participants contacted the local peer research associates or the research coordinator to learn more about the study and participated in a screening interview to determine interest and eligibility (i.e. being over age 18, able to attend a four-day workshop). Eligible women were provided with a FAQ pamphlet that outlined additional information about the criminalisation of HIV non-disclosure and the arts-based methodology to help them better understand the purpose and procedures of the research before agreeing to participate.

Data collection

Data for this paper come from seven in-depth group discussions that followed a one-hour HIV non-disclosure education session that occurred on day two of each workshop. The workshops took place over a four-day period in a retreat setting in each region (three in Ontario, two in Saskatchewan and two in British Columbia). Workshops were culturally grounded in ceremony and teaching, which involved an Elder or community leader providing support throughout. This process created a safe

and comfortable space to engage in art-making and conversations about the criminalisation of HIV non-disclosure.

The education sessions and group discussions became a fundamental component of our community-based research approach when, early on in the recruitment and data collection process, we recognised that women had very little knowledge and understanding of the law. Education sessions were recorded and co-facilitated by peer researcher associates and academic researchers who underwent training by a team member with significant legal expertise on this particular issue; workshop facilitators reviewed the contents of a factsheet published by the Canadian HIV/AIDS Legal Network about women and the criminalisation of HIV non-disclosure (CHLN 2017b). Workshop participants were then invited to ask questions and engage in discussion. Importantly, legal experts were 'on call' to answer questions the research team felt unable to answer in the moment, although no legal advice was provided. Discussions were recorded and transcribed.

Participatory thematic analysis

Transcripts of the discussions that followed the education sessions underwent participatory thematic analysis by a sub-group of the research team including peer research associates, academic investigators and research coordinators (Jackson 2008). Drawing on Ryan and Bernard (2003), we individually and collectively coded the most common emerging questions, concerns and issues; we also included stories that were less repetitive, but equally compelling in order to draw attention to the range of questions and concerns women identified. Once the themes were identified, we grouped excerpts from the transcripts into the identified themes (Ryan and Bernard 2003). The analysis team collectively interpreted the meaning of the themes. The broader WATCH team had the opportunity to provide additional insights and analysis from the transcripts and/or from their reflections on the education sessions.

Ethical considerations

Prior to each workshop, the research team distributed the study information letter and consent forms to participants. On the first evening of each workshop, the facilitators read both documents out loud and provided opportunities for participants to ask questions prior to providing written consent to participate. Ethics approval was granted from the research ethics boards of McMaster University, Simon Fraser University and the Regina Qu'Appelle Health Region. Pseudonyms are used throughout this paper in reporting on the data.

Findings

Participants

Participants' demographic characteristics are outlined in [Table 1](#).

Table 1. Participant demographics.

Demographics	Frequency n (%)
Total n = 48 women	
Age (median [range])	47 [30–59]
Ethnicity	
Indigenous	29 (60%)
African/Caribbean/Black	7 (15%)
Caucasian	4 (8%)
Latina	2 (4%)
Other (other race, mixed race, prefer not to answer)	6 (13%)
Sexual Orientation	
Heterosexual	35 (73%)
Bisexual	9 (19%)
Lesbian	1 (2%)
Other	1 (2%)
Prefer not to answer	2 (4%)
Gender Identity	
Cisgender	45 (94%)
Transgender	1 (2%)
Two-spirit	1 (2%)
Two-spirit trans	1 (2%)
Relationship Status	
Single	16 (34%)
Common-law relationship	14 (29%)
Married	7 (15%)
Relationship, not living together	5 (10%)
Separated/Divorced	2 (4%)
Prefer not to answer	4 (8%)
Country of Birth	
Canada	38 (79%)
African, Caribbean, Asian Countries	10 (21%)

Women's voices responding to the criminalisation of HIV non-disclosure

You know what? It's scary to talk about that. I know it's important and we need to know. But at the same time, it's scaring you inside. (Lucinda, Ontario)

Immediately following the HIV non-disclosure education sessions, women had multiple questions and opinions to share. This included the need for more information about the law and questions about justice. For example, women wanted to know, 'How can you be prosecuted if it's not transmitted?' (Trudy, Saskatchewan) and 'What about the ones that are out there that are not even educated, can't read, and they're sick and they don't even know?' (Rita, Ontario).

Some questions were characteristic of an information-gathering exercise, whereby women asked for medical information about HIV such as what is a 'low viral load?' Others queried the scope of expectations regarding HIV disclosure, including clarification about disclosure in the workplace. These questions highlighted women's lack of familiarity with the legal context and the existence of a significant gap in their knowledge of the law. What was particularly concerning for the women were the potential implications that their lack of knowledge could have on current legal responsibilities. This was reflected in questions such as, 'Do I have to tell someone I had sex with ten years ago?' and 'What happens if the condom breaks and you've told whoever you're with that you are HIV and the condom breaks, and they contract the virus, then what happens?' (Marisa, Saskatchewan).

In this early part of the discussion the women not only requested further clarification about the legal process, but also about whether or not being charged could lead to becoming a registered sex offender. What follows are the most common themes that emerged through our analysis of the discussions following the education sessions and include: the way the law reproduces (or reinforces) social and legal injustices; gendered experiences of intimate injustice; and the relationship between disclosure and violence against women living with HIV.

Social and legal injustice

I don't know about the rest of you, but I know when I was first diagnosed, I had a higher viral load because I wasn't being treated. And so actually the silent people who don't know are more at risk of passing it on. So, who is this [law] even protecting? We are the least likely to pass it on. (Lori, British Columbia)

In discussion following the HIV non-disclosure education sessions in all seven workshops, women consistently expressed concern over the reproduction of social and legal injustices with reference to the ways that stigma, lack of access to care and education and other factors (e.g. being differently abled) might put those most disadvantaged by their HIV diagnoses at highest risk of being criminalised. As reflected in the quote above, one example of this was women's belief that it is people who are unaware of their HIV status who are more likely to infect another person through sex than a person who is aware of their HIV status and who is on treatment. Hence, in their view and based on their own experiences, the women felt that people who are aware of their HIV status are much more likely to engage in sexual behaviours that are aimed at preventing the transmission of HIV. The point that the women were articulating was that targeting the diagnosed HIV population is both stigmatising and unjust, due in part to the underlying assumption that people living with HIV are at risk of intentionally engaging in sexual behaviours that could result in transmitting HIV. It is important to note that in Canada, a person cannot be charged under the law that criminalises HIV non-disclosure if they are or were unaware of their HIV status at the time that the sexual encounter took place. It is therefore not surprising that studies have shown that HIV stigma can result in an individual's choice not to get tested (Patterson et al. 2015; Wainberg 2008); the impact of HIV stigma in this context has critical consequences regarding both the transmission of HIV and access to treatment.

Of particular relevance to the women who participated in the education sessions was their fears about how HIV-related stigma could be wielded by those with legal decision-making power. For example, Adele from British Columbia asked:

How do we know what the judge is thinking? What is his viewpoint on HIV, what is his viewpoint even maybe on women? Like we don't know. They're supposed to be impartial. But everybody has morals and values. And we don't know ... or what their education level even is on medical terms. (Adele, British Columbia)

These concerns are echoed by the South African Justice Edwin Cameron when, in 2009, he pointed to the 'continuingly pivotal role of stigma' in the sentencing of 'HIV crimes' globally (Canadian HIV/AIDS Legal Network 2009, 66). More recently, as Kazatchkine and Gervais (2016) have stated in their online Winnipeg Free Press

editorial, women living with HIV, particularly those in marginalised positions, 'have become the new faces of sexual offenders'. Concern about HIV stigma also emerged in the ways some women articulated how they have come to understand how the law equates HIV to something that can be used as a weapon. As Rachele from British Columbia shared:

So, a neat way that it was explained to me was if I was going to go over there and stab [participant] with a knife, that's aggravated assault. So, they're taking that knife away and using HIV. I may not have given it to her. So, it's like the knife never even touched her or the knife wasn't used. I'm still charged. (Rachele, British Columbia)

This explanation of the use of aggravated assault provisions to prosecute cases of HIV non-disclosure demonstrates how women both interpret and internalise the law in ways that result in viewing their bodies (or fears that others view them) as weapons that can result in physical harm and even the death of their partners. Consequently, women were not only concerned with how HIV stigma was reflected in the law, but how HIV stigma would result in an unfair trial if they were charged for not disclosing their HIV status.

Another way in which criminalisation of HIV non-disclosure was clearly seen as unjust was with respect to the stark reality that many women face barriers to accessing information about the law. As Jaqueline, an Indigenous woman from Saskatchewan, pointed out:

You know, like even this, looking at this document [the factsheet about the law from the Canadian HIV/AIDS Legal Network], I'm like, shit, where's my highlighter because I need to highlight a couple of these words. Like even this isn't accessible or something understandable for some of my people because we have literacy issues. Some of our people, they left residential school at grade 6 and grade 8. Do they think about that? (Jaqueline, Saskatchewan)

The sense of injustice that the women articulated when speaking about HIV disclosure requirements was, for some, compounded by other forms of injustices, such as the on-going impacts of colonisation. This was poignantly demonstrated by a conversation between two Indigenous women at one of the education sessions in Saskatchewan:

Marilyn: So that's what I want for my people living with HIV. Those human necessities, you know.

Laverne: Basic needs.

Marilyn: Yes, basic needs.

Laverne: It's like we don't need to talk about criminalisation of HIV when people don't even have access to all of those things that you just said.

Marilyn: Yeah, they don't even know what we're learning. We're fortunate that we're learning this. But what about the people that are back home? They don't know anything about this.

Laverne: Well, that's what's so dangerous, right. They don't know.

Two of the Indigenous women who participated in the workshops had a severe visual impairment, which drew our attention to yet another barrier to accessing information about the law. Together, the social and legal injustices that the women articulated throughout the workshops demonstrate the ways that the law is experienced as oppressive and marginalising. This includes HIV stigma, the power imbalances inherent in the criminal justice system, sexism, racism, colonisation and ableism.

Gendered experiences of intimate injustice

So, it's supposed to be he has to know before he has sex with me ... I have not committed a crime ... because everybody knows I am. So, if they say, 'Oh, she give it to me because I have sex. She don't tell me anything'. And I say, 'Excuse me, I already told you'. So that means for me will be no criminal charges? (Lana, Ontario)

All the women had questions and concerns regarding how the law impacts them in the context of their sexual encounters in the past, present and future. Most women were somewhat aware of the 'Canadian Consensus Statement on HIV and its Transmission in the Context of Criminalization' and were most drawn to the evidence in the consensus statement that declared that: 'the possibility of sexual transmission of HIV from an HIV-positive individual to an HIV-negative individual via unprotected vaginal intercourse approaches zero when the HIV-positive individual is taking anti-retroviral therapy and has an undetectable viral load' (Loutfy et al. 2014, 137).

In learning about the evidence laid out in the consensus statement, many cis-gender women in our study observed that the law that criminalises HIV non-disclosure is inconsistent with medical knowledge regarding HIV transmission. Hence a common question was: 'So when I look at it, I'm undetectable. So, I cannot transmit HIV to who I'm going to have sex with. So why is it any of their business that I have it when I'm undetectable?' These questions echo Greene et al. (2015) who argue that there is a strong marriage between surveillance and HIV stigma; in this particular context, the intense sexual surveillance that women living with HIV are under is enacted within the Canadian criminal justice system.

Importantly, even when the women were told that they would only need to disclose if they did not have a low viral load or if they did not use a condom, anxiety about evidencing condom use emerged as the most pressing concern, and many women asked how they would prove whether or not they used a condom. Moreover, out of concern for her own legal safety, Priscilla from British Columbia asked 'So if you're going to not disclose, so the safest way – to use a condom and to get a print-out of your viral load so you can prove that before you have sex with the person, you've had a low viral?' and this sentiment was shared by other women. Women's need to develop strategies to maintain their innocence in the event that they are asked to prove their condom use suggests that although they were troubled by the surveillance of their sexual encounters they were also prepared to be mistrusted by the Canadian legal system.

The question of evidencing one's upholding legal obligations for non-disclosure led to a heated discussion about what the research team observed as the 'intimate injustice' inherent in the law. Intimate injustice in this context refers to the legal conditions that result in the sexual surveillance of women living with HIV, and the

reproduction of oppressive conditions under which HIV stigma, power imbalances in sexual or romantic relationships and intimate partner violence can occur. This was demonstrated in one of the British Columbia education sessions where women role-played one approach to evidencing their innocence:

Lilian: So how many people do you have in that room? You have the lawyer that's witnessing the paper that you're signing that you've disclosed. You have the doctor to say, 'Yeah, you're under a viral load'. You've got the forensic scientist there getting any evidence. You know, everybody is watching.

Sarah: The nosey neighbour that you had to call to watch the person sign this ...

Lilian: Yeah. So how many people are actually in the bedroom with us?

Sarah: Where's the romance?

Lilian: Yeah. Excuse me, we can't have sex yet. I've got to call my lawyer, my doctor, the judge, the policeman.

This dialogue moved into a discussion about what the women should do moving forward in their intimate encounters now that they had a better understanding of the law. The most common question in this context was, 'Isn't there a paper we can sign?' as was articulated by Doris from Saskatchewan. Yet, simply having someone sign a contract or agreement was not enough to make the women feel secure to engage in sex. Rather, thinking ahead about how to proceed in a new sexual relationship, many women talked about having a witness to their disclosure in the moment. Zainab from Ontario spoke for many of the others when she asked:

Okay, so say I had a sexual partner. I just met this guy. And my CD4 count is 880. I'm undetectable. But I've got to tell him before we get into bed. Do I need to make him sign a document and lock it up and have it witnessed by the neighbour? (Zainab, Ontario)

And, as Miranda from British Columbia put it, 'It seems like it's an impossible situation to prove your innocence as a criminal'. This concern is not surprising given that in a court of law it could come down to a 'he said/she said' argument, with the person living with HIV having to find ways to prove that they disclosed their HIV-positive status to the sexual partner. This was particularly concerning for women who were, or have been, in abusive relationships or who were the victims of sexual assault and rape.

Disclosure and violence against women

It feels like this law, unless you have a fairy tale relationship, sets you up for rejection and/or violence ... It makes you very vulnerable. (Lorraine, British Columbia)

As women's understanding increased over the course of the education sessions and group discussion, so did their concerns about how a law that was originally intended, at least in part, to protect women from sexual assault could now be used against them. The women articulated that the law criminalising HIV non-disclosure fails to consider their lived realities and, instead, increases the risk of HIV-related stigma,

rejection and violence. Notably, even the one woman, Desirae from Manitoba, who agreed with the need for a legal obligation to disclose questioned its applicability to the lived reality of women living with HIV: 'I agree with the law and everything like that. But the thing is like how is it protecting us?'

This question is particularly salient given that it is well documented that women who experience interpersonal violence do not always have control over how and when sex occurs, or whether or not a condom is used (Aryal, Regmi and Mudwari 2012; Davila 2002; Davila and Brackley 1999; Kalichman et al. 1998); the women noted that the law fails to recognise this as a barrier to disclosure.

Women in the study were specifically troubled about how the law could be applied in situations of domestic violence and rape. As Marcia from Saskatchewan asked: 'What happens if you're raped and you don't disclose to your rapist – Oh, I'm HIV, by the way?' These concerns generated multiple questions regarding whether women experiencing violence are required by law to disclose their HIV-positive status to the abuser. Responses to these questions opened up further discussion that resulted in women sharing experiences of violence and rape, and the harsh reality of what would happen if they disclosed, as was the case for Julie who participated in one of the British Columbia workshops:

I was raped by three [people] in [Canadian city]. They broke into my home and they held me prisoner for 24 hours and beat me and raped me. And if I had told him I was HIV positive, I would have been dead. I know it. So where does that fit in the picture? (Julie, British Columbia)

The legal requirement to disclose has resulted in a heightened sense of fear amongst women living with HIV in regard to the possibility of increased violence upon disclosing their HIV-positive status to an abusive sexual partner and in situations where they are being physically and/or sexually assaulted. Of critical concern was the potential for vindictive partners to use the non-disclosure law as a tool to 'get back' at women living with HIV. This was not surprising given that some of the women had viewed or had heard about the case of *R. v. D.C.* where D.C. was prosecuted for non-disclosure following her charging of her ex-partner for abuse.²

Women's concerns resonate with a recent Canadian study that reveals that most women living with HIV have experienced violence in adulthood (80%), with very high rates of physical (62%), sexual (45%), verbal (74%) and control (46%) forms of violence (Logie et al. 2017). However, women's concerns about the need to disclose also included situations in which they did not consent to having sex and where they were being raped. Women questioned the extent that the law could protect them from sexual partners who might dishonestly pursue charges in situations where disclosure actually took place:

Could they turn around and even if you're honest and told them, then ... they lied and said, 'Well, I caught it from her', or him. And they go to the police and get them charged, just out to be spiteful and mean. (Catherine, Saskatchewan)

This concern rippled throughout all of the workshops as many of the women had either been threatened themselves or knew other women who had been subjected to the threat of being charged for not disclosing their HIV status by spurned partners. Critically, while there is research that demonstrates the relationship between

interpersonal violence, lack of control over condom use and risk for sexually transmitted infections and HIV (see Mittal, Senn and Carey 2013), much less is known about the relationship between disclosing one's HIV status and risk of violence, including the emotional violence embedded in threats to falsely charge women for not disclosing.

Turning towards the juxtaposition of long-term and intergenerational impacts of colonisation with the law, fears about the violent impact of disclosure held particular consequences for Indigenous women in our study:

When you include the Indigenous community and the numbers and statistics there, like we're already like 10 times the rate of being gone missing, murdered and, you know, facing violence every day. So, when you throw in ... you know, HIV, you know, like it just becomes sometimes not even safe. A lot of people stay in very vulnerable situations because of this law ... I just really think that needs to be looked at in our context. (Jaqueline, Saskatchewan)

The women's need for clarification about the law, as well as the ways that they interpreted and interrogated the law that criminalises HIV non-disclosure, highlights the multiple ways that women living with HIV are disadvantaged and marginalised by a law that was initially thought to have offered them protection (Allard, Kazatchkine and Symington 2013). The women's accounts of their experiences of HIV disclosure, safety and violence that were generated by the education sessions also revealed avenues through which the law buttresses systems of oppression and structural violence that impact all women living with HIV. Critically, these discussions also highlighted the need to recognise the consequences of colonisation, and historical and current day racism against Indigenous women, and how this creates particularly dangerous consequences for the disclosure of their HIV status within the current Canadian legal framework.

Discussion

I always like to stress that, that even though we may sometimes engage in protected sex by using a condom and we are comfortable that we are undetectable, we must be very cognisant of the fact that we're still at risk of being criminalised ... you must have a witness. (June, Ontario)

The discussions that followed the education sessions demonstrate how the intersection between HIV and experiences of sexism, racism, colonisation and violence influence the interpretation and implications of the Canadian criminalisation of HIV non-disclosure law for women living with HIV. Of particular concern to women in this study was the length to which they felt they needed to go in order to prove their innocence in the event that they were charged; the surveillance that they are compelled to put themselves under in order to protect their innocence; and the potential for the law to exacerbate experiences of physical, sexual and intimate partner violence. Underpinning these concerns was the view that HIV-related stigma is firmly embedded in the criminal justice system and enacted by those who have the power to enforce it by imposing a law that positions women living with HIV as a 'weapon', a term that was expressed by a number of women from across Canada.

Emerging from the education sessions was an uneasiness for women living with HIV who do not have access to accurate and up-to-date information about the law. For some women, legal jargon was entirely inaccessible – in fact, even plain-language

documents explaining the law were difficult to comprehend for many. This was partly due to the complexity of the content and partly due to the women's incredulity that this legal obligation even exists. Barriers to accessing information about the criminal law on HIV non-disclosure could be attributed to multiple and intersecting structural factors including literacy, language, disability and other social determinants. This further demonstrates how marginalised women are structurally positioned so as to be ill-informed or completely unaware of the law, including their legal rights under the law. Of grave concern here is the fact that there is no statute of limitations regarding this law, and not knowing about or understanding the law cannot be used as a defence in court.

As the women learned more about the law and how it is enacted, deep-seated fears about the consequences of HIV-related stigma, surveillance of their sexual activities and disclosure were shared and discussed. Many of the women highlighted the necessity to document disclosure to a sexual partner or to have another person to act as a witness to the disclosure, a point echoed throughout all the workshops, particularly given the degree of violence that the women have encountered in their lives and though their interpersonal relationships. This not only highlights the significance of physical and sexual violence experienced by women living with HIV, but points to the need for mechanisms to protect women living with HIV from sexual partners who may vindictively pursue charges as a form of control and abuse.

Conclusions

The HIV disclosure obligation in Canadian criminal law has particular consequences for women living with HIV who are already structurally marginalised (Grant 2013; Symington 2013). Barriers to legal information and knowledge of their rights under the law are compounded by the social conditions that make it challenging for women to be in control of condom use and/or how their disclosure will be taken up. Both the fact that many women living with HIV do not have access to information about the law or their rights under the law and the challenge of proving one's compliance with the law on HIV disclosure and condom use in an intimate relationship translate to legal and intimate injustices for women. Our research confirms that it is unjust to continue seeing women restrain from engaging in healthy sexual relationship due to fear of prosecution despite evidence on the medical advances in HIV transmission and treatment. Conversely, our research also confirms that for those women living with HIV who live under the threat of violence the law upholds sexist and colonial oppressive forces within the Canadian legal system. The law, as it currently stands, could therefore put women living with HIV in a position of having to choose between protecting themselves from being charged for non-disclosure (or living under the threat of being charged) and protecting themselves from male violence. Women's stories underline the need to bring women together to provide opportunities to support themselves and each other in the midst of their experiencing another layer of surveillance in their lives. In addition, sharing the ways that women living with HIV engage with the knowledge they have received about the law is one important way to illuminate the human rights concerns faced by women living with HIV that, at the same time, contributes to our ongoing engagement in a process of advocating for legal reform.

Notes

1. There has been some positive movement forward in courts of law where some of these cases have resulted in an acquittal. In the province of Ontario, there is a moratorium on charging people for HIV non-disclosure, which was announced on 1 December 2017. As a result, crown attorneys will no longer prosecute cases of HIV-positive people who do not disclose their HIV status to their sexual partner when they have had a suppressed viral load for a period of 6 months. However, people living with HIV across the country, including in Ontario, continue to live under the threat of being charged with aggravated sexual assault for failing to meet legal obligations to disclose their HIV status to sexual partners. Hence, to know, own fears, id in our research and who attended
2. See *Positive Women: Exposing Injustice* for D.C.'s first-person account of these circumstances. Available at <http://positivewomenthemovie.org/index.html>.

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Declaration of interest statement

The authors do not have any conflicts of interest to declare.

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