



Criminalization of HIV Exposure: Canada

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1. Country summary and analysis

1.1 Criminalization of sexual exposure to HIV without disclosure: a snapshot¹

In Canada, as of mid-November 2009:²

- **Total number of prosecutions:** There had been a total of 96 prosecutions in which a person living with HIV was alleged to have transmitted HIV or exposed a sexual partner to the risk of infection without disclosing HIV-positive status. These 96 prosecutions involved 91 different accused, as a few accused had faced more than one prosecution.
- **Sex of the accused:** Of those individuals prosecuted, 90% were men and 10% were women.
- **Sexual orientation:** Of the men prosecuted, 72% were prosecuted for sex involving only female partners, 17% were men prosecuted for sex involving only male partners, 5% were prosecuted for sex involving both male and female partners, and in 6% of prosecutions, the sex of the accused's partners was not known based on available data sources.
- **Geographic distribution:** Of the total number of prosecutions (n=96), 45% were in the province of Ontario (which accounts for approximately 39% of the country's population), 14% were in Quebec and 13% were in British Columbia.
- **Race/ethnicity (overall):** Of the total number of people prosecuted (n=91), 29% were identified as white, 23% as black, 4% as aboriginal and 2% had some other race/ethnicity. Data on the race/ethnicity of the remaining 42% of accused could not be determined from the available data sources.
- **Race/ethnicity (male accused):** Among men with HIV prosecuted since 2005 (n=44), 43% were identified as black, 30% as white, none as aboriginal; 2% had some other race/ethnicity and the race/ethnicity of the remaining 25% of male accused could not be determined from the available data sources.

¹ Note that this analysis focuses on the application of the criminal law to HIV transmission or exposure in the context of consensual sexual activity, which accounts for the vast majority of cases in Canada and the area of greatest concern. There has been a handful of other circumstances in which various criminal charges have been laid in relation to transmitting HIV or exposing someone to a risk, real or perceived, of HIV infection in other contexts that are physically assaultive or coercive (e.g., biting, spitting, scratching, threatening or assaulting someone with a syringe, etc.). There has also been one (known) case in which an HIV-positive mother pled guilty to the offence of "failing to provide the necessities of life"; despite pre-natal counselling during her pregnancy, she did not inform medical staff of her HIV-positive status during the delivery of her second child (with the result that no measures were taken to reduce the risk of transmission) and subsequently insisted on breastfeeding the newborn, who later tested HIV-positive: *R. v. J.I.*, 2006 ONCJ 356 (Ontario Court of Justice).

² Most figures derived from: E. Mykhalovskiy, G. Betteridge, "The criminalization of HIV non-disclosure in Canada: A preliminary analysis of trends and patterns," Paper Presented at Ontario HIV Treatment Network Research Conference, Toronto, 16 November 2009.

- **Outcome of prosecutions:** Of the total number of cases (n=96), 31% resulted in a conviction following a trial on the merits, 28% resulted in a conviction based on a guilty plea, and 11% resulted in an acquittal at trial; the outcome of 19% of cases was unknown based on available data sources and the remaining 10% of cases were still in progress.
- **Transmission vs. exposure:** Of the cases which resulted in a conviction (n=57), 39% involved no allegation that HIV had been transmitted (i.e., only exposure to HIV was alleged), 23% involved allegations that HIV had been transmitted, 21% involved both complainants alleged to have been infected and other complainants only alleged to have been exposed to the risk of infection. In the remaining 17% of cases, it could not be determined at the time of the analysis, based on available information, whether the prosecution alleged actual transmission or simply exposure.
- **Sentencing:** Of those cases which resulted in a conviction (n=57), 88% led to the imposition of a prison term. Of the 57 convictions, 12% resulted in a conditional or suspended sentence, while 12% resulted in a prison term of 2 years or less, 28% a term of between 2 and 4 years, 14% a term between 4 and 6 years, 12% a term between 6 and 8 years, 7% a term between 8 and 10 years, and 7% a term exceeding 10 years; in 7% of cases, the length of sentence could not be determined from available data sources. At this time, it is not possible to draw any firm conclusions as to whether the severity of sentences is disproportionate in relation to 'equivalent' crimes, largely because sentences are to be tailored to the circumstances of a particular case and accused, and there is considerable variation between cases regarding the factors relevant to sentencing.

1.2 Criminalization of HIV exposure in Canada: analysis of legal developments and trends in application of the law

Landmark decision and its fallout

In the late 1980s and early 1990s, a handful of cases were brought before the courts in which people living with HIV were charged with a range of criminal offences – such as *common nuisance*, *criminal negligence causing bodily harm*, *administering a noxious thing* and *aggravated (sexual) assault* – for either transmitting HIV or engaging in conduct that carried, or was perceived to carry, a risk of transmitting HIV. Several of these cases were settled by way of guilty pleas, in some cases accused died before trial or before a verdict could be rendered. In a few cases, specifically related to charges of assault, there were mixed results – but a few trial courts ruled that an assault charge could not stand, as a matter of law, because the complainants in those cases had consented to the sexual activity, and the courts

were not willing to interpret the *Criminal Code* offence of assault more expansively to rule that not disclosing HIV-positive status would render this consent invalid.

However, one such case, originating in British Columbia in 1992, ultimately made its way on appeal up to the Supreme Court of Canada, and in 1998, the Court ruled that a person living with HIV could be found guilty of aggravated assault if he or she did not disclose his or her HIV-positive status and exposed another person to a “significant risk” of HIV transmission: *R. v. Cuerrier*, [1998] 2 SCR 371 (summarized in more detail below). The decision raised many questions; more than a decade later, many of those questions remain unanswered and new issues have been added to the debate.

Since the *Cuerrier* decision, a number of trends can be observed:

- *Increase in incidence of prosecution:* There has been a marked upswing in the frequency of prosecutions for alleged non-disclosure of HIV-positive status to a sexual partner: approximately 88% of prosecutions to date (for sexual exposure to HIV) have been in the decade since the Supreme Court’s decision.
- *Greater publicity of prosecutions by police:* This has been accompanied a greater frequency of police issuing public notices (including to the media) with the names, and often photographs, of a person accused of having sex without disclosing HIV-positive status. Often defended as being necessary to “warn the public,” these statements regularly encourage possible additional complainants to contact the police.
- *Escalation of charges:* In addition, an increasing number of defendants are facing charges of aggravated sexual assault (which carries a maximum penalty of life imprisonment), as opposed to the lesser charges of aggravated assault or criminal negligence causing bodily harm. Furthermore, several high-profile cases involving multiple complainants and violent or exploitative circumstances have gone to trial in the last few years. The uproar over the criminalization of HIV exposure reached a new pitch in 2008 when the trial of Johnson Aziga began in Ontario. Aziga was accused of having sex with 11 women without disclosing his HIV-positive status; two of the women he was alleged to have infected subsequently died. He was ultimately convicted of 10 counts of aggravated assault and one count of attempted aggravated assault, as well as two counts of first-degree murder, for allegedly not disclosing his HIV-positive status to sexual partners. To the best of our knowledge, Aziga thereby became the first person to be convicted of murder for not disclosing his HIV-positive status to a sexual partner.

In *Cuerrier*, the Supreme Court of Canada addressed the question of when non-disclosure of HIV-positive status to a sexual partner may amount to a “fraud” that vitiates that partner’s consent, thereby rendering the sexual intercourse an assault under the relevant provisions of the *Criminal Code of Canada* (sections 265 and 273). Specifically, Justice Cory, writing for the majority, stated that there are two elements the Crown must prove in order to establish such a fraud. First, there must be a “dishonest representation”, consisting of either deliberate deceit about HIV status or non-disclosure of that status. Second, the Crown must prove that the dishonesty resulted in some “deprivation” to the complainant, “which may consist of actual harm or simply a risk of harm.” HIV transmission need not occur for the offence of aggravated (sexual) assault to be made out.

The Court’s majority was clear that not any risk of harm will suffice to trigger the duty to disclose:

Yet it cannot be any trivial harm or risk of harm that will satisfy this requirement in sexual assault cases where the activity would have been consensual if the consent had not been obtained by fraud.... In my view the Crown will have to establish that the dishonest act (either falsehoods or failure to disclose) had the effect of exposing the person consenting to a significant risk of serious bodily harm. The risk of contracting AIDS as a result of engaging in unprotected intercourse would clearly meet that test. [emphasis added]

It is clear in the judgment that the Court was not imposing a blanket obligation on persons living with HIV to disclose their status in every sexual encounter. However, what was left – and remains – unclear is where the line will be drawn between activities requiring disclosure and those not requiring disclosure: how will the test of “significant risk” be interpreted and applied?

For example, Justice Cory’s majority judgment contemplated that disclosure might not be required with respect to intercourse for which a condom was used, but did not make an explicit ruling on the issue. In a separate minority opinion, two other judges of the Court agreed with the ultimate disposition of the case, but disagreed with Justice Cory’s approach to defining fraud as based on “significant risk”; they explicitly took the view that, while unprotected sex without disclosure was appropriately criminalized, sex with a condom was not and should remain outside the ambit of the crime of assault. Therefore, 6 out of the 7 Supreme Court judges who heard the case either suggested or explicitly affirmed that condom use would remove the legal obligation to disclose.

To date, the exact contours of the criminal law in Canada regarding non-disclosure of HIV-positive status remain uncertain, particularly with regard to lower risk practices (e.g., protected sex, oral sex) and undetectable viral load. In a handful of cases, trial

courts have suggested that non-disclosure of HIV-positive status to a sexual partner would not vitiate consent because the risk of a particular activity does not rise to the level of being legally “significant.”

- In *R. v. Edwards*, a case involving two gay men, a Nova Scotia trial judge was clear that the legal obligation was either “to practice safe sex or make clear disclosure so that there can be informed consent if unprotected sex is to be pursued.” (In addition, the Crown’s medical expert testified that the per-act risk of transmission through unprotected oral sex was 1 in 10,000 (or 0.01%). The trial judge noted that this did not meet the “significant risk” threshold: “The Crown acknowledges the unprotected oral sex is conduct at a low risk that would not bring it within s. 268(1) of the Criminal Code and had only unprotected oral sex taken place, no charges would have been laid.”³
- In the case of *R. v. Agnatuk-Mercier*, an Ontario trial judge stated that the Crown must prove beyond a reasonable doubt that the vaginal sex in question did not involve condom use in order to secure a conviction.⁴
- In *R. v. Nduwayo*, a jury trial in British Columbia, the judge instructed the jury that there was a duty to disclose HIV-positive status in the event of unprotected vaginal sex, but that “there was no legal duty on Mr. Nduwayo to disclose his HIV-positive status if he used condoms at all times. [...] These instructions on the issue of consent and fraud vitiating consent were taken from the decision of the Supreme Court of Canada in *R. v. Cuerrier*...”⁵
- In *R. v. Smith*, a Saskatchewan trial judge, in delivering oral reasons for judgment, instructed himself as follows: “Simply because I don't believe him [on the matter of disclosure of HIV-positive status], it doesn't follow that he's guilty of the offence charged. I have to go on and satisfy myself beyond a reasonable doubt that if he did have sex that that sex was unprotected sex...”⁶
- In *R. v. D.C.*, the Cour du Québec convicted the accused for not disclosing her HIV-positive status to her male partner, after finding as fact that no condom

³ *R. v. Edwards*, 2001 NSSC 80 (Nova Scotia Supreme Court).

⁴ *R. v. Agnatuk-Mercier*, [2001] OJ No. 4729 (Ontario Superior Court of Justice) (QL).

⁵ *R. v. Nduwayo*, 2006 BCSC 1972 (British Columbia Supreme Court); *R. v. Nduwayo*, Charge to the Jury, Transcript, pp. 625-626 [on file]. The B.C. Court of Appeal allowed Nduwayo’s appeal, on other grounds, and ordered a new trial: *R. v. Nduwayo*, 2008 BCCA 255.

⁶ *R. v. Smith*, [2007] SJ No. 116 (QL). The Saskatchewan Court of Appeal dismissed Smith’s appeal on other grounds: *R. v. Smith*, 2008 SCKA 61.

had been used and hence there was a significant risk of transmission. Condom use was the key question for the trial judge: “... le Tribunal est d’avis que la question la plus fondamentale à résoudre à cet étape est la suivante : les relations sexuelles ont-elles été protégées ou non protégées?”⁷

- In *R. v. Imona-Russell*, another Ontario trial judge repeatedly affirmed that the Crown must prove beyond a reasonable doubt that the accused had “unprotected” vaginal sex with the complainant to secure a conviction for HIV non-disclosure.⁸
- Also of interest is the one reported case in Canada of a criminal prosecution for non-disclosure of hepatitis C virus (HCV), a serious infection which is primarily blood-borne. In *R. v. Jones*, a New Brunswick trial judge accepted the expert medical evidence that the per-act risk of HCV infection from unprotected sex was less than 1% for vaginal sex and from 1– 2.5% for anal sex. Applying *Cuerrier*, the trial judge found that the risk of contracting HCV “through unprotected sex is so low that it cannot be described as significant. Therefore, the positive duty to disclose does not arise.”⁹

However, in a more recent Manitoba decision, *R. v. Mabior* (summarized below), the trial judge stated the law rather differently. The decision criminalized non-disclosure even when condoms were used.¹⁰ This case was also the first to directly examine the issue of low viral load and its relevance in terms of “significant risk.” The judge ruled that *both* an undetectable viral load *and* the use of a condom would reduce the risk of transmission below the level that would be considered a “significant risk.” Neither condom use nor low viral load on its own would suffice to remove the obligation to disclose one’s HIV-positive status, in this judge’s interpretation.

⁷ *R. v. D.C.*, Unreported, Reasons for Judgment, Court du Québec (Longueuil), No. 505-01-058007-051 (February 14, 2008) [on file]. Note that as of January 2010, this judgment was under appeal on other grounds.

⁸ *R. v. Imona-Russell*, Unreported, Reasons for Judgment, 23 February 2009, Transcript of (Oral) Reasons for Judgment, pp. 28, 50 [on file]

⁹ *R. v. Jones*, 2002 NBQB 340 (New Brunswick Court of Queen’s Bench). The trial judge also noted that the Crown’s medical expert testified that he does not advise his patients to disclose their condition because of the stigmatization associated with the disease.

¹⁰ *R. v. Mabior*, 2008 MBQB 201 (Manitoba Court of Queen’s Bench). At this writing, the decision was under appeal and the Canadian HIV/AIDS Legal Network was intervening to challenge this ruling; the matter was scheduled to be heard by the Manitoba Court of Appeal in February 2010.

1.3 Public health and human rights concerns

People living with HIV and service-providers in various fields regularly raise concerns about potential criminal liability and about the negative impacts of such criminal prosecutions. There is certainly disagreement among people living with HIV, AIDS organizations and others working in the field about where to draw the lines with respect to the use of the criminal law, and the appropriate strategies that should be pursued in so doing. However, a number of concerns have been raised repeatedly over the years and from many quarters – in community fora, in the media and increasingly in the courts, especially as the first cases post-*Cuerrier* begin to reach appellate courts and provide opportunities to address some of the outstanding questions regarding the “significant risk of transmission” threshold for requiring HIV disclosure.

Three primary areas of concern can be identified: (1) little beneficial impact of criminalization for HIV prevention; (2) potential harmful consequences for public health and human rights of criminalization; and (3) the potential for unfairness in the application of the law.

Criminal law plays little role in HIV prevention

Critics argue there is little reason to think that the criminal law plays any significant role in reducing the spread of HIV. Despite claims to the contrary, applying criminal law to HIV risk behaviour has not been shown to reduce the spread of HIV by incapacitating or rehabilitating particular offenders, or by deterring others. Indeed, what little evidence there is suggests the absence of any deterrent impact.¹¹ Furthermore, the function of the criminal law as an HIV prevention tool is largely non-existent when applied to those whose use of condoms or whose low or undetectable viral load means they already pose little risk of transmission — and so to extend the criminal law as far as the trial court did in *Mabior* (above), declaring that not disclosing is a crime even if a condom is used or the person’s viral load is undetectable, cannot be justified primarily on the grounds that to do will serve any significant HIV prevention function.

Overly broad criminalization undermines HIV prevention, harms human rights

In contrast, there is a substantial body of research demonstrating the beneficial impact of HIV testing and other public health initiatives in modifying

¹¹ S. Burris et al., “Do Criminal Laws Influence HIV Risk Behavior? An Empirical Trial”, (2007) 39 *Arizona State Law Journal* 467-517.

behaviour that risks transmitting HIV, making testing a centrepiece of national and international HIV strategies. Promoting regular HIV testing, and hence earlier detection of infection and interventions to modify risk behaviour with that diagnosis in mind, is particularly important, given that it is in the early weeks following initial HIV infection that a person's viral load tends to be highest and hence s/he is most infectious. The more people engage in high-risk activity while unaware of their own HIV infection, the greater the damage to public health. The Public Health Agency of Canada estimates that, as of the end of 2008, an estimated 26% of those living with HIV in Canada were unaware of their infection. To the extent that overly broad criminalization creates an additional disincentive to HIV testing (which impact has unfortunately not been well studied) — either directly because knowledge of HIV-positive status exposes a person to a greater risk of criminal prosecution for subsequent non-disclosure, or indirectly by creating further stigma surrounding HIV and people with HIV — it hinders HIV prevention.

Invasions of privacy and the stigmatizing effect of criminalization are other public policy considerations in circumscribing the use of the criminal law. Cases involving criminal charges against persons living with HIV garner considerable media attention, disproportionate given the small number of such cases overall (96 known prosecutions to date in Canada as of mid-November 2009), compared to the cumulative number of people infected with HIV to date in Canada.¹² Long before any resolution at trial, police media advisories and media reports may reveal publicly an accused's identity (including photograph) and HIV status, as well as the criminal allegations and details about his or her personal and sexual life. Stigma also has adverse effects on the effective diagnosis and treatment of HIV among people living with it and on the further spread of HIV amongst the population, including impeding testing, disclosure (including to sexual partners) and the adoption of protective measures. The persistent and widespread nature of HIV-related stigma in Canada is evident from attitudinal surveys commissioned by the Public Health Agency of Canada (PHAC) in recent years.¹³ Concerns about stigmatization and discrimination have often been particularly heightened in smaller and/or more closely-knit communities – something that has been raised for some Aboriginal and ethno-racial minority communities, for example.

¹² The Public Health Agency of Canada reports that, as of the end of 2009, there had been a total of 67,442 reported cases of HIV since November 1, 1985, of which 99.2% were among persons 15 years of age or older: HIV and AIDS Canada: Surveillance Report to December 31, 2008 (Ottawa: Public Health Agency of Canada, 2009), online: <http://www.phac-aspc.gc.ca/aids-sida/publication/survreport/2008/dec/index-eng.php>.

¹³ See, e.g., EKOS Research Associates Inc., *HIV/AIDS Attitudinal Tracking Survey 2006: Final Report* (Ottawa: Public Health Agency of Canada, 2006), online: <http://www.phac-aspc.gc.ca/aids-sida/publication/por/2006/index-eng.php>.

Critics have also argued that criminal prosecutions create distrust in relationships between HIV-positive people and their providers of health care and support services, as people may fear that information regarding their HIV status may be used against them in prosecutions, impeding the provision of quality treatment and care. There has been little systematic documentation of this concern in the Canadian context. However, anecdote and experience – such as the inquiries regularly directed to organizations such as the Canadian HIV/AIDS Legal Network and the HIV & AIDS Legal Clinic – Ontario (HALCO) – indicate that it is a common concern for people living with HIV, as well as for service-providers uncertain as to how to satisfy professional and practical requirements in their work without acquiring or recording information from clients that can be used to prosecute them.

As noted below, these sorts of concerns were largely dismissed by the majority of the Supreme Court of Canada (in Justice Cory’s judgment) when it heard the *Cuerrier* case in 1998, but they did receive some sympathetic commentary from the minority judgment by two of the judges (one of whom is now the Chief Justice of the Supreme Court). In disagreeing with the broader approach to defining “fraud” proposed by the majority (and the even broader approach proposed by the other minority judgment), Justice McLachlin noted that:

The broad extensions of the law proposed by my colleagues may also have an adverse impact on the fight to reduce the spread of HIV and other serious sexually transmitted diseases. Public health workers argue that encouraging people to come forward for testing and treatment is the key to preventing the spread of HIV and similar diseases, and that broad criminal sanctions are unlikely to be effective... Criminalizing a broad range of HIV related conduct will only impair such efforts... The material before the Court suggests that a blanket duty to disclose may drive those with the disease underground...

Concerns have also been raised that criminalization, often seen as a response that aims to protect women and provide justice in instances where women have been infected or exposed to HIV by their male sexual partners, will also operate to the detriment of women – particularly women living with HIV. There have been relatively few fora specifically addressing the ways in which criminalization of HIV non-disclosure does or can affect women. However, one such forum in 2007, consisting of approximately 40 women living with HIV and 40 front-line service-providers working with women, highlighted a range of concerns. These included those already noted above, but also included such things as:

- the added challenges that some women, particularly those in vulnerable relationships, may face in insisting on condom use by their partners, meaning they then must either disclose or lose even this possibility of avoiding criminal liability;

- fears that disclosure could trigger the loss of relationships (with not only emotional, but also financial consequences or consequences for immigration status if the woman is sponsored to immigrate by her husband); and
- fears of abuse and physical violence, as well as the use of the criminal law as a weapon, especially in situations where relationships break down and the person with HIV may be subjected to unfounded accusations or threats to lay criminal charges as a means of seeking revenge or exerting control.¹⁴

Uncertainty and unfairness in application of the criminal law

Finally, there is the potential for unfairness in the application of the criminal law. In her criticism of the “significant risk” test set out by Justice Cory in the Supreme Court of Canada’s majority decision in *Cuerrier*, Justice raised this issue as well as her concern that uncertainty would undermine the presumed deterrent effect of the criminal law:

When is a risk significant enough to qualify conduct as criminal? In whose eyes is "significance" to be determined - the victim's, the accused's or the judge's? ... The criminal law must be certain. If it is uncertain, it cannot deter inappropriate conduct and loses its *raison d'être*. Equally serious, it becomes unfair. People who believe they are acting within the law may find themselves prosecuted, convicted, imprisoned and branded as criminals. Consequences as serious as these should not turn on the interpretation of vague terms like "significant" and "serious".

Indeed, this concern has begun to manifest itself in the judgments since *Cuerrier*, as lower courts have been called upon to flesh out the contours of the “significant risk” test. In some cases (e.g., *Edwards*, noted above), a person living with HIV has avoided prosecution for oral sex without a condom because of the sensible exercise of prosecutorial discretion; yet within the last year, the prosecutor in at least one other case is proceeding with criminal charges solely on the basis of allegations of unprotected oral sex. As noted above, in a number of cases, trial judges have seemingly accepted that vaginal or anal sex with a condom does not attract criminal liability, yet in *Mabior* (under appeal) this interpretation has been rejected, in a judgment that seems to require disclosure as long as there is even a miniscule risk of transmission.

Furthermore, if the question of which acts and circumstances meet this threshold is always to be left to the trier-of-fact, whether a judge alone or a jury, as some courts have done, then we face the prospect that one person may be convicted of one of the most serious crimes under Canadian law for not disclosing

¹⁴ “To Tell or Not to Tell: the Criminalization of HIV Non-Disclosure & its Impact on HIV-Positive Women”, Report of a Community Forum, Toronto, 25 May 2007 [on file].

his or her HIV-positive status, while another person who has engaged in exactly the same sexual activity could be acquitted – all because one jury deems that an estimated 0.05% chance of transmission is “significant” while another deems it to fall below this threshold. In the absence of a clearly delineated test for when people living with HIV are, and are not, required to disclose their status in order to avoid criminal liability, the potential for inconsistent and unfair application of the law is only magnified.

1.4 Circumscribing the criminal law: the way forward

Although there has been a trend in Canada over the past decade to ever more expansive and frequent use of the criminal law in cases of HIV exposure, we have reached a moment where perhaps some significant changes can be achieved if advocates take strategic advantage of emerging opportunities. Several specific interventions may be particularly pertinent:

- There is growing public debate, including in the media, on the criminalization of HIV exposure and its impacts – although it is difficult to say that much of the media commentary, with a few exceptions, is well-informed or attempts honestly to present a careful, nuanced assessment of the public policy considerations at stake, both pro and con. GNP+NA could consider becoming more actively engaged in this debate in the public arena, bringing the perspective of people living with HIV more into the discussion.
- The first study in Canada has been initiated (in Ontario) to build a base of evidence on the impacts of criminalization of HIV exposure. Results from this 3-year study should be released in 2011 and provide an opportunity for further education and advocacy.
- Materials are being developed to assist defence lawyers in handling such cases, in collaboration between a number of organizations.
- The Canadian HIV/AIDS Legal Network and the HIV & AIDS Legal Clinic – Ontario are collaborating with the National Judicial Institute to develop, for the first time, a training session on HIV/AIDS and criminalization for judges (to be delivered in March 2010).
- The Canadian HIV/AIDS Legal Network, often in collaboration with local AIDS or PWA organizations, is intervening in a number of cases now reaching provincial appellate courts that raise the some of the outstanding questions following the *Cuerrier* decision about the scope of the criminal law (e.g., the

implications of condom use or undetectable viral load). In appropriate cases, GNP+NA might consider joining as an intervener.

- In one province (Ontario), a working group of AIDS service, legal and PWA organizations has been formed and has begun a project that will seek to engage the provincial Attorney-General's office with a view to developing prosecutorial guidelines that would limit the inappropriately expansive application of the criminal law.¹⁵ This work could serve as a model for use in other provinces (as provinces has the constitutional responsibility for the administration of justice, including the application of the federal *Criminal Code*). A campaign for the development and adoption of good prosecutorial guidelines will require broad support from community groups and from PWA groups; GNP+NA could play an important role here.

¹⁵ For example, a Legal Guidance (for prosecutors and caseworkers) and a Policy Statement (for a more general readership) on prosecutions to the sexual transmission of infections were published in March 2008 by the Crown Prosecution Service of the United Kingdom. See Y. Azad, "Developing guidance for HIV prosecutions: an example of harm reduction?" *HIV/AIDS Policy & Law Review* 13(1) (2008): 13–19.