



# Brief to the House of Commons Standing Committee on Health: LGBTQ2S+ HEALTH IN CANADA

May 2019

## 1. OVERVIEW

The Canadian HIV/AIDS Legal Network (the “Legal Network”) promotes the human rights of people living with, at risk of or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education and community mobilization. It is the only national organization working exclusively on HIV-related legal issues in Canada, with an extensive body of research and analysis on a range of issues related to HIV, including the impact of criminal laws on LGBTQ2S+ communities. In this submission, we make recommendations in three areas of law that unjustly impact LGBTQ2S+ communities, undermine their access to HIV and other health care interventions, and frustrate the national HIV response: (1) criminalization of HIV non-disclosure; (2) criminalization of sex work; and (3) criminalization of drug possession for personal use.

## 2. CRIMINALIZATION OF HIV NON-DISCLOSURE

Homophobia marked the response to HIV from the outset when the first cases reported in 1981 were labelled “gay-related immune deficiency”. The LGBTQ2S+ community played — and continues to play — a key role in mobilizing the social and political response to what remains one of the world’s greatest public health challenges. This includes resistance to stigmatizing, discriminatory and harmful laws that impede access to care, treatment and support and undermine HIV prevention efforts and access to testing. In addition, gay men (and other men who have sex with men) remain the single largest “key population” represented among those living with HIV in Canada and among new HIV infections each year, according to the Public Health Agency of Canada.<sup>1</sup> The overly broad criminalization of HIV non-disclosure is one of the most pressing issues for people living with HIV in Canada and therefore a pressing issue for the LGBTQ2S+ community. While most of the people who have been charged for non-disclosure in Canada are men who have sex with women, an increasing number of cases are against gay men or other men who have sex with men. Since 2012, when the Supreme Court of Canada last dealt with this issue, 42% of prosecutions have been against men who have sex with men, as opposed to 27% prior.<sup>2</sup>

Since 1989, almost 200 people have been charged for alleged HIV non-disclosure in Canada — making Canada a world leader in prosecuting people with HIV, third only to the U.S. and Russia.<sup>3</sup> People are most often charged with the offence of “aggravated sexual assault,” even in cases where no transmission occurs or the risks of transmission are zero or close to zero. Aggravated sexual assault is one of the most serious criminal offences in the *Criminal Code*. It is a charge traditionally used for violent rape, carrying a maximum penalty of life imprisonment and a registration as sexual offender (presumptively for a lifetime, but for a minimum of 20 years before an application can be made to void the designation).

All legal and policy responses to HIV should be based on the best available evidence, rooted in human rights principles and law, and supportive of HIV-related care, treatment and prevention. Not only is there is no evidence that criminalizing HIV non-disclosure has prevention benefits, **the overly broad use of the criminal law (i) causes considerable harm by increasing stigma and discrimination against people living with HIV; (ii) spreads misinformation about HIV and undermines public health messaging about prevention; (iii) affects the trust between HIV patients and their physicians and counsellors; and (iv) results in injustices and**

**human rights violations.** Consequently, numerous HIV organizations across Canada and internationally, UN bodies, respected jurists and women's rights advocates (including leading feminist legal academics) have urged governments to limit the use of the criminal law to cases of intentional transmission of HIV (i.e., where a person knows his or her HIV-positive status, acts with the intention to transmit HIV, and does in fact transmit it).<sup>4</sup>

However, based on the 2012 Supreme Court of Canada decisions in *R. v. Mabior*, 2012 SCC 47 and *R. v. D.C.*, 2012 SCC 48, a person living with HIV in Canada is at risk of prosecution for non-disclosure even if there was no transmission, the person had no intention to harm their sexual partner, and the person used a condom or had an undetectable viral load. The use of the criminal law in this manner runs contrary to recommendations by the Joint United Nations Programme on HIV/AIDS (UNAIDS) and other international bodies. It has moved nearly 80 of the country's leading HIV clinicians and scientific experts to issue a consensus statement in 2014 that clarifies the risks of HIV transmission associated with various acts, and in doing so, to state their concern about the way in which the criminal justice system has lost its way in its understanding of the scientific evidence available.<sup>5</sup> It has also galvanized the Canadian Coalition to Reform HIV Criminalization to release a joint Community Consensus Statement in 2017, endorsed by more than 150 organizations from across the country, denouncing the current overly broad use of the criminal law in Canada against people living with HIV and calling for urgent action from federal, provincial and territorial governments to limit the scope of the criminal law.<sup>6</sup> To assist scientific experts considering individual criminal cases, and to encourage governments and those working in the criminal justice system to ensure a correct and complete understanding of current scientific knowledge informs any application of the criminal law in cases related to HIV, 20 of the leading HIV scientists from around the world also released in July 2018 a peer-reviewed *Expert consensus statement on the science of HIV in the context of the criminal law*, published in the *Journal of the International AIDS Society* and endorsed by 70 other HIV experts, as well as the International AIDS Society, the International Association of Providers of AIDS Care and UNAIDS.<sup>7</sup>

In December 2018, the federal Attorney General published a binding directive to the Public Prosecution Service of Canada regarding prosecutions of HIV non-disclosure. The Directive reads as follows:

- The Director [of Public Prosecutions] shall not prosecute HIV non-disclosure cases where the person living with HIV has maintained a suppressed viral load, i.e., under 200 copies per ml of blood, because there is no realistic possibility of transmission.
- The Director shall generally not prosecute HIV nondisclosure cases where the person has not maintained a suppressed viral load but used condoms or engaged only in oral sex or was taking treatment as prescribed, unless other risk factors are present, because there is likely no realistic possibility of transmission.
- The Director shall prosecute HIV non-disclosure cases using non-sexual offences, instead of sexual offences, where non-sexual offences more appropriately reflect the wrongdoing committed, such as cases involving lower levels of blameworthiness.
- The Director shall consider whether public health authorities have provided services to a person living with HIV who has not disclosed their HIV status prior to sexual activity when determining whether it is in the public interest to pursue a prosecution against that person.

The federal directive only governs federal Crown attorneys, who handle these prosecutions in the three territories. In the ten provinces, it is provincial Attorneys General who have the constitutional responsibility for prosecuting *Criminal Code* offences. Therefore, to limit unjust prosecutions in other parts of Canada, each provincial Attorney General must issue similar directives (or their prosecution service needs to adopt a similar policy without being directed). Moreover, while the federal Attorney General's directive was a step in the right direction, more is needed, including reforms to the *Criminal Code*, to further limit the currently broad scope of HIV criminalization.

### **Recommendations**

We call on the federal government to limit the scope and application of the criminal law, in keeping with best practices and international, evidence-based recommendations, as follows:

- Consistent with the recommendations of numerous international and national organizations, reform the *Criminal Code* to limit the unjust use of the criminal law against people living with HIV by: removing HIV non-disclosure from the reach of sexual assault laws; limiting the use of the criminal law to intentional and actual transmission of HIV; and ensuring that, at a bare minimum, in no circumstances is the criminal law used against people living with HIV who use a condom, practice oral sex, or have condomless sex with a low or undetectable viral load.
- In keeping with the recommendation above, update the federal Attorney General’s directive to the Public Prosecution Service of Canada to unequivocally preclude prosecution for alleged HIV non-disclosure in circumstances where a condom has been correctly used, or based on oral sex, or in cases of condomless sex where the person living with HIV has a low or undetectable viral load.
- Work with and encourage provincial Attorneys General to issue directives to their provincial Crown prosecutors that reflect the above limits on prosecutions.
- In partnership with the provinces and territories, support the development of resources and training for judges, police, Crown prosecutors and prison staff to address HIV misinformation, fear and stigma.
- Explore options to expunge criminal convictions for HIV non-disclosure and remove sex offender designation for those individuals convicted in circumstances which did not involve the intentional and actual transmission of HIV.

## 2. CRIMINALIZATION OF SEX WORK

There is substantial overlap between LGBTQ2S+ and sex worker communities. Many sex workers are members of LGBTQ2S+ communities, and the venues and spaces of these two communities have often also been shared. There is also a long, shared history of both communities facing criminalization for consensual sex motivated by similar moral judgments and prejudice, and being targeted by indecency and prostitution-related laws.<sup>8</sup>

In *Canada (Attorney General) v. Bedford*, the Supreme Court unanimously declared that the *Criminal Code* prohibitions on keeping or being in a “common bawdy-house” (s. 210), “living on the avails” of prostitution (s. 212(1)(j)) and communicating in a public place for the purposes of prostitution (s. 213(1)(c)) were unconstitutional because they unjustifiably violate the rights of sex workers under section 7 of the *Canadian Charter of Rights and Freedoms* (“Charter”) by undermining their health and safety.<sup>9</sup> The Supreme Court suspended its declaration of invalidity for one year, until December 2014. In response, the federal government enacted the *Protection of Communities and Exploited Persons Act* (“PCEPA”), which created a new legal framework that extended the scope of criminal prohibitions on sex work.<sup>10</sup> As a result, a web of criminal offences surround sex work, making it difficult for a sex worker to work without running afoul of the law, and criminalizing clients and third parties across the board.

For example, the *PCEPA* introduced a new absolute prohibition on purchasing sexual services and re-introduced a prohibition on communication for the purpose of obtaining sexual services by clients *anywhere*, and by sex workers in a public place that is “next to” a school ground, playground or day care centre. These laws, which make sex workers’ clients guilty of a crime for any communication to obtain their services, have the same effect as the previous laws, and are particularly harmful for street-based sex workers, who are among the most marginalized people in the industry and were among those overwhelmingly targeted for prosecution under the former “communicating” provision that was struck down in *Bedford*. The available evidence demonstrates that **prohibitions on communicating and/or the purchase of sexual services displace and isolate sex workers who work on the street**, who also continue to fear and experience antagonism from police; **reduce all sex workers’ ability to negotiate clear terms of services with clients**, since pressure from clients concerned about arrest to proceed as quickly as possible means less opportunity for sex workers to screen or negotiate with their clients; **undermine sex workers’ legal right to give full consent**, by not

allowing clear and direct communication about services with clients; **increase sex workers' barriers to accessing police protection** because they fear being criminalized or subject to surveillance; and **deter clients and sex workers from contacting police** about harmful working conditions, exploitation or trafficking.<sup>11</sup>

The PCEPA also created a new offence of “receiving a material benefit,” which criminalizes all third parties<sup>12</sup> who receive a financial or other material benefit from someone else’s sex work. This provision prevents sex workers from creating professional relationships that provide ongoing, secure working conditions, creating the same harms as its predecessor, the “living on the avails of prostitution” law. The same reasons also give rise to concerns about the enforcement of the procuring provisions, which undermine sex workers’ ability to legally establish non-exploitive, safety-enhancing relationships. In particular, migrant sex workers often rely on third parties workers for assistance because of language barriers and lack of familiarity with the social system, yet these relationships are often conflated with human trafficking, denying migrant sex workers’ a vital form of support.<sup>13</sup> **The PCEPA prohibitions on “material benefit” and “procuring” thus harm sex workers by decreasing sex workers’ ability to access the services of third parties that could increase their safety and security;** criminalizing their personal and professional relationships if they cannot be proved to be “legitimate living arrangements”; **denying sex workers the benefit of health and safety regulations, labour laws and human rights protection; increasing sex workers’ experience of social and professional isolation; and restricting sex workers’ options regarding where and how they engage in sex work.** In addition, the material benefit and procuring provisions are unnecessary, because other provisions of the *Criminal Code* already capture the forms of exploitation and abuse that they seek to prevent.<sup>14</sup>

The law also prohibits the advertising of sexual services. While an individual sex worker does not face prosecution for advertising their own services, the provision can be interpreted as prohibiting any other party (e.g., a newspaper or website) from publishing prostitution-related advertising. **The advertising prohibition thus creates significant barriers to working indoors,** which research demonstrates is safer than working on the street (the impact of which is especially pronounced for migrant sex workers, who often rely on third parties to advertise) and also **restricts the way that sex workers advertise,** with a return to “code language”— reducing the capacity for sex workers to clearly communicate which services they offer and increasing the potential for misunderstandings and frustrations with clients. Forum boards where sex workers advertise, which are vital to sharing information with other workers that could improve security, are also targeted by this law.

The profound harms of criminalizing sex work to sex workers’ health and human rights have prompted a wide range of civil society organizations, domestically and internationally, to call for the decriminalization of sex work — meaning removing all laws and policies that make it a criminal offence to sell, solicit, purchase or facilitate sex work or to live off the proceeds of sex work. Most significantly, a large number of sex worker organizations and networks, including the Canadian Alliance for Sex Work Law Reform and the Global Network of Sex Work Projects, support the decriminalization of sex work as a means to realize sex workers’ human rights.<sup>15</sup> Calls for decriminalization have also come from UNAIDS,<sup>16</sup> the Global Commission on HIV and the Law,<sup>17</sup> Open Society Foundations,<sup>18</sup> the Global Alliance Against the Traffic in Women,<sup>19</sup> the UN Special Rapporteur on the right to health,<sup>20</sup> Human Rights Watch<sup>21</sup> and Amnesty International.<sup>22</sup>

## **Recommendations**

We urge the federal government to create a legal framework that ensures safe and healthy working conditions for sex workers (many from LGBTQ2S+ communities) by taking the following steps:

- Repeal all sex work-specific criminal laws, including those introduced through the PCEPA.
- Create new legislative frameworks for sex work that provide meaningful protections against violence and exploitative working conditions and ensure safe working conditions for sex workers, in consultation and collaboration with sex workers and provincial and territorial governments.

- Prioritize policies that are founded in sex workers’ well-being rather than criminal intervention.<sup>23</sup>

#### 4. CRIMINALIZATION OF DRUG POSSESSION FOR PERSONAL USE

Evidence from numerous jurisdictions indicates that LGBTQ2S+ individuals are disproportionately affected by the problematic use of alcohol and drugs, a reality rooted in stigma, discrimination, violence and vulnerability to various human rights abuses.<sup>24</sup> The Centre for Addiction and Mental Health, for example, notes that “isolation, alienation and discrimination from a homophobic society is stressful,” and that escaping from these feelings is one of the main reasons why LGBTQ people use substances.<sup>25</sup> Yet the specific needs of LGBTQ2S+ in relation to prevention, treatment and harm reduction services are often overlooked and unaddressed in policies and programs, undermining their access to — and the effectiveness of — such services.<sup>26</sup> Stigma, discrimination and abusive practices in health care and other services is also encountered by LGBTQ2S+ people, further undermining the reach and benefits of services where they do exist.<sup>27</sup>

Not only does a greater prevalence of use of controlled substances mean greater exposure to the risk of illness and overdose, it also heightens the risk of LGBTQ2S+ people coming into contact with the criminal justice system, whereby **the enforcement of punitive drug policies has been a basis for police surveillance and action against public and private spaces that play an important role in LGBTQ2S+ communities.** The particular vulnerability of LGBTQ2S+ people to violence (including sexual violence) and other abuses within the criminal justice system, including from law enforcement personnel and in detention facilities and prisons, is also well-established.<sup>28</sup> Both the LGBTQ2S+ liberation and drug policy reform movements are rooted in the principles of privacy, personal and bodily autonomy and the need to tackle stigma, moral panic, police surveillance and repression.<sup>29</sup> Just as personal autonomy and privacy are central to decriminalizing consensual queer sex, these same principles should lead governments to repeal laws that criminalize personal drug use — a form of state coercion, control and punishment that wreaks havoc on health and human rights. **Numerous studies have demonstrated the negative impacts of criminalizing the possession of drugs for personal use on the health needs of people struggling with problematic drug use.** An immense body of evidence demonstrates that the continued, overwhelming emphasis on drug prohibition — from policing to prosecution to prisons — is not only failing to achieve both the stated public health and public safety goals of prohibition, but also resulting in costly damage to the public purse, to public health and to human rights, in Canada<sup>30</sup> and globally.<sup>31</sup>

#### Recommendations

We urge the federal government to promote the health of LGBTQ2S+ communities, and people who use drugs more broadly, by taking the following steps:

- Support research into the specific needs of LGBTQ2S+ people in relation to programs and services to prevent, treat and reduce harms associated with problematic drug use.
- Improve information and messaging about preventing problematic drug use that is tailored to LGBTQ2S+ communities and ensure access to evidence-based health services, including for the prevention, treatment and reduction of harms associated with problematic drug use, that are tailored to meet the specific needs of LGBTQ2S+ people.
- Decriminalize drug possession for personal use and commit to examining appropriate models for the legalization and regulation of other currently illegal substances as part of an evidence-based, public-health approach to drug policy.
- Ensure and support the full involvement of civil society organizations, including organizations and networks of people who use drugs and LGBTQ2S+ people, in the elaboration, implementation and evaluation of drug policy and services for people who use drugs.

- <sup>1</sup> Public Health Agency of Canada, *Population-Specific HIV/AIDS Status Report: Gay, Bisexual, Two-Spirit and Other Men Who Have Sex With Men*, 2013, available at [www.catie.ca/sites/default/files/SR-Gay-Bisexual-Two-Spirit-and-other-Men-Who-Have-Sex-With-Men.pdf](http://www.catie.ca/sites/default/files/SR-Gay-Bisexual-Two-Spirit-and-other-Men-Who-Have-Sex-With-Men.pdf)
- <sup>2</sup> C. Hastings et al, *HIV Criminalization in Canada: Key Trends and Patterns*, Canadian HIV/AIDS Legal Network, 2017, p. 5, available at [www.aidslaw.ca/site/hiv-criminalization-in-canada-key-trends-and-patterns/?lang=en](http://www.aidslaw.ca/site/hiv-criminalization-in-canada-key-trends-and-patterns/?lang=en).
- <sup>3</sup> E. Bernard and S. Cameron, *Advancing HIV Justice 2: Building momentum in global advocacy against HIV criminalisation*, HIV Justice Network and GNP+, 2016, available at [www.hivjustice.net/wp-content/uploads/2016/05/AHJ2\\_final2\\_10May2016.pdf](http://www.hivjustice.net/wp-content/uploads/2016/05/AHJ2_final2_10May2016.pdf).
- <sup>4</sup> See, for example, UNAIDS/UNDP, *Policy brief: criminalization of HIV transmission*, August 2008, available at [www.aidslaw.ca/site/wp-content/uploads/2014/02/1.UNAIDSUNDPposition.pdf](http://www.aidslaw.ca/site/wp-content/uploads/2014/02/1.UNAIDSUNDPposition.pdf); UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc. A/HRC/14/20 2010, available at [www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf); Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights and Health*, July 2012, available at <https://hivlawcommission.org/report/>; and the perspectives articulated in the documentary film *Consent: HIV non-disclosure and sexual assault law* (Goldelox Productions and Canadian HIV/AIDS Legal Network, 2015), available at [www.consentfilm.org/](http://www.consentfilm.org/).
- <sup>5</sup> M. Loutfy, M. Tyndall, J.-G. Baril, J. Montaner, R. Kaul and C. Hankins, “Canadian consensus statement on HIV and its transmission in the context of criminal law,” *Can J Infect Dis Med Microbiol* Vol 25 No 3 May/June 2014.
- <sup>6</sup> Canadian Coalition to Reform HIV Criminalization, *Community Consensus Statement*, 2017, available at [www.hivcriminalization.ca/community-consensus-statement/](http://www.hivcriminalization.ca/community-consensus-statement/).
- <sup>7</sup> F. Barrée-Sinoussi et al., *Expert consensus statement on the science of HIV in the context of criminal law*, July 2018 and summary prepared by HIV JUSTICE WORLDWIDE available at <http://www.hivjusticeworldwide.org/en/expert-statement/>.
- <sup>8</sup> For example, solicitation and common bawdy-house laws were historically used against gay communities. Indeed, before the Supreme Court of Canada’s landmark 2013 ruling in *Canada (Attorney General) v. Bedford*, the definition of “common bawdy-house” included places “kept or resorted to” for “prostitution” or “acts of indecency.” In finding the common bawdy-house prohibition unconstitutional, the Supreme Court removed the reference to prostitution in the definition (*Criminal Code*, s. 197).
- <sup>9</sup> *Canada (Attorney General) v. Bedford*, 2013 S.C.C. 72 (Supreme Court of Canada).
- <sup>10</sup> *Protection of Communities and Exploited Persons Act*, S.C. 2014, c. 25.
- <sup>11</sup> See, for example, Canadian HIV/AIDS Legal Network, *The Perils of “Protection”: Sex Workers’ Experiences of Law Enforcement in Ontario*, 2019.
- <sup>12</sup> The Global Network of Sex Work Projects (NSWP) has outlined why the decriminalization of third parties is important for sex workers’ health and human rights, and has specified that: “The term ‘third parties’ includes managers, brothel keepers, receptionists, maids, drivers, landlords, hotels who rent rooms to sex workers and anyone else who is seen as facilitating sex work”: NSWP, *Criminalisation of Third Parties and its Impact on Sex Workers’ Human Rights*, May 2016, available at [www.nswp.org/resource/criminalisation-third-parties-and-its-impact-sex-workers-human-rights](http://www.nswp.org/resource/criminalisation-third-parties-and-its-impact-sex-workers-human-rights).
- <sup>13</sup> See, for example, Elene Lam, *Behind the Rescue: How Anti-Trafficking Investigations and Policies Harm Migrant Sex Workers*, Butterfly (Asian and Migrant Sex Workers Support Network), June 2018.
- <sup>14</sup> The range of criminal laws that protect sex workers from abuse by third parties and others are set out clearly in House of Commons, Report of the Standing Committee on Justice and Human Rights, *The Challenge of Change: A Study of Canada’s Criminal Prostitution Laws*, 2006, Appendix D, available via [www.parl.gc.ca/HousePublications/Publication.aspx?Language=e&Mode=1&Parl=39&Ses=1&DocId=2599932](http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=e&Mode=1&Parl=39&Ses=1&DocId=2599932).
- <sup>15</sup> See, for example, Canadian Alliance for Sex Work Law Reform, *Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada*, March 2017, available at <http://sexworklawreform.com/wp-content/uploads/2017/05/CASWLR-Final-Report-1.6MB.pdf> and NSWP, *Consensus Statement on Sex Work, Human Rights, and the Law: A Summary*, 2013, which is guided by “opposition to all forms of criminalisation and all other legal oppression of sex work (including sex workers, clients, third parties, families, partners and friends)” and is available at [www.nswp.org/sites/nswp.org/files/ConStat%20PDF%20EngSum.pdf](http://www.nswp.org/sites/nswp.org/files/ConStat%20PDF%20EngSum.pdf).
- <sup>16</sup> UNAIDS, *Guidance Note on HIV and Sex Work*, 2012. Available at [www.unaids.org/sites/default/files/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306\\_UNAIDS-guidance-note-HIV-sex-work\\_en.pdf](http://www.unaids.org/sites/default/files/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf).
- <sup>17</sup> Global Commission on HIV and the Law, *supra* note 4.
- <sup>18</sup> Open Society Foundations, *Ten reasons to decriminalize sex work*, 2012, available at [www.opensocietyfoundations.org/publications/ten-reasons-decriminalize-sex-work](http://www.opensocietyfoundations.org/publications/ten-reasons-decriminalize-sex-work).
- <sup>19</sup> Global Alliance Against the Traffic of Women, *Statement to the Human Rights Council*, 2012, available at [www.gaatw.org/statements/GAATWStatement\\_05.2013.pdf](http://www.gaatw.org/statements/GAATWStatement_05.2013.pdf).
- <sup>20</sup> *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, *supra* note 4.
- <sup>21</sup> Human Rights Watch, “Canada’s prostitution bill a step in the wrong direction,” *Ottawa Citizen*, June 18, 2014, available at [www.hrw.org/news/2014/06/18/canadas-prostitution-bill-step-wrong-direction](http://www.hrw.org/news/2014/06/18/canadas-prostitution-bill-step-wrong-direction).
- <sup>22</sup> Amnesty International, *Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers*, 2016, available at [www.amnesty.org/en/documents/pol30/4062/2016/en/](http://www.amnesty.org/en/documents/pol30/4062/2016/en/).
- <sup>23</sup> For further discussion, see: Canadian Alliance for Sex Work Law Reform, *supra* note 15; Canadian Alliance for Sex Work Law Reform, *After Bedford: Developing a health and safety framework for sex workers and Canadian Communities*, 2014, available at

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[http://maggiestoronto.ca/uploads/File/after\\_bedford\\_140316.pdf](http://maggiestoronto.ca/uploads/File/after_bedford_140316.pdf); Pivot Legal Society, *Beyond Decriminalization: Sex Work, Human Rights and a New Framework for Law Reform*, 2006, available at [www.pivotlegal.org/beyond\\_decriminalization](http://www.pivotlegal.org/beyond_decriminalization).

<sup>24</sup> Rainbow Health Ontario, *LGBTQ people, drug use & harm reduction*, 2015.

<sup>25</sup> Centre for Addiction & Mental Health, *Substance Use: Issues to consider for the lesbian, gay, bisexual, transgendered, transsexual, two-spirit, intersex and queer communities*, 2006, available at

[http://knowledgex.camh.net/amhspecialists/resources\\_families/Pages/substance\\_use\\_LGBTQttiq.aspx](http://knowledgex.camh.net/amhspecialists/resources_families/Pages/substance_use_LGBTQttiq.aspx).

<sup>26</sup> See, for example, Drug Policy Alliance, *LGBT Communities and Drug Policy Reform: Toward a Public Health and Safety-Based Approach*, 2013 and UK Drug Policy Commission, *The Impact Of Drugs on Different Minority Groups: A Review Of The UK Literature Part 2: Lesbian, Gay, Bisexual & Transgender (LGBT) groups*, July 2010.

<sup>27</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, 2013, UN Doc. A/HRC/22/53, paras. 75-79.

<sup>28</sup> UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan Méndez, 2013, UN Doc. A/68/295, paras. 47, 67-68, 70; UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, 2010, UN Doc. A/HRC/13/39/Add.5, paras. 231 and 257.

<sup>29</sup> Drug Policy Alliance, *supra* note 26.

<sup>30</sup> Canadian HIV/AIDS Legal Network, *Drug policy and human rights: The Canadian context — Submission to the Office of the UN High Commissioner for Human Rights*, May 19, 2015, available at [www.aidslaw.ca/site/drug-policy-and-human-rights-ohchr](http://www.aidslaw.ca/site/drug-policy-and-human-rights-ohchr).

<sup>31</sup> K. DeBeck et al., “HIV and the criminalisation of drug use among people who inject drugs: a systematic review,” *The Lancet HIV*, May 14, 2017; S. Boyd, C.I. Carter and D. MacPherson, *More Harm Than Good: Drug Policy in Canada* (Halifax and Winnipeg: Fernwood Publishing, 2016); Office of the UN High Commissioner for Human Rights, *Study on the impact of the world drug problem on the enjoyment of human rights*, Report to the UN Human Rights Council, UN Doc. A/HRC/30/65, 2015; T. Babor et al., *Drug Policy and the Public Good* (Oxford: Oxford University Press, 2010); S. Rolles et al., *The Alternative World Drug Report*, 2nd ed. (London: Transform Drug Policy Foundation, 2016), available at [www.countthecosts.org/alternative-world-drug-report-2nd-edition](http://www.countthecosts.org/alternative-world-drug-report-2nd-edition); Global Commission on Drug Policy, *The War on Drugs and HIV/AIDS: How the Criminalization of Drug Use Fuels the Global Pandemic*, 2012, available at [www.globalcommissionondrugs.org/reports/the-war-on-drugs-and-hiv-aids](http://www.globalcommissionondrugs.org/reports/the-war-on-drugs-and-hiv-aids); Global Commission on Drug Policy, *The Negative Impact of the War on Drugs on Public Health: The Hidden Hepatitis C Epidemic*, 2013, available at [www.globalcommissionondrugs.org/reports/the-negative-impact-of-the-war-on-drugs-on-public-health-the-hidden-hepatitis-c-epidemic](http://www.globalcommissionondrugs.org/reports/the-negative-impact-of-the-war-on-drugs-on-public-health-the-hidden-hepatitis-c-epidemic); Global Commission on HIV and the Law, *supra* note 4.