

# Criminal law and HIV non-disclosure



What should PHAs do if they are concerned that they may be under investigation for allegedly failing to disclose their HIV-positive status?

- If a person living with HIV (PHA) **did not disclose** his or her status before sex, he or she should consider contacting a **criminal lawyer** familiar with HIV-related issues. Even if there has been no contact with the police, it is a good idea to speak with a criminal lawyer about the situation to get some legal advice. If a PHA did not disclose his or her status, he or she should avoid talking about it with anyone, including social workers, friends, doctors, public health officials or family members until he or she speaks to a criminal lawyer.
- A PHA who is **contacted by the police** is under **no obligation to speak with police**. If a PHA is contacted by police, he or she should get the officer's contact information and immediately contact a criminal lawyer. The PHA and the lawyer can then decide how best to respond to the police contact.
- If a PHA is **detained** by the police (meaning the police take control over that person, physically or psychologically), then the PHA has **the legal right to remain silent**. He or she does not have to answer police questions. It is probably a good idea to remain silent because anything said to the police can be used in evidence at a trial. The PHA can thus choose to give only his or her name, address and date of birth, and say nothing more.
- A PHA **detained** by the police also has the **right to consult with a lawyer in private without delay**. The police must explain why the PHA is being detained and offer him or her the opportunity to speak with a lawyer. The PHA should ask to speak to a lawyer. The police must provide a phone and appropriate phone books to enable contacting a lawyer, and inform the PHA about legal aid and his or her right to free legal services. A lawyer can help figure out how to respond to police requests and whether or not it would be wise to answer their questions. Once a PHA has spoken to his or her lawyer, the police may continue to ask questions but he or she does not have to answer these questions. Again, anything that a person says to the police at anytime could be used against him or her.
- If financial resources are limited, **legal aid** is often available to hire a defence lawyer for a criminal trial.

- If the PHA is not a Canadian citizen (e.g., a permanent resident or a refugee claimant), he or she should also contact an **immigration lawyer**.
- The investigation and trial process can be very difficult, involving a police press release publicly identifying the individual PHA involved, time in a detention centre, an application for bail, various hearings, testimony at trial, and sometimes extensive media coverage. A local **AIDS service organization (ASO) or prisoner support organization (like Prisoners' HIV/AIDS Support Action Network [PASAN] or Positive Living BC's Prison Outreach Program [POP])** may be able to offer support during the investigation and legal proceedings. See also "For more information and legal advice," in this resource kit.
- **The Canadian HIV/AIDS Legal Network (in Canada), HIV & AIDS Legal Clinic Ontario (HALCO) (in Ontario) and COCQ-SIDA (in Quebec)** may be able to suggest a lawyer or legal clinic, as well as possible support organizations. See also "For more information and legal advice," in this resource kit.

This document is part of the on-line resource, *HIV Disclosure and the Law: A Resource Kit for Service Providers*, available at [www.aidslaw.ca/community-kit](http://www.aidslaw.ca/community-kit). It contains general information and does not constitute legal advice. Reproduction is encouraged, but copies may not be sold, and the Canadian HIV/AIDS Legal Network must be cited as the source of the information. For further information, contact the Legal Network at [info@aidslaw.ca](mailto:info@aidslaw.ca). *Ce document est également disponible en français.*

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