

Statement Déclaration

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UNJUST SUPREME COURT RULING ON CRIMINALIZATION OF HIV MAJOR STEP BACKWARDS FOR PUBLIC HEALTH AND HUMAN RIGHTS

October 5, 2012 — As a coalition of interveners, we are shocked and dismayed at today's ruling by the Supreme Court of Canada that says that even the responsible use of a condom does not protect a person living with HIV from rampant prosecution. The Court's judgments in *R. v. Mabior* and *R. v. D.C.*, two cases relating to the criminalization of HIV non-disclosure, are a cold endorsement of AIDS-phobia. They will stand as an impediment to public health and prevention, and add even more fuel to stigma, misinformation and fear. And they place Canada once again in shameful opposition to standards set out by international human rights bodies, UNAIDS and the Global Commission on HIV and the Law.

In its decisions, the Court purports to uphold its own 1998 decision standard that a "significant risk" of HIV transmission is required in order to trigger the legal duty to disclose. But this is an illusory limit to the criminal law. It blatantly ignores solid science and opens the door to convictions for non-disclosure even where the risk of transmission is negligible, approaching zero. Even in 1998, when there was less science quantifying the small risks of HIV transmission than there is today and less effective treatment for HIV, the Supreme Court had ruled that condom-use might sufficiently reduce the risk below "significant" for the purpose of the criminal law. Yet now, 14 years later, despite significant advances in scientific knowledge, the Supreme Court decides condoms are not enough. In practice, today's ruling means that people risk being criminally prosecuted even in cases where they exercised responsibility and took precautions, such as using condoms — which are 100% effective when used properly.

Adding to continued injustice, the Court's actions will seriously undermine public health efforts. Criminalizing HIV non-disclosure in this way creates another disincentive to getting an HIV test and imposes a chill on what people can disclose to health professionals and support workers. People living with HIV need more health and social supports; they don't need the constant threat of criminal accusations and possible imprisonment hanging over their heads. Similarly, people *not* living with HIV need to be empowered to accept responsibility for their own health, and not proceed under a false sense of security that the criminal law will protect them from infection. In short, the Court's actions will have deleterious effects not only on the lives and health of people living with HIV, but on all of us, through fostering a climate of fear and recrimination.

While we welcome the Court's acquittal of D.C. — an acknowledgement of at least one miscarriage of justice — the onus must now fall to those protecting the health and defending the dignity of people living with HIV. We also call on Crown prosecutors to use their discretion and refuse to be complicit in injustice just because the Court gave them the power to do so. It is not in the public interest to prosecute people living with HIV where condoms have been used or where a person has a low or undetectable viral load. Prosecutions in such cases will only perpetuate misinformation, pander to prejudice and undermine efforts at HIV prevention and treatment.

Signed, the interveners:

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Coalition des organismes communautaires québécois de lutte contre le sida (COCQ-SIDA)
Positive Living Society of British Columbia (Positive Living BC)
Canadian AIDS Society (CAS)
Toronto People with AIDS Foundation (PWA)
Black Coalition for AIDS Prevention (Black Cap)
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