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HIV disclosure:

▶ a legal guide for gay men in Canada

**UPDATED LEGAL INFORMATION
MAY 2013**



The content of this guide has been adapted from a guide originally developed by the HIV & AIDS Legal Clinic Ontario (HALCO), through a partnership with Ontario's Gay Men's Sexual Health Alliance (GMSH). The original version of this guide, published in 2009, is no longer accurate due to changes in the law.

Thanks to the AIDS Bureau, Ontario Ministry of Health and Long-Term Care, Government of Ontario, for funding the original guide, and to members of the Poz Prevention Working Group of the GMSH for their contribution to the original guide.

This national version of the guide has been adapted from the original in partnership with CATIE.

Most of the non-criminal law sections of this guide, including public health law and privacy law, fall under provincial jurisdiction and therefore vary from province to province.

The information in the non-criminal law sections is general, and it is suggested that you contact your local AIDS service organization for more information, and your local legal service provider for more specific guidance related to your rights and responsibilities (see page 35).

Copies of this publication can be ordered through the CATIE Ordering Centre, available online at www.catie.ca or by calling 1-800-263-1638.

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HIV Disclosure:

► a legal guide for gay men in Canada

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► This guide gives you legal information, not legal advice

This guide is designed to answer some of your questions about HIV disclosure and the law in Canada. Most of it is about criminal law. It also has information about disclosure and other areas of law, for example: public health, privacy, employment, travel and immigration.

The difference between legal information and legal advice is important. Legal information can help you understand the law and legal options, but it is general. Legal advice is specifically about your situation and can help you to decide what to do.

If you want or need legal advice you should talk to a lawyer. (See page 35 for information about how to find a lawyer.) This guide was written in March 2009, and updated in May 2013 to include important new information from court cases about the criminal law and HIV non-disclosure. But the law can change at any time. You can contact a lawyer to get up-to-date legal information and legal advice.





► Why was this guide written and who wrote it?

You may not like what the law says. You may not agree with it. But it is still the law.

The criminal law about HIV non-disclosure is strict and the consequences can be severe.

This guide gives you information about the law so that you can make more informed decisions about your life and your sex life. It offers guidance to help you protect yourself from being charged with an HIV non-disclosure criminal offence.

The original guide was written by gay men living with HIV for:

- gay men living with HIV, both long-term survivors and those diagnosed more recently;
- gay men who think they might be HIV-positive but have not had an HIV test or have not tested HIV-positive; and
- gay men who want to know more about HIV and the law.



You may not like what the law says. You may not agree with it. But it is still the law.

Important words and phrases used in this guide

Here are the meanings of some of the words and phrases in this guide:

AIDS – Acquired Immunodeficiency Syndrome

Disclosure – to tell someone

HIV – Human Immunodeficiency Virus

HIV disclosure – to tell someone that you are infected with HIV

Poz – HIV-positive (a person who has HIV)

STI – a sexually transmitted infection, also known as a sexually transmitted disease (STD). HIV, gonorrhea, chlamydia, herpes and syphilis are examples of STIs.



► HIV, sex, dating and relationships

Living with HIV comes with responsibility. For many people who have access to good-quality medical care and treatment, HIV is now a chronic, manageable infection. However, there is no cure for HIV yet. Without proper medical care and treatment HIV can still lead to serious illness and death. And we know that HIV can be transmitted during sex. The law requiring disclosure before having sex is very strict, especially the criminal law. The Supreme Court of Canada made the criminal law even stricter with two decisions it released in October 2012.

Because you are HIV-positive, the law can affect your sex life. But when you know what the law says, you can make better decisions and potentially avoid legal problems. So knowing about the criminal law may help you have a safer and more satisfying sex life.

Living with HIV can complicate sex, dating and relationships. Telling another guy you have HIV can be really difficult. You may find that disclosing your HIV status gets easier the more you do it. Or you may never find it easy to disclose. Either way, you can probably figure out ways to prepare yourself to deal with the other guy's reaction to your HIV.

If a guy does not want to have sex with you or date you because you are HIV-positive, it is his loss. But he is entitled to make that choice. Just like you are entitled to say "no" to guys you do not want to have sex with or date.





You may find that disclosing your HIV status gets easier the more you do it. Or you may never find it easy to disclose.

► Laws that protect people from discrimination

Discrimination means treating a person differently from other people based on a personal characteristic, so that the person does not get what he legally deserves. There are laws that may protect you from discrimination. The two most important laws are:

- your provincial or territorial human rights law (often called a human rights “Code” or “Act”)
- the Canadian Human Rights Act

These laws prohibit discrimination against you because you are gay or because you have HIV. Anti-discrimination laws may also protect you from discrimination because of your race, ancestry, place of origin, ethnic origin, colour, citizenship, religion, sex, sexual orientation, age, marital status or family status, and mental or physical disability.

Some anti-discrimination laws may also protect you from discrimination based on your source of income and may protect you from discrimination based on a criminal record.

Here are examples of some people and organizations that may be prohibited from discriminating against you:

- bosses, employers and unions
- governments, government agencies, police, hospitals and schools
- stores, restaurants, theatres, telecommunications companies and other businesses
- doctors, dentists and other healthcare providers
- landlords
- clubs and organizations
- banks and credit unions

The Canadian Charter of Rights and Freedoms is a constitutional document with a whole set of laws that can help you if a law, the government or an organization that is part of government discriminates against you.

If you think someone has discriminated against you or violated your rights, you can contact the human rights agency in your province or territory, or the Canadian Human Rights Commission. For legal advice about your human rights, contact a lawyer who practices human rights law.

(See page 35 to find out how to contact the human rights agency or a lawyer in your province or territory.)



It is illegal for many different people and organizations to discriminate against you



► What the criminal law says about sex and HIV

This section is about the criminal law, sex and HIV in Canada. It explains when you have a legal duty to disclose your HIV infection to the guys you have sex with. Even if the law says you have a legal duty to disclose, it is still up to you to decide whether to disclose your HIV. So this section also explains the potential legal consequences you may face if you have a legal duty but do not disclose.

If there is a “realistic possibility” that you will pass on HIV to your sex partner during sex, you have a legal duty to tell your sex partner that you have HIV before you have sex.

Here is what can happen to a person living with HIV who exposes someone else to a “realistic possibility” of HIV infection during sex but did not disclose his HIV infection before sex:

- The police can investigate and charge the person living with HIV with a serious crime, usually aggravated sexual assault. If the police want to question him or they arrest him, he does not have to answer their questions. But, he should tell the police basic information such as his name and date of birth. Anything he says to the police at any time may be used against him. He has the right to speak to a lawyer in private. (See page 35 for more information about legal aid and finding a lawyer in your province or territory.)
- The police can arrest the guy living with HIV and put him in jail. He can apply for bail – to be released from jail until his case has been decided. If the court refuses to release him, he will have to stay in jail while his case is ongoing.
- His picture, his HIV status, other personal information and the crime he is accused of committing may appear in a police press release, in the media and on the internet. Usually, criminal court trials are open to the public and the media.

If there is a “realistic possibility” that you will pass on HIV to your sex partner during sex, you have a legal duty to tell your sex partner that you have HIV before you have sex.

- He can hire a lawyer to defend him in court. Depending on his income, legal aid may help to pay for the lawyer. (See page 35 for more information about legal aid and finding a lawyer in your province or territory.)
- If he pleads guilty, or if the court decides he is guilty, he will almost certainly be sentenced to time in prison. He will have a criminal record. His name may be put on a list of sex offenders. A DNA sample may be taken from him and placed in a data bank of convicted criminals.
- If the charges are dropped or he is found “not guilty” after a trial, he will be set free.

A person with a criminal record may not be able to travel to some countries. And he may not be able to get some types of jobs. If he is not a Canadian citizen, immigration authorities may be able to deport him.

Please note that the focus of this guide is criminal law, sex and HIV. This guide does not cover all the legal issues about HIV and disclosure. For example, there is likely a legal duty to disclose before sharing needles to inject drugs. Speak to a lawyer for information or advice about other legal issues, including other HIV disclosure issues (see page 35).

Although the criminal law about HIV disclosure is strict, and the consequences can be severe, it is important to put the risk of criminal prosecution into context. Between 1985 and the end of 2011 approximately 74,200 people in Canada tested HIV-positive. Up until the end of 2012, as far as we know, there were approximately 155 legal cases in Canada where individuals were criminally prosecuted for not disclosing their HIV infection to their partners before sex. Of these, about 30 cases involved men who were prosecuted for allegedly not disclosing their HIV infection to other men before sex. In recent years there has been an increase in the number of gay men prosecuted. Some guys were found not guilty, but many were convicted of serious criminal offences.

► Figuring out the risk of passing on HIV during sex

The criminal law about sex and HIV disclosure is based on the risk of passing on HIV. If there is a “realistic possibility” that you will pass on HIV during sex, you have a legal duty to tell your sex partner that you have HIV before you have sex.

From an HIV education and prevention perspective, when we talk about the risk of passing on HIV we usually talk about “high risk,” “low risk,” “negligible risk” and “no risk.” These are not the words the criminal law uses. The criminal law looks at whether there is a “realistic possibility” of HIV transmission during sex. But courts have not clearly defined what “realistic possibility” means for different types of sex. So sometimes it can be really hard to figure out if you have a legal duty to disclose.

Here are some things to consider when you try to figure out the risk of passing on HIV during sex:

Condoms: You can reduce the risk of passing on HIV by properly using latex condoms and water-based lube.

HIV viral load: A viral load test measures the amount of HIV in your blood. The higher your viral load the more likely you are to pass on HIV during unprotected sex. Research has shown that people who are successfully taking anti-HIV medications significantly reduce their chances of passing on HIV during sex. But even if your anti-HIV medications are working effectively, or your viral load was “undetectable” in a blood test, there is still a risk you could pass on HIV because:

- You still have HIV in your body.
- Your cum, pre-cum and ass fluid may contain high levels of HIV.
- Your viral load might have increased since your last HIV viral load test.

Blood, cum, pre-cum and ass fluid: The blood, cum, pre-cum and ass fluid from a guy living with HIV can contain enough virus to infect another person with HIV. HIV can be passed on when blood, cum, pre-cum or ass fluid that contains HIV gets into a guy's bloodstream. HIV can also be passed on when the cells lining the inside of a guy's ass, piss hole, mouth, nose or eyelids absorb blood, cum, pre-cum or ass fluids that contain HIV.

Sexually transmitted infections (STIs): If you have an STI it is easier for you to pass on HIV. If your sex partner has an STI it is easier for him to get HIV.

For more information about the risk of passing on HIV during sex, please visit the Prevention section of the CATIE website, www.catie.ca.



► Figuring out if you have a legal duty to disclose your HIV infection before sex

Remember, when there is a “realistic possibility” that you will pass on HIV you have a legal duty to tell your sex partner that you have HIV before you have sex.

Although this guide was written for gay men, vaginal sex is the starting point for understanding your legal duty to disclose – because the Supreme Court has never decided a case about gay men, anal sex or oral sex.

According to Supreme Court decisions handed down in 2012, a person living with HIV does not have a legal duty to disclose his or her HIV-positive status before having vaginal intercourse where a condom is used and the person living with HIV has a “low” HIV viral load at the time of sex. The court said in one case that a viral load of 1,500 copies or less of HIV per millilitre of blood counted as “low” – on the evidence in that case. The court specifically stated that the person did not have to prove that he had an “undetectable” viral load. An undetectable viral load means 40 or 50 copies or less of HIV, depending on the test used. What the courts will consider to be a “low” viral load may change in the future, so make sure you have the most up-to-date legal information.

Anal sex

Courts are figuring out how to apply the new “realistic possibility” test to anal sex. Anal sex, in some circumstances, poses higher risks of transmission than vaginal sex, so the duty to disclose is at least as strict as for vaginal sex. In other words, you have a duty to disclose before having anal sex if you **do not** use a condom, or, when your viral load is higher than “low.”

Do you have to disclose if a condom is worn and you have a “low” viral load? At this time, we cannot say for sure if using a condom and having a low viral load will be enough to avoid convictions for non-disclosure before anal sex.

Even if the law treats anal sex the same way it treats vaginal sex (no duty to disclose when a condom is used and the person with HIV has a low viral load), ***what happens if the condom breaks during anal sex that takes place where a condom is used and the person with HIV has a low viral load?*** You might have a duty to disclose in this situation as soon as the condom breaks. Disclosing your HIV status might help to reduce your partner's risk of HIV infection. If your partner knows that you are HIV-positive, he can decide whether to seek "post-exposure prophylaxis" (PEP) with anti-HIV drugs (PEP needs to be started as soon as possible after the exposure, within a maximum of 72 hours).

But be aware that disclosure after a broken condom may increase the risk that your sex partner will contact the police, which may lead to you being charged with a criminal offence. Or your sex partner may react badly, which could lead to conflict or violence.

Oral sex

Courts are also figuring out how to apply the "realistic possibility" test to oral sex. Generally speaking, **blow jobs** carry a lower risk of HIV transmission than vaginal sex. So based on the "realistic possibility" test you would **not** have a legal duty to disclose before giving or receiving a blow job if you use a **condom** and have a "**low**" viral load.

Unfortunately, we cannot say for sure whether you have a legal duty to disclose before giving or receiving a blow job without a condom. And we are not sure how the courts will look at viral load and HIV in relation to oral sex.

Rimming

A guy **almost certainly does not** have a duty to disclose before **rimming** another guy, or getting rimmed by another guy. There has never been a documented case of HIV being passed on by rimming. But, as far as we know, a court has never decided a case about rimming, so we cannot say with absolute certainty that there is no duty to disclose before rimming or getting rimmed.

► Other important information about criminal law, sex and HIV

Here is some other important information about the criminal law, sex and HIV:

- The crime is *exposing* a person to a "realistic possibility" of HIV infection when you did not tell him before sex that you had HIV. So you can be charged and convicted for not disclosing even if the other guy does not get infected.
- If there is a "realistic possibility" of passing on HIV, but you lie about your HIV infection ("I am HIV-negative.") or you do not tell your partner about your HIV infection ("He did not ask. I did not tell."), you can still be charged and convicted.
- You might be charged and convicted even if you did not know or think that you had a legal duty to disclose.
- If there is a "realistic possibility" of passing on HIV, you have a legal duty to disclose your HIV infection:
 - no matter where you meet the guy or have sex. It may be an internet hookup, in a bathhouse, bedroom, park, locker room, washroom or backroom, or at a sex party.
 - no matter how long you have known the guy or what he means to you. He may be a long-term lover, spouse, fuck buddy, trick, anonymous fuck, date, potential life partner, guy you pay to have sex, internet hookup, friend or part of a threesome/group.
 - whether you have sex for fun, to make money, in exchange for drugs or for other reasons.

- You may not want to disclose that you have HIV because the guy might tell other people, or post your HIV status on the internet. Although this may make it more difficult for you to disclose, it does not change your legal duty under the criminal law. (See page 31 for more information about your privacy.)
- Even if the other guy is also HIV-positive, you may still have a legal duty to disclose your HIV infection (see page 18).
- Even if a guy has not tested positive for HIV, he can still be charged and convicted for not disclosing that he may be HIV-positive (see page 20).
- The criminal law is the same everywhere in Canada.

Many people do not think that the criminal law is an effective way to prevent HIV transmission. Some people living with HIV, community activists, lawyers and AIDS service organizations, have been working for two decades to change the criminal law.

► If you have sex with a guy who is also HIV-positive

Do you have a legal duty to disclose your HIV before sex with a guy who you know has HIV?

There is a risk that you might be charged and convicted for not telling him that you have HIV. This type of legal case is based on the theory that:

- A person living with HIV can be re-infected with a different type (also known as a different "strain") of HIV.
- Re-infection with a different strain of HIV can cause "serious bodily harm."

Re-infection is hard to study. Only a few dozen medical cases of re-infection have been identified with certainty. Nobody knows how often re-infection happens.

As far as we know, there have been no Canadian court cases where a person living with HIV was convicted for exposing another person living with HIV to a risk of HIV re-infection.





Only a few dozen medical cases of re-infection have been identified with certainty.

► For guys who have HIV but have not tested HIV-positive

What about guys who have HIV but have not tested HIV-positive? Do these guys have a duty to disclose?

If a guy is aware of a risk that he has HIV, he has a legal duty to disclose that he may be infected with HIV before he has sex that poses a “realistic possibility” of passing on HIV. However, to date, Canadian courts have not decided what circumstances would lead to an “awareness of a risk” in HIV-related cases.

As far as we know, all the legal cases in Canada have been about people who knew their HIV-positive status before the criminal charges were brought against them.



► Reducing your risk of criminal charges and convictions

In a criminal case, the Crown prosecutor must prove beyond a reasonable doubt that the accused person committed a crime. This means that the Crown prosecutor must present the court with evidence. The Crown prosecutor can use almost anything you tell someone else about your sex life as evidence against you in a criminal case. So think carefully before you talk to anyone about HIV disclosure and the sex you have had. The only exception is a lawyer because other than in extremely rare circumstances everything you say to a lawyer is confidential and cannot be used against you in court.

Here are some other things that you can do to help reduce the risk of passing on HIV and that might help reduce your risk of getting in trouble with the law:

- Tell your sex partners you are HIV-positive before sex. And try to get proof that you told them. (See pages 23 and 24.)
- Use latex condoms and water-based lube when you fuck or get fucked to protect your sex partners from being exposed to HIV and to protect both of you from some other STIs. (See page 12.)
- Instead of fucking, have other types of sex and safer sex that have lower risks of passing on HIV. (See page 14.)
- See your doctor regularly and work together to get and keep your viral load as low as possible. Ask your doctor to test your HIV viral load on a regular basis (for example, every three to six months) so you can keep track of your viral load. Proof that your viral load was “low” at the time you had sex might reduce your risk of facing criminal charges or being convicted. (See page 12.)
- Have sex with guys you know are also HIV-positive. (See page 18.)



► Do not assume he knows you are HIV-positive

Do not assume that the guy you want to have sex with knows that you are HIV-positive. Here are some reasons why you might think that he knows, and the reasons why you might be wrong:

- You wrote "HIV" in your internet profile. He did not read it.
- You wrote "poz" in your profile. He does not know what "poz" means.
- You wrote "safer sex needs discussion" in your profile. This could mean lots of things to him.
- His friends know you have HIV. They did not tell him.
- You left your HIV meds on the counter in your bathroom. He does not know what your meds are for.
- He has seen your red ribbon tattoo. You do not have to be HIV-positive to get a tattoo like that.
- He knows you work or volunteer at local AIDS organizations. HIV-negative people work and volunteer at AIDS organizations too.
- He knows that you get a disability pension. You could have another disability.
- You have body changes from HIV and HIV meds, like sunken cheeks, a hard belly or a hump on your back. He has no idea what causes these types of body changes.



► If you are going to disclose, make it count

If you are going to disclose your HIV infection to your sex partner, here are two things you can do to make it count:

- Avoid code words or hints. Do not assume he knows what words like “poz” and “positive” mean. It is best to tell him “I have HIV,” “I am HIV-positive” or “I am infected with HIV.”
- Make sure that he understands what “HIV infection” or “HIV-positive” means. Some guys still do not know that:
 - (1) HIV is the virus that causes AIDS.
 - (2) HIV infection is a serious health condition and there is no cure.
 - (3) There is a risk that HIV can be transmitted during some sexual activities.

Under the criminal law, you also have to have an honest and reasonable belief that the guy agreed to have sex with you. So you must take reasonable steps to find out if he is too drunk or too high on drugs to agree to sex. If he is too drunk or high to agree to sex, then you could be charged with sexual assault. That is the law for everyone, not just for people living with HIV.



► How to protect yourself against guys who might lie

Even if you told a guy *before sex* that you are HIV-positive, after you have sex he might lie and say you never told him. He could go to the police and file a criminal complaint against you—even if what he is saying is not true.

Here are some things you can do *before* you have sex that may protect you against criminal charges. These strategies might help you prove you disclosed your HIV infection to the guy if he accuses you of not disclosing. We realize that some of these strategies might not be practical or hot before that first hook up, but the law is severe and these are some options. It is up to you to decide what strategies would work best for you.

Save on-line conversations, emails and text messages:

If you disclose to a guy over internet chat or by email, be clear about your HIV status. He should acknowledge that you are HIV-positive. Save an electronic copy of what you wrote and his response. Print it out and put it in a safe place. But be careful about what you write in on-line chats and conversations. The police and Crown prosecutors have used conversations from gay chat rooms as evidence when prosecuting guys living with HIV. Even if what you are writing is just a fantasy—something you never intend to do—think about how it might sound to a police officer, judge or jury member who does not know much about gay culture or gay sex.

Have witnesses: Tell the guy that you are HIV-positive in front of a friend (or someone you trust). Your friend becomes a witness who can say that you disclosed your HIV infection prior to any sexual activity. Or tell the guy in front of a group of friends who already know you are positive. This way you will have more witnesses. Ask your friend to write down the date of the discussion, the time, who was present, where the discussion took place and exactly what was said—on paper or in an email—and send it to you.

Double-check: Have a friend ask the guy if he knows that you are HIV-positive. If the guy answers that he knows, then your friend can be a witness. You could ask your friend to write down the date of the discussion, the time, who was present, where the discussion took place and exactly what was said—on paper or in an email—and send it to you.

Sign a document: Get the guy to sign a paper before sex that says that he knows you are HIV-positive and that he knows what it means. Put the date on it, and have him print and sign his name. This may be a good way for you to protect yourself. But it is also the most unrealistic strategy.

Make a video: Many gay guys have smart phones that can shoot videos. Before you have sex with the guy ask him if he is willing to let you record a video of him clearly stating that you have not had anal or oral sex, and that he knows you are HIV-positive. If you have a computer, download and save a copy of the video there so that you (and your lawyer) can use it later if you need to defend yourself. Do not share the video with anyone else or post it on the internet unless the other guy has given you permission to do so—there could be serious legal consequences if you share it without first getting permission.

Create support and counselling records: If you are thinking about getting into a relationship with a guy, you and the guy can go for a couples counselling session with a counsellor, support worker, or your healthcare provider, before you have sex for the first time. Ask the counsellor, support worker or healthcare provider to make notes of the session. During the session tell the guy that you are HIV-positive. (See page 31 for more information about privacy and your healthcare records, and how healthcare and counselling records have been used in criminal cases.)

Trust your instincts. If a guy seems like he cannot be trusted, ask yourself if sex with him is worth the risk.

These strategies might help you prove you disclosed your HIV infection to the guy before you had sex.

► What does public health law have to do with you?

The information in this section is very general. Public Health law may be different in your province or territory. Public Health authorities may use their powers differently in different parts of your province or territory. If you want to know more about public health law where you live, talk to a lawyer. (See page 35.)

In Canada, every province and territory has laws to protect public health. Public Health authorities are legally responsible for protecting public health. One way they protect public health is by taking action to prevent the transmission of sexually transmitted infections, including HIV.

Public health law is different from criminal law. The criminal law is about HIV disclosure. Public health law is about health promotion and disease prevention. Public health law focuses on preventing new cases of HIV infection by providing education and counselling and by using legal powers to encourage HIV disclosure and safer sex. To prevent transmission of HIV, Public Health authorities may want you to disclose that you have HIV to every sex partner before you fuck or get fucked, suck his cock or he sucks your cock, before you rim another guy or he rims you, and they may also want you to use a condom every time you fuck or get fucked, suck his cock or he sucks your cock.

Public health in provinces and territories other than Quebec

- **HIV testing labs and certain healthcare providers have a legal duty to inform Public Health about all positive HIV test results.** Sometimes the name of the person tested is reported with the positive test result, but sometimes it is not.
- **Public Health may keep a record or a database of people who have been infected with HIV or other STIs.** The database may include each person's name, date of birth, gender, infections and contact information. The type of information that gets reported to Public Health, and perhaps stored in a database, depends on the law and practice in your province or territory.

- **If you test positive for HIV or some other STIs, Public Health will probably require that your sex partners be contacted.** This is known as contact tracing, partner counselling or partner notification. Public Health will probably ask you for information about your sex partners, including their names. Public Health may ask you or your doctor to contact your sex partners to tell them that they may have been exposed to HIV or another STI, and to advise them to get medical care. Or Public Health may contact your partners. As a result of the contact tracing, your sex partners may figure out that you have HIV or another STI. (Needle-sharing partners of someone who tests HIV-positive may also be contacted.)
- **Public Health may counsel HIV-positive people about their legal obligations, sexual health, safer sex and how to prevent HIV and other STIs.** If you are HIV-positive and you test positive for another STI, Public Health authorities may assume that because you got another STI, you put another person at risk of getting infected with HIV. So they may counsel you about HIV and STI prevention and your obligations under public health law.

Public Health authorities are legally responsible for protecting public health by trying to prevent the transmission of various infections, including HIV.



Public Health authorities are legally responsible for protecting public health by trying to prevent the transmission of various infections, including HIV.

- **Public Health authorities may have the power to make an "order" (sometimes called a "certificate") against you if they have reason to believe that you are putting another person's health at risk.** For example, Public Health authorities may issue an order if they believe you are having sex that risks passing on HIV or another STI. Public Health may order you to:
 - attend counselling sessions given by Public Health
 - give Public Health the names of people you have had sex with
 - disclose your HIV infection to every sex partner before you fuck, get fucked or have oral sex
 - use a latex condom every time you fuck, get fucked or have oral sex
 - not share needles or donate your blood, tissues or organs

If Public Health issues an order against you, you may be able to appeal the order. To find out your rights and responsibilities, talk to a lawyer as soon as possible because there may be very short time limits to dispute the order. (See page 35.)

- **Public Health authorities may have the power to order you to get treatment to prevent the spread of HIV or another STI.** In some provinces and territories the treatment may involve counselling or mental health treatment. Public Health authorities may have the power to force a person to spend time in a hospital or other institution to get treatment. Public Health authorities may have to get a court order before you can be held in a hospital or other institution. If Public Health or a court has issued a treatment order against you, you may be able to appeal the order. Talk to a lawyer as soon as possible if this type of order is made against you, as there may be short time limits to dispute it. (See page 35.)

Public health in Quebec

Public health regulations in Quebec are different from those in other provinces and territories.

- **Quebec Public Health authorities only collect general information about people who test HIV-positive.** They do this so that they can track HIV epidemic trends in the province, but **not** to identify people infected with HIV. In fact, unless a person is infected with HIV from a blood transfusion or blood products, the name of a person who tests positive for HIV is not reported to Public Health. The laboratory where the HIV test is done must report to Public Health other information about people who test HIV-positive, including their birth date (including the day, month and year), gender, locality of residence, the first three characters of their postal code, ethno-cultural origin and health insurance number, but not their name. In addition, the Quebec system allows for a mechanism to prevent information obtained in this way from being used to identify the person. Public Health must electronically encrypt the health insurance number so it cannot be linked to the person.
- **Public health law in Quebec does not require that HIV-positive persons' sex partners be contacted** when they test positive for HIV. However, Public Health or doctors in some health units in Quebec may ask for permission to contact sex partners. This is known as "contact tracing," "partner counselling" or "partner notification." If the HIV-positive person agrees to contact tracing, Public Health, the doctor or the medical team will ask the person to provide information about sex partners, including the sex partners' names. Public Health or the doctor will then contact the person's sex partners to tell them that they may have been exposed to HIV and advise them to get medical care. They will not reveal the identity of the HIV-positive person but, as a result of the contact tracing, the person's sex partners may figure out that the person has HIV. (Needle-sharing partners of someone who tests HIV-positive may also be contacted.)

Furthermore, please be aware that this counselling procedure also enables people who have tested HIV-positive to be accompanied by professionals if they themselves wish to disclose this information to their former partners.

Only in exceptional circumstances will Quebec Public Health be able to contact a person's sex partner without the person's consent, and only to prevent the partner from being exposed to an imminent threat of serious bodily harm or death. But even in these rare cases, Public Health does not keep a record of the HIV status of the person.

- **Quebec Public Health does collect a person's identity information when the person tests positive for a sexually transmitted infection (STI) other than HIV.** The information collected includes the following: name, gender, occupation, birth date, address (including postal code), telephone number and health insurance number of the affected person. This collection concerns only the STIs included in the list of diseases subject to mandatory reporting. And if you test positive for an STI other than HIV, Public Health will also offer you the "partner counselling" procedure, using the same method as in the case of an HIV infection.
- **Quebec Public Health law does not give Public Health the power to make an order against you to do something, or stop doing something, based on your HIV-positive status.** Quebec Public Health does not have the power to force you – because you are HIV-positive and there is evidence you may be putting another person at risk of HIV infection – to get treatment or counselling or to be held in a hospital or other institution against your will solely based on your HIV-positive status.



► Who can disclose your HIV infection without your permission?

The information in this section is very general. The law may be different in your province or territory. If you want to know more about your rights and privacy laws where you live, talk to a lawyer. (See page 35.)

In most circumstances, you have a legal right to privacy of your health information, including information about your HIV status. But there are some circumstances when you can lose control over who knows you have HIV.

Sex partners, friends and people you meet: There might not be much you can do to stop an internet chat buddy, a sex partner, a “friend,” a relative or a stranger from telling other people about your HIV infection. You may be able to sue them and get some money – this may depend on the laws in your province or territory. But even if you do win your lawsuit (or complaint), once your information gets out, there is really no way to get your privacy back. If you want to know more about your privacy rights, speak to lawyer. (See page 35.)

Doctors, nurses and other people who provide you with healthcare: As a general rule, doctors, nurses and other people who provide you with healthcare have a legal and an ethical duty to keep all your medical information, including your HIV status, confidential. So healthcare providers can generally only reveal your medical information to another person if you give them permission.

But there are important exceptions to the general rule. In most provinces and territories, doctors, nurses and other healthcare providers may (or in some circumstances they must) disclose your medical information without your permission in some or all of the following circumstances:

- to Public Health (see page 26), but remember, in Quebec the public health law about HIV reporting is different from laws in other provinces and territories (see page 29)

- to contact a relative, friend or substitute decision maker if you are injured, incapacitated or ill and you cannot consent to medical care
- to prevent serious bodily harm or death to you or someone else
- where a law gives the healthcare provider permission, or requires them, to share your medical information

In criminal investigations and trials: Public health nurses and your healthcare providers can be called to give evidence in a criminal trial. And your health records can be seized and used during a criminal investigation and trial.

- If you are ever charged, your health records may help prove your innocence. But some of the information in your records might be used to prove your guilt.
- Many courts have looked at evidence about the date of a person's HIV diagnosis, counselling he received, his HIV viral load test results, test results for other STIs, and things he said to a doctor or nurse about his sex life.
- In most circumstances, anything you say to a public health nurse or healthcare provider can be used as evidence in a criminal investigation or court case.
- If you have concerns about what to say, or what you have said in the past, to public health or your healthcare provider, speak to a criminal lawyer. (See page 35.)

► Do you have to disclose – work, insurance, landlords, travel and immigration?

The information in this section is very general. The law may be different in your province or territory. If you want to know more about your rights and the laws where you live, talk to a lawyer. (See page 35.)

Work

Anti-discrimination laws may protect you when you:

- apply for a job
- interview for a job
- are offered a job
- are working
- ask your employer to change your job to better fit your health situation


In Canada, there are almost no jobs where an employer has the legal right to ask you to take an HIV test or make you prove that you do not have HIV.

Insurance

Insurance is complicated. So this is very general information.

There are two basic types of insurance: “group” and “individual.”

Group insurance covers a group of people who are insured under the same insurance plan. An example is an employer’s group insurance plan for its employees. A basic group plan usually includes life insurance and health insurance, and may also include long-term disability insurance. If you work for a large employer you can often join the group plan without giving any health or medical information. But you may be asked to give detailed health information or have an HIV test, especially if you apply for extra insurance coverage under the group plan.



Individual insurance is insurance that you apply for and pay for yourself. If you apply to buy individual life, health, disability or mortgage insurance, you will probably be asked for detailed health and medical information. You may be asked to take an HIV test.

If an insurance company finds out that you did not give accurate information, the insurance policy will not be legally valid.

Your landlord

You do not have to tell your landlord about your HIV infection.

Travelling outside Canada

People living with HIV can visit many countries. However, some countries do not allow people living with HIV to visit, even for vacations, conferences or business. Before you make travel plans, check the rules for the country at www.hivtravel.org.

Make sure the information is up-to-date. You can also check with the consulate of the country you plan to visit, but do not give your name. If you call a consulate, either block your phone number or call from a public phone.

Be aware that gay sex is illegal in some countries. See the website of the International Lesbian and Gay Association, www.ilga.org, for more information.

Travelling and immigrating to Canada

Canada has different rules depending on your reason for coming to Canada.

For general information about immigration, contact Citizenship and Immigration Canada:
www.cic.gc.ca 1-888-242-2100 TTY 1-888-576-8502

Quebec handles many aspects of immigration to that province. For more information, contact Immigration-Québec:
www.immigration-quebec.gouv.qc.ca/en/index.html
514-864-9191 or 1-877-864-9191
TTY 514-864-8158 or 1-866-227-5968

► For more information or legal advice

For more information about HIV and the law in Canada

- Canadian HIV/AIDS Legal Network:
www.aidslaw.ca

For information and advice about HIV and the law in Ontario

- HIV & AIDS Legal Clinic Ontario (HALCO):
www.halco.org
416-340-7790 or 1-888-705-8889

For information and advice about HIV and the law in Quebec

- Coalition des organismes communautaires québécois
de lutte contre le sida (COCQ-Sida):
www.cocqsida.com (in French only)
514-844-2477 ext 0 or 1-866-535-0481

To contact federal (Canadian government) agencies responsible for protecting human rights or privacy

- Canadian Human Rights Commission: www.chrc-ccdp.ca
1-888-214-1090 • TTY 1-888-643-3304
- Office of the Privacy Commissioner of Canada:
www.priv.gc.ca
613-947-1698 or 1-800-282-1376 • TTY 613-992-9190

Lawyer Referral Services refer people to lawyers. Your province or territory may have a lawyer referral service. The service may charge a fee. The fee is much less than what a lawyer would usually charge for services. After you pay the fee you get a telephone or in-person appointment with a lawyer to discuss your case. For more information about lawyer referral services and any fees they charge, contact the lawyer referral service in your province or territory. If there is no lawyer referral service in your province or territory, contact legal aid.

To contact legal aid, a lawyer, human rights agencies, or agencies responsible for access to information/ protection of privacy in your province or territory

Alberta

- **Legal Aid Alberta:** www.legalaid.ab.ca
1-866-845-3425
- **Lawyer Referral Service, Law Society of Alberta:**
www.lawsociety.ab.ca/public/overview.aspx
403-228-1722 or 1-800-661-1095
- **Alberta Human Rights Commission:**
www.albertahumanrights.ab.ca
Northern Regional Office 780-427-7661
Southern Regional Office 403-297-6571
TTY 1-800-232-7215
- **Office of the Information & Privacy Commissioner of Alberta:** www.oipc.ab.ca
1-888-878-4044

British Columbia

- **Legal Services Society of British Columbia "Legal Aid":**
www.lss.bc.ca
604-408-2172
outside the Lower Mainland 1-866-577-2525
- **Lawyer Referral Service:**
www.cba.org/BC/public_media/main/lawyer_referral.aspx
604-687-3221 or 1-800-663-1919
- **British Columbia Human Rights Tribunal:**
www.bchrt.bc.ca
604-775-2000 or 1-888-440-8844
TTY 604-775-2021
- **Office of the Information & Privacy Commissioner for British Columbia:** www.oipc.bc.ca
Toll-free, call Enquiry BC (in Vancouver 604-660-2421; elsewhere in BC 1-800-663-7867) and request a transfer to 250-387-5629

Manitoba

- **Legal Aid Manitoba:** www.legalaid.mb.ca
1-800-261-2960
- **Law Phone-In & Lawyer Referral Program:**
www.communitylegal.mb.ca/programs
204-943-2305 or 1-800-262-8800
- **Manitoba Human Rights Commission:**
www.manitobahumanrights.ca
1-888-884-8681
TTY 1-888-897-2811

- **Ombudsman Manitoba, Access and Privacy Division:**
www.ombudsman.mb.ca/info/access-and-privacy-division.html
204-982-9130 or 1-800-665-0531

New Brunswick

- **New Brunswick Legal Aid Services Commission:**
www.legalaid.nb.ca/en/index.php
Saint John 506-633-6030 • Fredericton 506-444-2777
- No lawyer referral service
- **New Brunswick Human Rights Commission:**
www.gnb.ca/hrc-cdp
506-453-2301 or 1-888-471-2233
- **Office of the Ombudsman (Protection of Personal Information):** www.gnb.ca/0073/index-e.asp
506-453-2789 or 1-888-465-1100

Newfoundland & Labrador

- **Newfoundland and Labrador Legal Aid Commission:**
www.legalaid.nl.ca
709-753-7860 or 1-800-563-9911
- **Lawyer Referral Service:** www.publiclegalinfo.com
709-722-2643 or 1-888-660-7788
- **Newfoundland and Labrador Human Rights Commission:**
www.justice.gov.nl.ca/hrc
709-729-2709 or 1-800-563-5808
- **Office of the Information and Privacy Commissioner for Newfoundland and Labrador:**
www.oipc.nl.ca
709-729-6309 or 1-877-729-6309

Northwest Territories

- **Legal Aid Northwest Territories:**
www.justice.gov.nt.ca/legalaid
867-873-7450
- **Lawyer Referral Service:**
www.lawsociety.nt.ca/public
867-873-3828
- **Northwest Territories Human Rights Commission:**
www.nwthumanrights.ca
867-669-5575 (Yellowknife) or 1-888-669-5575

- **Information & Privacy Commissioner of the Northwest Territories:** www.justice.gov.nt.ca/ATIPP
867-920-6418

Nova Scotia

- **Nova Scotia Legal Aid Commission:**
www.nslegalaid.ca
1-877-420-6578 (for referral to local office)
- **Lawyer Referral Service:** www.legalinfo.org
902-455-3135 or 1-800-665-9779
- **Nova Scotia Human Rights Commission:**
<http://humanrights.gov.ns.ca>
902-424-4111 or 1-877-269-7699
TTY 902-424-3139
- **Nova Scotia Freedom of Information & Protection of Privacy Review Office:** www.foipop.ns.ca
902-424-4684 or 1-866-243-1564

Nunavut

- **Nunavut Legal Services Board "Legal Aid":**
www.justice.gov.nt.ca/LegalServicesBoard
867-873-7450
- No lawyer referral service
- **Nunavut Human Rights Tribunal:** www.nhrt.ca
1-866-413-6478
- **Information & Privacy Commissioner:**
www.info-privacy.nu.ca
867-669-0976 or 1-888-521-7088

Ontario

- **HIV & AIDS Legal Clinic Ontario (HALCO):**
www.halco.org
416-340-7790 or 1-888-705-8889
- **Legal Aid Ontario:** www.legalaid.on.ca
416-979-1446 or 1-800-668-8258
TTY 416-598-8867 or 1-866-641-8867
- **Law Society Referral Service, Law Society of Upper Canada:**
www.lsuc.on.ca/faq.aspx?id=2147486372
416-947-3330 or 1-800-268-8326
TTY 416-644-4886
- **Human Rights Tribunal of Ontario:** www.hrto.ca
416-326-1312 or 1-866-598-0322
TTY 416 326-2027 or 1-866-607-1240

- **Human Rights Legal Support Centre:** www.hrlsc.on.ca
416-597-4900 or 1-866-625-5179
TTY 416-597-4903 or 1-866-612-8627
- **Office of the Information & Privacy Commissioner of Ontario:** www.ipc.on.ca
416-326-3333 or 1-800-387-0073

Prince Edward Island

- **Prince Edward Island Legal Aid:** www.gov.pe.ca,
search for "legal aid"
Charlottetown 902-368-6043
Summerside 902-888-8219
- **Lawyer Referral Service, Community Legal Information Association of PEI:** www.cliapei.ca
902-892-0853 or 1-800-240-9798
- **PEI Human Rights Commission:**
www.gov.pe.ca/humanrights
902-368-4180 or 1-800-237-5031
- **Office of the Information & Privacy Commissioner:**
www.assembly.pe.ca/index.php3?number=1013943
902-368-4099

Quebec

- **Coalition des organismes communautaires québécois de lutte contre le sida (COCQ-Sida):**
www.cocqsida.com (in French only)
514-844-2477 ext 0 or 1-866-535-0481
- **Quebec Legal Aid:**
www.csj.qc.ca/SiteComm/W2007English/Main_En_v3.asp
514-873-3562
- **Lawyer Referral Service, Barreau du Québec:**
www.barreau.qc.ca/en/public/trouver
Montréal 514-866-2490
Québec, Beauce and Montmagny 418-529-0301
Elsewhere in Québec 1-866-954-3528
- **Commission des droits de la personne et des droits de la jeunesse:** www.cdpdj.qc.ca
514-873-5146 or 1-800-361-6477
TTY 514-873-2648
- **Commission d'accès à l'information du Québec:**
www.cai.gouv.qc.ca/english
1-888-528-7741

Saskatchewan

- **Legal Aid Saskatchewan:** www.legalaid.sk.ca
1-800-667-3764
- **Saskatchewan Human Rights Commission:**
www.saskatchewanhumanrights.ca
Saskatoon 306-933-5952 or 1-800-667-9249
Regina 306-787-2530 or 1-800-667-8577
- **Information and Privacy Commissioner of Saskatchewan:** www.oipc.sk.ca
306-787-8350 or 1-877-748-2298

Yukon

- **Yukon Legal Services Society "Legal Aid":**
www.legalaid.yk.ca
867-667-5210 or 1-800-661-0408 ext 5210
- **Lawyer Referral Service, Law Society of Yukon:**
www.lawsocietyyukon.com/referral.php
867-668-4231 (outside Whitehorse, call collect)
- **Yukon Human Rights Commission:** www.yhrc.yk.ca
867-667-6226 or 1-800-661-0535
- **Information & Privacy Commissioner:**
www.ombudsman.yk.ca/ipc
867-667-8468 or 1-800-661-0408 ext 8468

For information about prevention, treatment, care and support for people living with and vulnerable to HIV/AIDS

- **CATIE**
Canada's source for HIV and hepatitis C information
www.catie.ca Call toll-free 1-800-263-1638

This guide was written in March 2009 and updated in May 2013.

► **Notes**

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Need more information and resources on HIV or hepatitis C?

Contact CATIE:

1-800-263-1638

www.catie.ca

info@catie.ca

HALCO
HIV & AIDS Legal Clinic Ontario



Canada's source for
HIV and hepatitis C
information

CATIE Ordering Centre Catalogue Number: ATI-26081

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