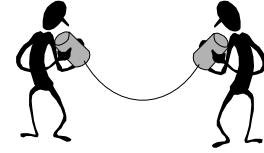




Disclosure and HIV/AIDS

Disclosure

Sharing information about your HIV status with others.



There are a lot of things to think about after you find out you are living with HIV. It is important to **take time** to think about disclosing your HIV status before you are in a situation where you need to disclose. Think about your personal safety, the safety of others and your legal responsibilities. Think about what will work best for you and the people in your life.

Unfortunately, there are still a lot of people who are afraid of HIV and many people living with HIV experience discrimination. Keep that in mind when you are deciding when, and with whom, to share your personal information.

A lot of people have trouble figuring out if they are in a situation where they **MUST** disclose their HIV status or if they are in a situation where they can choose whether they **WANT TO** disclose. This fact sheet will give you helpful information so that you can make informed choices about disclosing your HIV status.

The information on this sheet is **not legal advice**. If you have specific legal questions you should talk to a lawyer.

Disclosure and Human Rights

“There’s always that feeling when... I’m disclosing my status, that fear of how people are going to react on an individual basis. It’s a tightening inside.”

“It boils [down] to loss, the risk of loss, and the degrees of it”

“Isn’t that kind of discrimination too? Not being able to tell people? [If I told them at work] they would send me home, I know what would happen. So it’s more like I’m afraid of being discriminated against, more than it has happened to me, more than actually being discriminated against.”

Fear: Fear of disclosing your HIV status, or of having people discover your HIV status, can be one of the hardest things about living with HIV.

Risky Behaviour and Criminal Law: Usually when people talk about disclosure and HIV they focus on “risky behaviours” and criminal law. In the following pages you can read about what the criminal law has to say about disclosure.

Human Rights: Disclosure can also be a human rights issue. Being afraid of disclosing your HIV status can get in the way of accessing your rights. Working, living or accessing services in environments that are hostile towards people living with HIV can also get in the way of accessing your rights. Here is an example:

Disclosure as a Human Rights Issue:

If you are afraid to disclose your HIV status to your employer, you may be afraid to ask them for “accommodation” of your disability. Accommodation includes things like time off to see a doctor or a change in work duties to make the work less physically demanding. Due to things your employer has said, or how you have seen them treat others, you may be afraid that if your employer finds out about your disability they will treat you differently, stop giving you opportunities for promotion or even fire you.

If this is the case, you may be working in a “**hostile or poisonous work environment.**” This is an environment where the actions of one or more people, though not directed specifically at you, contribute to an atmosphere which affects your ability to work effectively or to access your right to accommodation of your disability. This is a human rights issue.

Disclosure and Criminal Law



The Cuerrier Case

If you are living with HIV/AIDS, you may have heard people talking about “The Cuerrier Case”. This was a legal case that was heard by the Canadian Supreme Court, the highest court in Canada. In 1992, Mr. Cuerrier tested positive for HIV. At the time he was living in a small community, and felt that he was unable to disclose his HIV status before he engaged in unprotected sexual intercourse.

The court case against him looked at whether Cuerrier had broken the law when he had unprotected sexual intercourse with two different women without disclosing his HIV status. Cuerrier was counseled by public health nurses to use condoms and to tell his sexual partners about his HIV status. This is the most important legal case regarding HIV in Canada so far.

The Court’s Decision:

The court decided that people living with HIV/AIDS **MUST** disclose their HIV status in any situation where they are going to place someone at **“significant risk of serious bodily harm.”**

The law is very clear that if you are going to **engage in unprotected sexual intercourse or share needles you MUST disclose your HIV status**. The law is not very specific about other risky situations, so it is up to you to **use your common sense** and **what we know about HIV transmission** to look at each situation you are in and decide whether you may be putting someone at “significant risk.”

Remember HIV can be transmitted when there is:

- **A source of infection** (HIV virus in blood, semen, vaginal fluid or breast milk)
- **A means of transmission** (sexual or injecting activity, breast feeding, fetus in uterus)
- **A host susceptible to infection** (all people are susceptible)
- **A route of entry to the target cells of the body** (through a break in the skin or mucosal membranes located in mouth, nose, rectum, vagina, urethra)
- **A significant level of virus delivered to establish infection** (semen, pre-cum, vaginal fluid, blood and breast milk contain significant levels of virus; urine, saliva and tears have very low levels of virus)

Infecting another person with HIV is considered by law to be causing them “serious bodily harm.” But, you **DO NOT** have to actually infect someone with HIV to be held legally responsible. If you place someone **“at risk”** of HIV infection you can be held legally responsible. Ignorance of the law cannot be used as a defense.

By disclosing your HIV status in situations where you may be placing someone at risk of HIV infection you allow that person to make an informed decision about whether they want to participate in that risky activity or not. If you disclose your HIV status, and they choose to accept the risks involved in participating in a risky activity, then you cannot be held legally responsible in the event that they become infected with HIV.

What does the Cuerrier Case say about condoms?

“To have intercourse with a person who is HIV positive will always present risks. Absolutely safe sex may be impossible. *Yet the careful use of condoms **MIGHT** be found to so reduce the risk of harm that it could no longer be either [harm or risk of harm].*” [emphasis added]

This means that if you were to wear a condom when having sexual intercourse that **might** be enough to make the risk so low that the law would not see the sexual intercourse as harmful or putting someone at risk of being harmed. So, if you were to have protected sexual intercourse without disclosing your HIV status, you **MAY** or **MAY NOT** be held legally responsible if that person took you to court for placing them “at risk” of HIV infection. The law is not clear about this.

The Law- R. v. Williams

A more recent Supreme Court case called *R. v. Williams* found that even people who have **NOT tested positive** for HIV can be held legally responsible for putting people at risk of HIV infection. If you are aware that you have been exposed to a **risk** of HIV infection, and you do not disclose this to your partner, you could be held legally responsible for placing them at risk of HIV infection. For example, you might be aware that you have been exposed to a **risk** of HIV infection if you have been notified that a previous sexual partner has tested positive for HIV, or if you have engaged in risky activities and have symptoms that you think

(Continued on page 3)

Disclosure and Criminal Law (continued)

might be HIV related. According to the law, you should disclose any known **risks of HIV** before engaging in risk activities with a partner. The other significant thing about the *Williams* court judgment is what it says about situations where a person who is living with HIV has unprotected sex, without disclosing their status, with **a person who may already be infected with the virus**. In such a situation, a person cannot be found guilty of “aggravated assault” because the court cannot prove that the person living with HIV endangered the life of the person they had unprotected sex with. Instead, the person living with HIV can be found guilty of “**attempted aggravated assault**” because they *attempted* to endanger the life of the person.

Sex, Drugs and Disclosure

In a situation with a sexual or injecting partner you may need to disclose that you are living with HIV. If you are going to have unprotected sexual intercourse or share needles, it is not enough to say that you have an STD (sexually transmitted disease). According to the law, in these high risk situations you need to be specific about being HIV positive.

HIGH RISK ACTIVITIES = MUST Disclose

- 1) Unprotected vaginal or anal sex
- 2) Sharing injection needles or syringes without cleaning them in between [We recommend using a new needle every time]
- 3) Sharing sex toys if both partners insert the sex toy without cleaning it in between

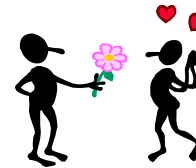
If you are going to engage in “**HIGH RISK**” activities the law says you **MUST** disclose your HIV status to the other people involved in these activities. This is so that they can choose to participate in that activity, or not to participate in that activity.

LOW RISK ACTIVITIES= MAKE AN INFORMED DECISION [You MAY or MAY NOT be legally responsible]

- 1) Vaginal and anal sex using a condom
- 2) Oral sex without using a condom/ dental dam
- 3) Sharing injection needles or syringes that have been cleaned [We recommend using a new needle for every injection]

If you are going to engage in “**LOW RISK**” activities you need to **MAKE AN INFORMED DECISION** about whether to disclose your HIV

They can also be found guilty of “common nuisance” for endangering the health of a member of the public. In the *Williams* case, the court did not deal with the question of whether the **risk of re-infection** with a different strain of HIV would be enough to argue that a person’s life had been endangered. The court noted that in the future this argument could be made in other court cases. This means that people living with HIV may have a duty to disclose their HIV status to other people living with HIV before engaging in risk activities with them. Due to the **risk of re-infection** with another strain of the virus, a failure to disclose their HIV status may pose a “**significant risk of serious bodily harm**” to the other person.



status or not. The **law is unclear** about whether you have to disclose when engaging in low risk activities because the law has not defined what “significant risk” means. This means that if you were to have protected sexual intercourse without disclosing your HIV status, you **MAY** or **MAY NOT** be held legally responsible if that person took you to court for placing them “at risk” of HIV infection.

NEGLIGIBLE RISK ACTIVITIES: Disclose if you WANT TO.

- 1) Oral sex using a condom/ dental dam
- 2) Mouth to anus sex without using a condom/ dental dam
- 3) Finger–anus sex without using a condom/ dental dam

If you are going to engage in “**negligible risk**” activities there is **likely not** a legal reason that you should disclose your HIV status. You may still **WANT TO** disclose, but that would be a personal choice and it is **unlikely** that your partner would be successful if they tried to take you to court.

NO RISK ACTIVITIES = Disclose if you WANT TO:

- 1) Kissing, massage, touch, caressing, body rubbing
- 2) Solo masturbation, being masturbated by a partner (without using vaginal fluid/ semen as a lubricant)
- 3) Using unshared sex toys
- 4) Urination, ejaculation or defecation on unbroken skin
- 5) Injecting a substance using a new needle and syringe.

If you are going to engage in “**no risk**” activities you do not legally need to disclose your status before engaging in these activities. You may still **WANT TO** disclose, but that would be a personal choice.

Work and Disclosure

You **DO NOT have to disclose** your HIV status to your employer. In most situations, there is no need for you to disclose your HIV status to your employer, even if you work in health services. In situations where a risk of HIV transmission exists, using *universal precautions* (e.g. wearing latex gloves, aprons, goggles etc.) should reduce the risk of HIV transmission enough that it should not be an issue. However, if you are a health care worker performing invasive medical procedures, there may be a legal duty to disclose your HIV status to the patient before you conduct the procedure. Health care workers should consult the guidelines and policies of their regulatory bodies for more information.



Asking for Accommodation: If you need some kind of accommodation (e.g. time off to see a doctor) due to your health, ask your doctor to write a letter saying that you have “health concerns” or “a disability” and outlining what you need (e.g. a week off work). You never need to tell your employer what your health concerns are. You should feel like you can say “I’m dealing with some health issues” or “It’s something I prefer to keep private.” You don’t have to give a more specific explanation. Your employer may require you to undergo a medical exam or provide a note from your doctor to prove that you are fit to carry out the duties of your job. If this happens, it should be enough for the doctor to state that you are fit to perform the duties of your job. They do not need to provide specific health information.

Workplace Insurance: At work, you may need to have a medical exam or fill out medical forms for insurance purposes. If this is the case, you should be sure to ask the insurance company or doctor **who** will have access to that information. Feel free to remind them that they have a responsibility to maintain your confidentiality. You should not lie to the insurance company about your HIV status because, if you do, you may not be able to get insurance payments if they find out, or they could take you to court for committing fraud.

Health Care and Disclosure

You **DO NOT have to disclose** your HIV status to your health care providers in most situations. This means that you usually do not have to disclose your HIV status to your doctor, nurse, dentist, dental hygienist or any other health care specialist. If the intake form for your health care provider asks for your HIV status, you can leave that question blank. In situations where a risk of HIV transmission exists, health care providers use *universal precautions* (e.g. wearing latex gloves, aprons, goggles etc.) which should reduce the risk of HIV transmission enough that it should not be an issue. However, if you are having an invasive medical procedure where exposure to excessive amounts of blood is likely, there may be a legal duty to disclose your HIV status to the health care workers before undergoing the procedure. Also, you may **WANT TO** disclose your HIV status to your health care providers so that you can get better health care services which take your HIV status into account. Before taking any new medications, you should check with your HIV specialist to make sure that the medications will not interact with your HIV medications.

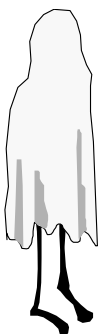


Housing and Disclosure

You **DO NOT have to disclose** your HIV status to your landlord or roommates. In the course of daily living, there is no risk of HIV transmission.



Disclosing: Easier Said than Done!!!



“I had a lot to lose if my family turned their backs on me at that time. I was in a vulnerable state, emotionally weak. I had no support systems, I had no coping mechanisms...the fear of losing that connection held me back from talking to them when I needed them the most. Yet, I was able to talk to strangers.”

“It’s funny this disease does that eh? Like if I had cancer, I’d have no problem telling people I had cancer”

“When I was first integrating all the information of being HIV positive, the one thing that was very very predominant in my thoughts and feeling is that I was like a leper, my blood, my fluids, were poisonous. And that affected me on a huge huge level. HUGE.”

Fears, Benefits and Dangers

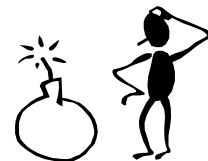
Some common fears about disclosing:

- 1) Fear of rejection or a negative reaction
- 2) Fear of physical violence
- 3) Fear that the person you tell will disclose your HIV status to others
- 4) Fear of experiencing discrimination in the workplace, by your landlord or by your health care provider
- 5) You may not feel like you have the power to negotiate safer sex even if you do disclose your status

Some possible benefits of disclosing:

- 1) You may get support from family/friends
- 2) You will not have to make up explanations or lies to account for your health issues
- 3) You may get better health and dental care because your doctor or dentist is better able to identify and understand your health concerns

- 4) You might increase other people's awareness or knowledge about HIV/AIDS
- 5) You may be able to ask for accommodation in the workplace more easily (e.g. time off work for doctor's appointments, sick leave etc.)



Some dangers of not disclosing:

- 1) You may miss out on the support of family/friends.
- 2) You could risk infecting another person with HIV or being infected yourself with another strain of HIV or other sexually transmitted infections.
- 3) In some risky sexual and drug injecting situations, you could be charged with a variety of criminal offenses including common nuisance, assault, aggravated assault, attempted murder, and criminal negligence causing bodily harm. If found guilty, these offences carry possible sentences of a few months to many years.

Important Steps to Consider before Disclosing

- 1) **Take time to think about disclosing your HIV status:** After getting a positive diagnosis, you may need someone to talk to. But you should be careful that you talk to somebody you can trust, who will be supportive and who will respect your privacy. If you are not sure you are ready to talk to your family/friends, you may want to talk to a public health nurse or a support worker at your local AIDS organization before you disclose to anyone else. They may be able to refer you to an HIV Peer Support group to get some advice from people who have gone through the same thing.
- 2) **Decide WHO you want to disclose to first.** Try to start with someone you think will be open, supportive and respect your privacy.
- 3) **To Disclose or not to Disclose?** Figure out if you are in a situation where you **MUST** disclose (e.g. if you are going to have unprotected sex with someone) or if you just **WANT TO** disclose. See pages 2-3 of this fact sheet for more information.
- 4) **Try to disclose BEFORE you are in a risky situation.** This way you will not get carried away in the moment...
- 5) **Try to avoid disclosing to someone who is drunk or high.** If you disclose your HIV status to someone who is under the

influence of alcohol or drugs, they may not fully understand what you are telling them, they may not remember what you tell them and they may not remember promising to keep that information private.

- 6) **Think about your personal safety.** You may be afraid that the person you disclose to will have a violent reaction. Think about your safety when you pick the location for your disclosure discussion.
- 7) **Plan how you will disclose.** Think about what you will say and how much information you will give.
- 8) **How much do they know about HIV?** Before you disclose, think about the person you are talking to and consider how much they know about HIV. When you start the conversation, you may want to give them some more information about HIV before you tell them you're HIV positive. You can also give them some pamphlets to take away with them. If they have questions, tell them they can call any AIDS service organization or this toll free number 1-800-772-2437
- 9) **Be prepared for a negative reaction.** Some people may get mad, or be scared. It is important for you to be strong, and to let people express how they feel. It may take time to work through these feelings with them. Make sure that you take care of yourself while all this is happening.
- 10) **You are not alone.** Remember that there is always support available and you are not alone. See the last page of this fact sheet for resources in your area.



A Note on Viral Load and HIV Risk

If your viral load is undetectable you can still pass on the HIV virus to someone else. A viral load test only measures the amount of HIV virus in your blood. It does not measure the amount of HIV virus in your lymph nodes or your genital fluids. So, you have no way of knowing how much virus you have stored in your body. This means that even if your viral load is undetectable, having unprotected sex with someone would place them at a high risk for HIV infection. The law says you must disclose your HIV status before engaging in any high risk activities with a partner.

A Note on “Confidentiality”

When people talk about keeping information “confidential” they mean that they will not share that information with other people. When someone says that they will “ensure your confidentiality” that means that they will keep what you tell them private. When you speak with counselors, support workers, social workers, staff at AIDS serving organizations, doctors, nurses, dentists and many other professionals they are supposed to keep what you tell them confidential under most circumstances. If you have any concerns or questions about this, ask people if what you tell them will be kept confidential. You have a right to privacy and that should be respected. If someone does not keep your information confidential, you can complain to them, their employer or to the Information and Privacy Commission.

Community Resources

AIDS Calgary

Suite 200, 1509 Centre Street South
Calgary AB T2G 2E6
Phone #(403) 508-2500
www.aidscalgary.org



Southern Alberta Clinic

#213 906-8 Ave. SW
Calgary AB T2P 1H9
Phone: 403 234-2399
www.crha-health.ab.ca/clin/sac/sac.htm

Safeworks

Day: 266-2622
Night: 781-1214 or pager 232-3838

HIV/AIDS Hotline 1-800-772-2437

Prerecorded information on HIV and STDs.
You can talk to a nurse Monday-Friday between
8:45 am and 4:45 pm.

Distress Centre

24 Hour Crisis Line: (403) 266-1605

Lawyer Referral Service

(403) 228-1722
Has prerecorded legal information
Will give you the names of 3 lawyers you can call
for advice. The first 1/2 hour is free.

Alberta Human Rights and Citizenship Commission

Confidential Inquiry Line **(403) 297-6571**
Toll-free, dial 310-0000 then (430) 297-6571

Calgary Legal Guidance

Will give free legal advice through their evening
legal clinic. (403) 234-9266

Information and Privacy Commission

10101 Southport Road SW
(403) 943-0424

For Further Reading

This fact sheet was adapted in part from the following
sources:

HIV Transmission: Guidelines for Assessing Risk.
Canadian AIDS Society. 1999. www.cdnaids.ca

Criminal Law and HIV/AIDS Fact Sheets #1-8.
Canadian HIV/AIDS Legal Network. www.aidslaw.ca

***Notice re: Supreme Court of Canada Decision in R.
v. Williams.*** www.aidslaw.ca

Canadian HIV/AIDS Policy and Law Review.
Criminal Justice. Volume 6, Number 1/2, 2001.
www.aidslaw.ca

***Counselling Guidelines on Disclosure of HIV
Status, HIV Status & Disclosure: Choices and
Consequences.*** Southern African AIDS Training (SAT)
Programme, Canadian International
Development Agency. Canadian
Public Health Association. 2000.
Available at ww.satregional.org

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