



lavvy / la-
law / ɔ/, n 1.
a government
of legislative
enforced by
or collecti

HIV disclosure:

▶ a legal guide for gay men in Canada



The content of this guide has been adapted from a guide originally developed by the HIV & AIDS Legal Clinic (Ontario), known as HALCO, through a partnership with Ontario's Gay Men's Sexual Health Alliance (GMSH). The original guide provided information specific to the laws and practices of Ontario and can be obtained by contacting a community-based AIDS service organization in Ontario.

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 (Canadian AIDS Treatment Information Exchange) with funding provided to CATIE by the Public Health Agency of Canada. The views expressed in this resource do not necessarily reflect the views of the Government of Ontario or the Public Health Agency of Canada.

HALCO is an Ontario-based organization and has only reviewed the criminal law sections of this guide. 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, or other resources in your province or territory for more specific guidance related to your rights and responsibilities [see page 34].

This guide is one in a series which includes *Positively Healthy: a gay man's guide to sex and health in Canada* and a manual for service providers called *Poz Prevention: knowledge and practice guidance for providing sexual health services to gay men living with HIV in Canada*.

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

You can copy or reproduce this guide, but copies must not be sold. HALCO and CATIE must be cited as the source of the information in accordance with the copyrights below.

© 2009 HIV & AIDS Legal Clinic (Ontario),
pages 1–7, 10–25.

© 2009 Canadian AIDS Treatment Information Exchange,
pages 8,9, 26–43.

HIV Disclosure:

▶ a legal guide for gay men in Canada

The information in this guide and where to find it:

This guide gives you legal information, not legal advice	2
Who wrote this guide and why?	4
HIV, sex, dating and relationships	6
Laws that protect people from discrimination	8
What the criminal law says about sex and HIV	10
Figuring out if you have a legal duty to disclose your HIV infection before sex	12
Other important information about criminal law, sex and HIV	16
If you have sex with someone who is also HIV positive	18
For guys who have HIV but have not tested HIV positive	20
Reducing your risk of criminal charges and convictions	21
Don't assume he knows you are HIV positive	22
If you are going to disclose, make it count	23
How to protect yourself against guys who might lie	24
What does public health law have to do with you?	26
Who can disclose your HIV infection without your permission?	31
Do you have to disclose – work, insurance, landlords, travel and immigration?	32
For more information or legal advice	34
Notes	40

► 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. 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 **legal advice** you should talk to a lawyer. See page 34 for information about how to find a lawyer.

This guide was written in March 2009. But the law can change at any time. You can contact a lawyer to get up-to-date legal information and legal advice.





► Who wrote this guide and why?

Gay men living with HIV developed the original Ontario guide 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. This guide will give you information about the law so that you can make more informed decisions about your life and your sex life.



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). Gonorrhea, chlamydia, herpes and syphilis are examples of STIs.

You may not like what the law says.

You may not agree with it.

But it is still the law.



► HIV, sex, dating and relationships

Living with HIV comes with responsibility. There is no cure for HIV. HIV can seriously harm a person's health and can lead to death. And HIV can be transmitted during sex.

The law about HIV and sex is very strict.

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 avoid legal problems. So knowing about the criminal law can help you have a safer, hotter 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 doesn't 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 don't 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 health care providers.
- Landlords.
- Clubs and organizations.
- Banks and credit unions.

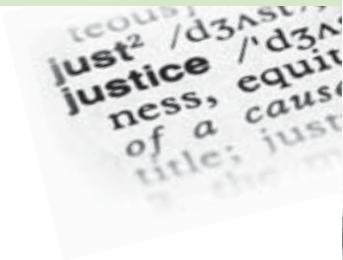
The Canadian Charter of Rights and Freedoms is another law that can help you if a law, the government or an organization that is part of government discriminates against you.

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 34 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. 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, you still have to decide whether to tell the guy about your HIV. So this section also explains the possible legal consequences you may face if you have a legal duty but do not disclose.

If there is a "significant risk" 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 an HIV positive person who exposes someone else to a **"significant risk" of HIV infection** during sex but did not disclose his HIV infection before sex:

- The police can investigate, and charge the HIV positive person 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 his basic information such as his name and date of birth. He has the right to speak to a lawyer in private. Anything he says to the police at any time may be used against him. See page 34 for more information about legal aid and finding a lawyer in your province or territory.
- The police can arrest the HIV positive person 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.

If there is a "significant risk" 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.

- 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.
- 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 34 for more information about legal aid and finding a lawyer in your province or territory.
- If he pleads guilty, or 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,” 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 can try to deport him.

Between 1998 and 2008 there were approximately 75 cases in Canada where a person was charged for not disclosing their HIV infection to their partner before sex. Of these, about 10 cases involved men who were charged for not disclosing their HIV infection to other men before sex. Some people were found not guilty, but some were found guilty.

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 when sharing needles to inject drugs. Speak to a lawyer for information or advice about other legal issues, including other HIV disclosure issues [see page 34].

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

The criminal law about sex and HIV is really about the risk of passing on HIV. If there is a “**significant risk**” 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.

Usually when we talk about the risk of passing on HIV, we talk about “high risk”, “low risk”, “negligible risk” and “no risk”. These are not the words the law uses. The law talks about “significant risk”. But the law has not defined exactly what “significant risk” means. So sometimes it can be really hard to figure out if you have a legal duty to disclose.

Fucking without a condom

One thing we do know for sure is that sex with a “high risk” of passing on HIV is a “significant risk” in the eyes of the law – so you have a legal duty to disclose.

If you fuck or get fucked without a condom, there is a high risk you will pass on HIV. So when you fuck or get fucked without a condom, you have a legal duty to disclose your HIV infection to the other guy before sex.

Fucking with a condom, oral sex and other types of sex

When you fuck or get fucked with a latex or polyurethane condom and water-based lube, have oral sex or have another type of sex, **you may have a legal duty to disclose** your HIV infection to the other guy before sex. We cannot say for certain whether you have a legal duty to disclose because:

- Canadian courts are still figuring out what “significant risk” means in criminal cases about HIV and sex.
- Your risk of passing on HIV during sex is hard to figure out because it can depend on a lot of things.

See “Figuring out the risk of passing on HIV during sex” on page 14.



Figuring out the risk of passing on HIV during sex

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

- **Blood, cum, pre-cum and ass fluid:** An HIV positive man's blood, cum, pre-cum and ass fluid 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.
- **Condoms:** You can reduce the risk of passing on HIV by properly using condoms and water-based lube.
- **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.
- **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.
But even if your viral load was "undetectable" in a blood test, you can still 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 you had the test.

Remember, when there is a "significant risk" that you will pass on HIV you have a legal duty to tell your sex partner that you have HIV before you have sex.

For more information about the risk of passing on HIV during sex, see the Canadian AIDS Society's *HIV Transmission: Guidelines for Assessing Risk*, at page 39.



► 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 about **exposing** someone to a "significant risk" of HIV infection when you didn't tell him before sex that you have HIV. So you can be charged and convicted for not disclosing even if the other guy does not get infected.
- If there is a "significant risk" of passing on HIV, but you lie about your HIV infection ("I'm HIV negative.") or you don't tell your partner about your HIV infection ("He didn't ask. I didn't tell.") you can still be charged and convicted.
- You can be charged and convicted even if you didn't know or think that you had a legal duty to disclose.
- If there is a "significant risk" 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 hook-up, 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 hook-up, friend or part of a threesome/group.
 - Whether you have sex for fun, to make money or in exchange for drugs or other things.
- 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 doesn't 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 and organizations, including people living with HIV, community activists, lawyers and AIDS service organizations, are working to change the criminal law.



► If you have sex with someone who is also HIV positive

Do you have a legal duty to disclose your HIV before sex with another 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 someone living with HIV:

- Can be **re-infected** with a different type (also known as a "strain") of HIV; and
- That 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.

To date, there have been no Canadian court cases where an HIV positive person was criminally charged for exposing another HIV positive person to a **"significant 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 "significant risk" 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 tested HIV positive before the police criminally charged them.



► Reducing your risk of criminal charges and convictions

Here are some things you can do if you want to **reduce** the risk of passing on HIV to other guys and **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 page 24].
- Use condoms and water-based lube when you fuck or get fucked to protect your sex partners from being exposed to HIV [See page 12].
- Instead of fucking, have other types of sex and safer sex that have lower risks of passing on HIV [See page 12].
- See your doctor regularly and work with your doctor to get your HIV viral load as low as possible [See page 14].
- Have sex with guys you know are also HIV positive [See page 18].



► Don't assume he knows you are HIV positive

Don't 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 didn't 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 doesn't know what your meds are for.*
- He has seen your red ribbon tattoo. *You don't 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 am infected with HIV" or "I am HIV positive".
- Make sure that he understands what "HIV infection" or "HIV positive" means. Some guys still don't know that:
 - (1) HIV is the virus that causes AIDS.
 - (2) HIV infection is a serious health condition and there is no cure.
 - (3) 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 get you into trouble with the law.

Here are some things you can do to protect yourself. These strategies might help you prove you disclosed your HIV infection to the guy before you had sex. It is up to you to decide what strategies might work best for you.

- **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. Or tell the guy in front of a group of friends who already know you are positive. This way you will have more witnesses.
- **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.
- **Save on-line conversations and emails:** 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 too.
- **Create support and counselling records:** If you are thinking about getting into a relationship with a guy, you and the guy can go to see a counsellor or support worker together. Ask the counsellor to make notes of the session. During the session tell the guy that you are HIV positive.
- **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 is a good way for you to protect yourself. But it is also the most unrealistic strategy.

Trust your instincts. If a guy seems like he can't 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. The 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 34].

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 – in this case HIV disclosure and preventing new cases of HIV infection. 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, and 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

If you live in a province or territory other than Quebec, here are some of the ways that Public Health may become involved in your life and your sex life (but remember, public health laws are different in every province and territory):

- **HIV testing labs and certain health care 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, infection(s) 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 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 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 to a person. 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 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 short time limits to dispute the order [see page 34].

- **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 34].

Public health in Quebec

Public health law in Quebec is different from public health laws in other provinces and territories.

- **Public Health in Quebec only collects general information** about people who test HIV positive. They do this so that they can track the HIV epidemic in the province. 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 the HIV positive person's birth date, gender, the first three characters of his postal code, and his health insurance number. But Quebec public health law states that this information cannot be used to identify the person. The law also states that Public Health must electronically disguise the health insurance number so it cannot be linked to the person.
- **Public health law in Quebec does not require that an HIV positive person's sex partners be contacted** when he tests 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 or the person's doctor will ask him to provide information about his sex partners, including his 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.)

In exceptional circumstances, Public Health in Quebec may contact a person's sex partner without the person's consent to prevent the partner from being seriously harmed. Even in these rare cases, Public Health does not keep a record of the HIV status of the person.

- **Public Health in Quebec does collect a person's name when they test positive for a sexually transmitted infection (STI) other than HIV.** And if you test positive for an STI other than HIV, Public Health requires that your known sex partners be contacted. Your partners will be told that they may have been exposed to an STI and advised to get medical care, but your name will not be given.
- **Public health law in Quebec 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 law does not give Public Health the power to force you – because you are HIV positive and there is evidence you may be putting another person at risk of getting HIV – to get treatment or counselling or to be held in a hospital or other institution against your will.



► 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 34].

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 status. 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 about your privacy rights, speak to lawyer [see page 34].

Doctors, nurses and other people who provide you with health care: As a general rule, doctors, nurses and other people who provide you with health care have a legal and an ethical duty to keep all your medical information, including your HIV status, confidential. So health care providers can 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 health care 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 health care provider permission, or requires them, to share your medical information.
- Where a court or tribunal orders the health care provider to disclose your medical information.

► 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 34].

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.

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 HIV positive people 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 don't 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 • 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), known as HALCO: www.halco.org
416-340-7790 or 1-888-705-8889
TTY 416-922-2352 or 1-866-513-9883

For information and advice about HIV and the law in Quebec

- VIH info droits (COCQ-Sida): www.cocqsida.com
514-844-2477 ext 34 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
1-800-999-6899 • TTY 1-888-643-3304
- Office of the Privacy Commissioner of Canada:
www.privcom.gc.ca
613-995-8210 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.lawsocietyalberta.com • 1-800-661-1095
- **Alberta Human Rights and Citizenship Commission:** www.albertahumanrights.ab.ca • 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 • Lower Mainland 604-408-2172
outside the Lower Mainland 1-866-577-2525
- **Lawyer Referral Service:** www.cba.org/BC/Initiatives/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 • 250-387-5629
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 Service:** www.communitylegal.mb.ca
204-943-2305 or 1-800-262-8800
- **Manitoba Human Rights Commission:** www.gov.mb.ca/hrc
Winnipeg 204-945-3007 or 1-888-884-8681
TTY 204-945-3442
Brandon 204-726-6261 or 1-800-201-2551
TTY 204-726-6152
The Pas 204-627-8270 or 1-800-676-7084
TTY 204-623-7892

- **Ombudsman Manitoba, Access and Privacy Division:**
www.ombudsman.mb.ca
204-982-9130 or 1-800-665-0531

New Brunswick

- **Criminal Legal Aid:** www.gnb.ca/cour/legalaid-e.asp
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

- **Legal Aid Commission of Newfoundland and Labrador:**
www.justice.gov.nl.ca • 1-800-563-9911
- **Lawyer Referral Service:** www.publiclegalinfo.com
709-722-2643 or 1-888-660-7788
- **Newfoundland Human Rights Commission:**
www.justice.gov.nl.ca/hrc
709-729-2709 or 1-800-563-5808
- **Office of the Information & Privacy Commissioner for Newfoundland & Labrador:** www.oipc.gov.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 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.gov.ns.ca/just/legal_aid.asp • 1-877-420-6578
- **Lawyer Referral Service:** www.legalinfo.org
902-455-3135 or 1-800-665-9779
- **Nova Scotia Human Rights Commission:**
www.gov.ns.ca/humanright
902-424-4111 or 1-877-269-7699
TTY 902-424-3139 or 1-866-811-3732
- **Nova Scotia Freedom of Information & Protection of Privacy Review Office:** foipop.ns.ca
902-424-4684 or 1-866-243-1564

Nunavut

- **Nunavut Legal Services Board "Legal Aid":** www.nulas.ca
867-360-4601
- No lawyer referral service
- **Nunavut Human Rights Tribunal:** 1-866-413-6478
- **Information & Privacy Commissioner:**
www.info-privacy.nu.ca
867-669-0976 or 1-888-521-7088

Ontario

HIV disclosure: a legal guide for gay men in Ontario provides legal information specifically for gay men living in that province. In Ontario, contact your local AIDS service organization to obtain copies.

- **HIV & AIDS Legal Clinic (Ontario):** www.halco.org
416-340-7790 or 1-888-705-8889
TTY 416-922-2352 or 1-866-513-9883
- **Legal Aid Ontario:** www.legalaid.on.ca
416-979-1446 or 1-800-668-8258
- **Lawyer Referral Service, Law Society of Upper Canada:**
www.lsuc.on.ca/public/a/faqs---lawyer-referral-service/
1-900-565-4LRS (4577)

- **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
416-314-6266 or 1-866-625-5179
TTY 416-314-6651 or 1-866 612-8627
- **Office of the Information & Privacy Commissioner/
Ontario:** www.ipc.on.ca
416-326-3333 or 1-800-387-0073 • TTY 416-325-7539

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

- **VIH info droits (COCQ-Sida):** www.cocqsida.com
514-844-2477 ext 34 or 1-866-535-0481
- **Quebec Legal Aid:** www.csj.qc.ca • 514-873-3562
- **Lawyer Referral Service, Quebec Bar:** www.barreau.qc.ca
Montreal 514-866-2490 • Quebec City area 418-529-0301
elsewhere in Quebec 514-954-3528 or 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 Quebec:**
www.cai.gouv.qc.ca • Montreal 514-873-4196
Quebec City 418-528-7741 • 1-888-528-7741

Saskatchewan

- **Saskatchewan Legal Aid Commission:**
www.legalaid.sk.ca • 1-800-667-3764
- **Saskatchewan Human Rights Commission:**
www.shrc.gov.sk.ca
Saskatoon 306-933-5952 or 1-800-667-9249
TTY 306-373-2119
Regina 306-787-2530 or 1-800-667-8577
TTY 306-787-8550
- **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 • 1-800-661-0408 ext 5210
- **Lawyer Referral Service, Law Society of Yukon:**
www.lawsocietyyukon.com • 867-668-4231
- **Yukon Human Rights Commission:** www.yhrc.yk.ca
867-667-6226 or 1-800-661-0535
- **Information & Privacy Commissioner:**
www.ombudsman.yk.ca/infoprivacy/info_index.html
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** (Canadian AIDS Treatment Information Exchange)
Call toll-free 1-800-263-1638 www.catie.ca

For more information about HIV transmission

- *HIV Transmission: Guidelines for Assessing Risk*, 5th edition, Canadian AIDS Society, 2004. www.cdnaids.ca

This guide was written in March 2009.



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

CATIE (Canadian AIDS Treatment Information Exchange)

Call toll-free 1-800-263-1638 www.catie.ca



FSC

Mixed Sources

Product group from well-managed forests, controlled sources and recycled wood or fiber

Cert no. SGS-COC-005437

www.fsc.org

© 1996 Forest Stewardship Council



March 2009

CATIE Ordering Centre Catalogue Number: AT1-26081
(aussi disponible en français, AT1-26082)