



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

February 15, 2023

Email: rsd.drs@justice.gc.ca

Research and Statistics Division
Department of Justice Canada
284 Wellington Street
Ottawa, ON K1A 0H8

Dear Research and Statistics Division:

Re: HIV non-disclosure public consultation

We are writing on behalf of the Sexual Orientation and Gender Identity Community Section (the CBA Section) in response to the public consultation on reforming the criminal law regarding HIV non-disclosure.

The CBA is a national association of 37,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. SOGIC addresses the concerns of LGBTQI2S members in the CBA and provides a forum for the exchange of information, ideas and action on legal issues relating to sexual orientation and gender identity.

The CBA Section commends the Government of Canada for undertaking the public consultation and considering reforms to the criminal law regarding HIV non-disclosure. We believe this law reform is of significant importance to the LGBTQI2S community.

We have reviewed the pertinent jurisprudence, prosecutorial directives, scientific evidence, and community perspectives relating to the criminal law and HIV non-disclosure. After careful consideration, the CBA Section endorses the position outlined in the 2022 Community Consensus Statement issued by the Canadian Coalition to Reform HIV Criminalization.¹

The CBA Section would like to emphasize three points:

- The current law governing HIV non-disclosure is overbroad and does not reflect available scientific evidence. Law reform must ensure the scope of criminalization is significantly narrowed to reflect current science.

¹ See Appendix A.

- HIV non-disclosure prosecutions should not be conducted under the sexual assault provisions of the *Criminal Code*.
- HIV non-disclosure prosecutions should require actual and intentional transmission.

We appreciate that the topic of criminal law and HIV non-disclosure is complex, sensitive, and must reflect an array of interests and objectives. In our view, the position conveyed in the 2022 Community Consensus Statement strikes the right balance.

We appreciate the opportunity to comment. We trust our comments are helpful and would be pleased to offer further clarification.

Sincerely,

(original letter signed by Véronique Morissette for Hossein Moghtaderi)

Hossein Moghtaderi (he/him)
Chair, Sexual Orientation and Gender Identity Community Section

Enc. 2022 Community Consensus Statement

cc. Nathalie Levman (Nathalie.Levman@justice.gc.ca)