

The Criminalization of HIV Nondisclosure in Canada – Sexual Risk and Responsibility as Discursive Strategies to Regulate People Living with HIV/AIDS

Spencer Go

MA Candidate, Department of Criminology
University of Ottawa
120 University Private
Ottawa, ON K1N 6N5
email: SGO065@uOttawa.ca

In 2012, the Supreme Court of Canada jointly heard the cases of *R. v. Mabior* and *R. v. D.C.*: the ruling posited that people living with HIV/AIDS (PHAs) can forego disclosure only if they have undetectable viral loads and wear condoms as this was deemed to reduce risk of transmission to insignificant levels. Given how the ‘significant risk’ test is out of step with medical treatments that have rendered HIV/AIDS chronic and manageable, there is now a body of literature that decries the criminalization of HIV nondisclosure on public health grounds, but a comparative dearth of research investigates this phenomenon from a social scientific perspective (Dej & Kilty, 2012; Mykhalovskiy, 2011). AIDS service organizations (ASOs) are often the first point of contact for those seeking advice about their disclosure requirements and sexual health, which begs the question of how staff firstly, negotiate the criminal law in light of their public health training and secondly, understand sexual risk and responsibility. Locating this research within the ‘medico-legal borderland’ (Timmermans & Gabe, 2002), I examine how PHAs are discursively regulated through ASO counselling practices, which make appeals to legal and extralegal conceptions of risky and responsible sexual behaviour amidst this backdrop of criminalization.