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Chair

Mr. Anthony Housefather

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● (0850)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good morning, ladies and gentlemen, and welcome to the Standing Committee on Justice and Human Rights as we resume our study on the criminalization of non-disclosure of HIV status.

We're joined today by four groups of distinguished witnesses.

We have, first, with us in the room today, from the AIDS Committee of Ottawa, Mr. Khaled Salam, the Executive Director. From the Interagency Coalition on AIDS and Development, we have Ms. Robin Montgomery, the Executive Director.

Joining us from Toronto we have CATIE, represented by Mr. Andrew Brett, who is the Director of Communications, and Mr. Sean Hosein, who is the Science and Medicine Editor. From the Women's Legal Education and Action Fund, we're once again joined by Ms. Karen Segal, who is the Staff Counsel.

We seem to be having some technical difficulties from the folks in Toronto. Let's try it one more time.

We can now hear you perfectly. Thank you.

Folks, because we don't ever want to lose people on video conference, in case of technical difficulties, we're going to start with both of the groups in Toronto.

You each have eight minutes. CATIE, you're first with eight minutes, and then we'll go to the Women's Legal Education and Action Fund.

Andrew and Sean, please go ahead.

Mr. Andrew Brett (Director, Communications, CATIE): Thank you.

Good morning and thank you to the chair and members of the committee for inviting us to share our expertise on HIV transmission and public health. We hope that our comments this morning will help your deliberations on this very important issue.

My name is Andrew Brett. I am the Director of Communications at CATIE. Here with me today is Sean Hosein, who co-founded the organization in 1990 and remains to this day our science and medicine editor.

We are Canada's voice for HIV and hepatitis C information. We are funded by the Public Health Agency of Canada to act as the pan-Canadian knowledge broker for people and organizations working in HIV and hepatitis C prevention, testing, treatment and care. We pride ourselves on being a reliable source of accurate and unbiased information about HIV and hepatitis C.

We're appearing here today thanks to your invitation, but also because we believe this is an area of Canadian criminal law that is unfortunately suffering from a poor and outdated understanding of HIV science. Our comments today will be limited to our area of expertise, which is the science of HIV prevention and treatment.

For other matters, such as the most appropriate legal mechanism to curb the inappropriate use of criminal law in matters of HIV non-disclosure, we would defer to others with more expertise in the criminal law, such as the Canadian HIV/AIDS Legal Network.

Mr. Sean Hosein (Science and Medicine Editor, CATIE): Good morning, and thank you for asking us to appear before the committee today.

My name is Sean Hosein, and I am the Science and Medicine Editor at CATIE. For more than 30 years, I have reviewed research on HIV prevention and treatment and disseminated this news in plain language to people living with HIV, their health care providers and the broad range of service providers working in Canada's HIV/AIDS response.

One of the most exciting developments in HIV research that I have witnessed in my career has been the evolution of our knowledge on the impact of HIV viral load on the possibility of transmission. Between 2011 and 2018, four large clinical trials have now confirmed that people living with HIV who have a suppressed viral load do not transmit the virus to their sexual partners.

When people living with HIV take their medication as prescribed, it can reduce the amount of virus in their body to levels so low that they cannot be detected by standard blood tests. We call this “undetectable viral load” or “viral suppression”. According to the latest estimates from the Public Health Agency of Canada, 91% of HIV-positive Canadians on treatment have achieved viral suppression, and this proportion could be higher with greater access to treatment and care. In the United Kingdom, the equivalent proportion is 97%.

In the four large clinical trials I previously mentioned, out of more than 100,000 instances of sex without a condom with an HIV-positive partner, there were zero confirmed cases of HIV transmission when the HIV-positive partner had a suppressed viral load. For the purpose of these studies, this meant that they had less than 200 copies of HIV per millilitre of blood.

As published in an editorial in the eminent medical journal The Lancet in 2017, the evidence to support the effectiveness of viral suppression in blocking transmission is clear. Where the evidence is less clear is in the likelihood of transmission in the absence of viral suppression. Quantifying this is difficult due to the challenges of conducting a robust study that tracks the number of potential HIV exposures within a couple over time, what type of sex they had, whether they used prevention tools and any biological factors.

Despite these challenges, attempts have been made to calculate the average HIV transmission possibility. There is no possibility of an HIV-negative person contracting HIV when receiving oral sex from an HIV-positive person with or without a viral suppression. There is a theoretical possibility of HIV transmission from performing oral sex on an HIV-positive man when ejaculate is present, although there is limited evidence to confirm this. If such transmission were possible, it would be a negligible risk, at most.

When a condom is used consistently and correctly, HIV transmission is not possible with or without viral suppression. Laboratory tests have confirmed that condoms are impermeable to HIV, including condoms made of latex, polyurethane, nitrile or polyisoprene. These estimates are synthesized in the expert consensus statement on the science of HIV in the context of criminal law published in 2018 by 20 of the world's leading scientists.

● (0855)

Mr. Andrew Brett: Many of the elements of the federal directive regarding prosecutions of HIV non-disclosure cases, which was issued in December 2018, were welcome news for those of us who appreciate evidence-based policy. For example, the directive to not prosecute where the person living with HIV has maintained a suppressed viral load is consistent with the science of HIV transmission. However, it should be noted that criminal prosecutions of HIV non-disclosure in general, regardless of viral load, contribute to a climate of fear and stigma for people living with HIV, which inhibits access to HIV services, we know from research. Also, ironically, it actually discourages people from disclosing their HIV status for fear of legal reprisals.

As a practical and recent example, I am currently working on an HIV educational video with support from the Public Health Agency of Canada, and in this video we are interviewing people living with HIV on camera to dispel myths about HIV and how the virus is transmitted. One of the participants in this project confided to me that he had some concern that disclosing his HIV status on camera could lead to repercussions, and not just in terms of stigma or discrimination but because a sexual partner could make a criminal complaint upon learning he is HIV positive, even though he has an undetectable viral load and there is no possibility of HIV transmission.

There is a very well-founded concern among people living with HIV that they could face a very serious criminal charge by people who misuse sexual assault law, and as a result, they conceal their HIV status to protect themselves. If our goal here is to encourage people to disclose their HIV status to their sexual partners, using sexual assault law could actually be counterproductive.

Mr. Sean Hosein: It should also be noted that HIV is most likely to be transmitted when a person doesn't even know they have the virus, especially if this person has been recently infected. A new analysis by the U.S. Centers for Disease Control found that a recently infected person was 92% more likely to transmit the virus than someone who had not been infected recently. This is consistent with our knowledge that HIV is most transmissible in the acute phase of infection, when the virus is circulating in the body at its highest levels. The same CDC analysis also found that people who know their status are less likely to transmit the virus, due to behavioural changes that occur once a person is diagnosed.

In summary, people who know they are HIV positive are the least likely to transmit the virus and HIV-positive people with suppressed viral loads cannot transmit the virus.

Mr. Andrew Brett: With this knowledge at our disposal, it is clear that targeting people living with HIV with criminal sanctions should not be our approach. Our efforts to curb the spread of HIV should instead be focused on increasing awareness—increasing access to testing and increasing access to treatment and care.

We hope this information has been useful for you and we welcome your questions.

The Chair: Thank you very much. That was very helpful.

Now I will go to Women's LEAF.

Ms. Segal, the floor is yours.

Ms. Karen Segal (Staff Counsel, Women's Legal Education and Action Fund): Thank you.

My name is Karen Segal. I'm from the Women's Legal Education and Action Fund, also known as LEAF. I'm joining you from LEAF's national office in Toronto. Thank you very much for having me back and for inviting LEAF to speak to this committee on this issue.

LEAF is a national non-profit that advances women's equality rights. Over the past 35 years, LEAF has played a key role in advancing women's rights in law through litigation, law reform and public legal education. Sexual assault law and the development of sexual assault law through a feminist lens is a fundamental element of LEAF's work due to its close proximity to women's equality rights.

As this study considers sexual assault law and questions around sex and consent, it is a study that is particularly relevant to LEAF's mandate. I am aware this committee has heard extensively from advocates in the HIV/AIDS community who seek to end the harsh criminalization of individuals living with HIV. LEAF supports this important objective, but to further assist this committee, I will focus my submissions here on the impact of this area of law on women's equality rights.

As an organization that advocates for the equality rights of women and girls. There are three key areas that we are interested in regarding the law of HIV non-disclosure. First, HIV non-disclosure prosecutions have led to an increase in the number of women as accused persons being convicted of aggravated sexual assault. That has had a particular impact on women from marginalized communities. Almost 80% of women living with HIV are indigenous or racialized women, a group that already faces serious over-criminalization in Canada. That over-criminalization is a product of systemic race and sex discrimination that will be exacerbated through the harsh criminalization of HIV.

Further, HIV non-disclosure prosecutions can make women more vulnerable to intimate partner violence. For example, in the case of Regina v. D.C., one of the seminal Supreme Court of Canada cases in this area, the complainant was an abusive partner who brought his allegations of HIV non-disclosure against his former spouse after she brought forward allegations of domestic violence against him. He waited until that point despite having known about her HIV status for many years, which is an example of how HIV prosecutions can be used by abusive men as a tool of their abuse.

On the other hand, despite the fact that most cases of HIV transmission occur among men who have sex with men, the majority of HIV non-disclosure prosecutions occur in the context of heterosexual relationships with women bringing complaints of sexual assault against men. The safety and bodily autonomy of this group of women as complainants also animates LEAF's proposed response to HIV non-disclosure.

Finally, the development of the law relating to HIV non-disclosure has altered the law of sexual assault to the detriment of women's equality rights. LEAF has a particular interest in the law of sexual assault because sexual assault is a gendered crime that disproportionately impacts women. Because non-disclosure of HIV is dealt with under the law of sexual assault, advocates in this area have sought to limit the scope of behaviour prohibited under sexual assault laws due to the concern that expansion of the kind of behaviour considered to be a sexual offence would further criminalize people with HIV.

Unfortunately, the changes that many advocates have advocated for apply to all sexual assault trials, not just those involving HIV non-disclosure. Success in advocacy to limit the application of sexual assault law risks decreasing protections provided for women against sexual violence. In this way, the limitation of the law to advance equality of people living with HIV has actually undermined important protections for women's equality rights.

In response to these complex concerns, LEAF engaged in a multi-year consultation with feminist experts nationwide, including scholars and legal practitioners, which resulted in the law reform position that we have provided to you.

I will give you an overview of that position now.

First, it is imperative that HIV non-disclosure be removed from the law of sexual assault. Sexual assault affects one in three Canadian women and in 2014 less than 1% of sexual assaults led to conviction. Impunity for sexual violence is a human rights crisis in Canada and further limiting the protection of the law in this area will hurt women. On the other hand, further criminalization of people with HIV will hurt equality rights in Canada.

● (0900)

The proper response is to remove HIV non-disclosure from sexual assault law altogether. LEAF proposes that HIV non-disclosure be prosecuted under criminal provisions that do not deal with sexual assault and only when the accused was reckless and transmission actually occurred.

This serves three purposes. First, it limits the punitive over-criminalization of people living with HIV.

The requirement of transmission would act essentially as a proxy for the factors identified in the recent federal prosecutorial directive that outlines when HIV non-disclosure should be prosecuted, specifically that it should be prosecuted only when the individual either did not use a condom or properly use ARVs. As I've heard from my friends on this panel, studies indicate that those methods are just about 100% effective at preventing transmission, so transmission would act as a proxy for someone failing to take one of those two steps.

While the recklessness requirement leaves open the possibility that, in some circumstances, transmission would not be criminal, depending on the steps taken by the accused to prevent transmission, this would reduce the over-criminalization of the most marginalized women in Canada.

The second reason that we propose this is that leaving some room for the criminal law in cases of reckless transmission of HIV provides some protection for women who have contracted HIV from partners who acted recklessly and took no care to prevent transmission of the virus.

Finally, this proposal would protect the robust and broad scale of consent that is fundamental to women's equality rights and the right to bodily autonomy. It would prevent courts from having to contort the law of sexual assault to fit the context of HIV non-disclosure, which is a very different set of circumstances from those usually seen in sexual assault prosecutions.

As I've outlined in our written submissions to you, we urge this committee to take this opportunity to clearly signal that the principles outlined in seminal sexual assault decisions, such as R. v. Ewanchuk, which give women the right to decide who touches their body and how, and clearly indicate that voluntary consent is required for any sexual touching, remain the foundational principles of sexual assault law and continue to bind future courts.

Finally, we would propose that prosecutorial directions for HIV non-disclosure are necessary to ensure that marginalized women are protected from violence. We've submitted to you in our submission that the reckless transmission of HIV non-disclosure should be prosecuted under non-sexual assault provisions of the Criminal Code. We would further submit that the transmission should not be an offence when the accused feared violence would result from disclosing their HIV status or feared violence if they insisted on condom use.

As we know, the use of a condom is a gendered requirement and women don't always have as much control over condom use as their partner if they engage in sex under duress, were coerced into sex or the sex occurred without the consent of the accused.

In short, to best protect the equality rights of people living with HIV and to protect women from sexual violence, we propose that HIV non-disclosure be removed from sexual assault law and that the reckless transmission of HIV should be prosecuted under criminal provisions that do not deal with sexual assault, with clear prosecutorial guidelines that ensure that women are not criminalized for the violence committed against them.

Thank you very much for hearing from LEAF.

● (0905)

The Chair: Thank you very much.

Now we will go to the AIDS Committee of Ottawa, Mr. Salam.

Mr. Khaled Salam (Executive Director, AIDS Committee of Ottawa): Good morning.

My name is Khaled Salam and I'm the Executive Director of the AIDS Committee of Ottawa. ACO is a social justice organization that provides education, support, outreach and advocacy to people living with, affected by and at risk of HIV/AIDS in Ottawa. ACO has served the Ottawa community for almost 35 years.

Criminalization of HIV non-disclosure has stood as an impediment to public health and HIV/AIDS education and prevention. It has added even more fuel to stigma, misinformation and fear. HIV is a health and medical issue, not a legal or criminal issue. HIV should be addressed from a scientific and evidence-based lens, particularly when it comes to risk factors and methods of transmission, and not from a place of prejudice, judgment and HIV phobia.

People living with HIV need health and social supports instead of the threat of criminal accusations and imprisonment hanging over their heads. Criminalization of HIV non-disclosure undermines the work of organizations like ACO, and it fosters a climate of fear and recrimination. We understand that the topic of criminalization of HIV non-disclosure generates different views, opinions, thoughts, feelings and experiences. Having these conversations—even if they are difficult at times—is crucial in effectively addressing the impact of criminalization of HIV non-disclosure in our communities.

Disclosure of one’s HIV status is a complex social issue. Our communities and society as a whole don’t always allow for safe and supportive environments for voluntary disclosure of status. Often when people living with HIV disclose their status, they're shunned and ostracized, sometimes by those closest to them. People may fear rejection, violence or discrimination, or they may worry that their status might not be kept confidential by the person they're disclosing to.

There are many communities where the topic of sexuality and HIV is taboo. Racism, colonialism, homophobia, drug phobia, gender norms, economic conditions, and cultural and language barriers are all factors that can also affect a person’s ability to disclose their status.

In the overwhelming majority of cases, the very broad application of the criminal law to HIV exposure—which often includes draconian sentences—does far more harm than good. Rather than using criminal law to respond to cases of HIV exposure or transmission, our society as a whole should move towards reforming laws and policies that stand in the way of evidence-informed HIV prevention, support and treatment efforts. We need to collectively work towards promoting a social and legal environment that is supportive of and safe for voluntary disclosure.

Last year on World AIDS day, December 1, at our annual commemorative event on Parliament Hill, the federal Minister of Health, the Honourable Ginette Petitpas Taylor, on behalf of the Canadian government, officially endorsed the “U=U” strategy—undetectable equals untransmittable—and signed the consensus statement. Words cannot express our sentiments, nor can they truly convey our feelings surrounding that momentous occasion when we as an organization, a city, a country and most importantly the HIV community made history together. Our collective hearts were filled with pride and tears were trickling down our cheeks. At the same time, our hands were either up in the air or coming together in thunderous claps as Canada became the first country in the world to endorse U=U. This meant our government was proudly declaring that a person living with HIV on treatment with a suppressed viral load cannot sexually transmit the virus to another person. This is a shining example of government and community working together to eradicate HIV/AIDS stigma.

The same day as that endorsement, the federal government announced a new directive to help limit unjust prosecutions against people living with HIV in Canada. This new directive comes after years of advocacy by legal networks, many community partners and people living with HIV across Canada. At ACO, we see this as a welcome and positive step forward in the ongoing effort to end the criminalization of HIV. We recognize that it is more in line with the latest scientific evidence regarding HIV and its transmission.

Last year, the Canadian Coalition to Reform HIV Criminalization—the CCRHC—released its community consensus statement. We immediately signed on to it, along with 160 other organizations across Canada.

● (0910)

This statement called upon the federal government to act on its stated concerns about the over-criminalization of HIV and the findings of a Justice Canada report released back in 2017.

As a local organization advocating for the HIV community in Ottawa, we were pleased that the government listened to our collective voice by issuing this new directive. It is an important step in the right direction. The fact that the new directive states that there should not be prosecution where the person living with HIV has maintained a suppressed viral load is a big step forward and in line with the government's aforementioned endorsement of undetectable equals untransmittable.

Having said that, it is important to recognize that historically, Canada has had one of the highest rates of HIV criminalization in the world, with more than 200 cases documented to date. Even though this new directive is a significant step forward in reducing the stigmatization of Canadians living with HIV, there is a lot more work to be done. We call upon the federal government to reform Canada's Criminal Code to ensure that HIV-related prosecutions are removed from sexual assault law and are applied only to intentional transmission.

In addition, the federal directive only applies to Nunavut, Northwest Territories and Yukon, as they all fall under federal jurisdiction. The majority of people living with HIV reside in the other 10 provinces. We continue to call on the provincial governments to adopt the federal directive and update their prosecutorial guidance on HIV-related prosecutions. We would like to see our federal government work closely with its provincial counterparts to ensure the directive is standardized and consistent all across our country.

In closing, we would like to congratulate the federal government for taking this action, and we urge Ontario and the other provinces to also move forward.

Thank you for giving me the time to speak today.

The Chair: Thank you very much.

We will now go to the Interagency Coalition on AIDS and Development.

Ms. Montgomery, the floor is yours.

Ms. Robin Montgomery (Executive Director, Interagency Coalition on AIDS and Development): Thank you, Chair and members of this committee, for the opportunity to appear before you today. The issue of the criminalization of HIV non-disclosure is a serious one, and I'm very pleased that the Standing Committee on Justice and Human Rights is studying the matter.

My name is Robin Montgomery. I'm the Executive Director of the Interagency Coalition on AIDS and Development. I do not have a law degree, nor do I have a medical degree. However, I am a human rights defender and a public health advocate on issues of HIV here at home in Canada and within the global community. It's from this perspective that I will ground my comments today.

In our work at the Interagency Coalition on AIDS and Development, a Canadian coalition that bridges domestic and global responses and connects the worlds of HIV and international development, we continue to observe the negative impact of HIV criminalization on individuals, on communities and on countries and regions in Canada and around the world. We see the negative impact on women, on LGBT2QI communities and on black and indigenous communities, to name but a few.

We also see its detrimental implications for our collective progress in ending HIV as a global public health threat as part of our 2030 agenda for sustainable development, an international commitment to which Canada has been an enthusiastic signatory.

We know that HIV does not discriminate. It's rooted in complex social and structural issues. It's largely both a cause and a consequence of poverty, where isolation, marginalization, vulnerability, stigma and discrimination are its closest friends.

One key global strategy in meeting our 2030 targets and goals, leaving no one behind, is called the 90-90-90 fast-track strategy, laid out by UNAIDS and endorsed by Canada. The tenets of this strategy are grounded in targets for HIV prevention and treatment, with the understanding that if we are able to reach the goal of having 90% of people living with HIV knowing their status, 90% of people who know their status on antiretroviral therapy and 90% of people on antiretroviral therapy achieving viral suppression, then we will effectively see success in getting to zero new infections, zero AIDS-related deaths and zero stigma and discrimination.

Singling out HIV with specific laws or prosecutions runs directly counter to this UN-led global public health strategy. There is no body of evidence that criminalization of HIV non-disclosure exposure or transmission has a public health benefit. There is, however, as we've heard today, a growing body of research that illustrates how such prosecutions undermine public health interventions and messaging by further stigmatizing people living with and at risk of HIV, placing them at risk of violence and driving them further away from learning their status and accessing essential and life-saving services and treatment. As we know, HIV-related stigma is the greatest barrier to testing, treatment uptake and timely access to prevention, treatment, care and support services.

As we've heard today, HIV epidemics are driven by undiagnosed HIV infections, not by people who know their HIV-positive status. It is now well established that the possibility of HIV transmission from an HIV-positive person with an undetectable viral load as the result of early and effective treatment is zero. HIV-positive people with a suppressed viral load cannot transmit the virus. I refer you to the “Expert consensus statement on the science of HIV in the context of criminal law”, which is a statement that was circulated in July 2018 from 20 of the world's leading HIV scientists. I have copies here for you today, but only in English. I will follow up with a hard copy following today's session.

The 2012 Oslo Declaration on HIV Criminalisation, which is the second document that I have shared with you today, points to the growing body of evidence that illustrates how criminalization of HIV non-disclosure is actually doing more harm than good in terms of its impact on public health and human rights. Due to the high number of undiagnosed infections, relying on disclosure to protect oneself and prosecuting people for non-disclosure can and does lead to a false sense of security.

● (0915)

As we've heard today from our esteemed colleagues at CATIE, if our goal is to encourage people to disclose their HIV status to partners and to access services early, using the blunt tool of sexual assault law to achieve this is counterproductive. Rather, an evidence-informed and rights-based alternative includes measures that create an environment that enables people to seek and realize the benefits of testing, support and timely treatment, and to safely disclose their HIV status.

While there may be a limited role for criminal law in rare cases in which people transmit HIV knowingly and with malicious intent, we echo experts, advocates and leaders at the Global Commission on HIV and the Law, UNAIDS, the UN special rapporteur on the right to health, the World Health Organization and the Canadian Coalition to Reform HIV Criminalization. We prefer to see people who are living with and at risk of HIV supported and empowered from the moment of diagnosis, so that even these rare cases can be prevented. This requires a non-punitive, non-criminal HIV prevention approach that is centred within communities where expertise about and understanding of issues of HIV are best found.

Where to go from here? We are very encouraged by the 2018 federal prosecutorial directive as a firm step forward, but more needs to be done. The acceleration of work with provincial attorneys general to endorse and follow the federal government directive is absolutely paramount. Reforms to the Criminal Code are also warranted in order to further limit the currently broad scope of HIV criminalization in Canada.

These reforms should achieve two things: first, put an end to the use of sexual assault law as the means of criminalizing HIV non-disclosure; and second, limit any use of the Criminal Code to cases of intentional and actual transmission of HIV to another person.

To help move forward this important work that has already been undertaken with the federal directive, broad multi-stakeholder consultations and cross-sector co-operation will be essential to ensure that legal reforms are steeped in the most up-to-date, leading scientific and medical evidence, and that all concerned stakeholders are meaningfully engaged. These include experts in human rights and law; public health, medical and scientific experts; experts from civil society and the community; and first and foremost, experts with lived first-hand experience—people living with HIV.

Canada has demonstrated tremendous global leadership and political will in responding to issues of HIV, human rights, gender diversity and gender equality. It is unfortunate, as well as very inconsistent and very confusing, to also have the distinction of being one of the most aggressive countries in the world in terms of the criminalization of HIV non-disclosure. It is fourth only to Russia, the United States and Belarus.

Canada's leadership here is absolutely critical. It will send an important signal to other countries that are either in the process of legal reform or that have yet to begin. Removing HIV non-disclosure prosecutions entirely from the reach of sexual assault laws will, first, be catalytic in Canada's ability to meet its own 90-90-90 targets. Second, it will be catalytic in its commitment to the sustainable development goal to leave no one behind. Third, it will align with Canada's commitment to human rights and evidence-informed public health approaches.

Thank you.

● (0920)

The Chair: Thank you very much.

We will now move to questions.

Mr. Cooper.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you, Mr. Chair. I'll address my first questions to the representatives from CATIE.

You spoke about the very low risk of transmission where there is a low viral load, where a condom is properly used, and in the case of oral sex. Let me just say that I support the federal directive that was issued, inasmuch as I believe that it strikes a balance in terms of recognizing individual autonomy without unduly over-criminalizing what, at the end of the day and on the whole, is not harmful and blameworthy behaviour.

What is the risk of transmission in the case of not having a low-viral load and not using a condom?

Mr. Sean Hosein: That's a very good question. Those studies are hard to quantify. This relies on people reporting what they may or may not have done in a certain situation. They can't be observed in a proper experiment, so it's uncertain.

● (0925)

Mr. Andrew Brett: What we can say is that for sex with a condom with or without viral suppression, there is no possibility of this if the condom is used consistently and correctly. In the context of oral sex as well, there are no confirmed cases of HIV transmission. There's very limited evidence, but there's a theoretical possibility of this if a person performs oral sex on an HIV-positive person and ejaculate is present. However, there are no confirmed cases in a scientific study.

Mr. Michael Cooper: Now, you would agree that while HIV is no longer a fatal condition, it remains clearly incurable and has serious implications on one's health. You would agree with that.

Mr. Sean Hosein: Yes, but to be clear, a person who's diagnosed today and who gets on treatment right away has a near-normal life expectancy. Canadian studies have shown this. So yes, it is no longer a fatal illness, but people have a near-normal life expectancy with treatment.

Mr. Michael Cooper: Even with antiretrovirals, for some individuals they don't always work well. I saw some evidence indicating that individuals who use antiretrovirals experience higher rates of certain diseases, including cardiovascular disease, diabetes and so on. Would you care to comment on that?

Mr. Sean Hosein: HIV treatment has evolved over time. At first it was not very effective. The latest treatments are fairly simple. They can be taken once daily. More importantly, they have very few side effects. What we're seeing now in the studies that look at people who are aging is that HIV-positive people get the same illnesses as others. In some cases, as you point out, the cardiovascular risk has been associated with the fact that in HIV-positive people, rates of smoking are double or triple what they are in HIV-negative people.

It's not the medicines. It's other factors.

Mr. Michael Cooper: Thanks for that.

Ms. Montgomery, you stated that it is your position that in terms of the realm of criminal law, there should be Criminal Code penalties for individuals who intentionally transmit. What about in the case or recklessness? Why should that not be covered by the criminal realm? Again, where the risk is well above negligible.... I certainly agree that where the risk of transmission is negligible, whether it's intentional or not, that should not be covered by criminal law, but where the risk is above negligible and the conduct wasn't intent but recklessness, is there not room for criminal law in that regard? If not, why not?

Ms. Robin Montgomery: Thank you very much for that very important question. I will look to my colleagues at CATIE, the ACO and LEAP to jump in here as well.

I would answer that by first asking how you define “reckless” behaviour and at whom that is pointed. Power relations play an important role in all sexual negotiations. When we're looking at the impact of HIV transmission and prosecutions against women in particular, and marginalized communities, more importantly, as a whole, they often come from a place of marginalization, where power relations are certainly not to their advantage.

I think it's very difficult to define reckless behaviour, as there is a very limited breadth of evidence to actually prove, in the moment, whether the act is reckless or not.

Mr. Michael Cooper: Thanks very much.

The Chair: Just as food for thought on Mr. Cooper's question for the panel, or in terms of future questions, let's say somebody has Kaposi's sarcoma, for example, where they have actual signs that they have AIDS and they don't get tested, or let's say somebody is told by their previous partner, “I have now been diagnosed with HIV, so you should get tested” and they don't. There are other elements of recklessness, other than lack of powerlessness, that maybe you want to consider.

Mr. Ehsassi.

● (0930)

Mr. Ali Ehsassi (Willowdale, Lib.): Thank you, Mr. Chair.

My first question is for Mr. Brett and Mr. Hosein.

I reviewed your 2019-20 strategic plan. In that plan, you note that there are a number of policy gaps that inhibit the reduction of HIV in marginalized communities. Could you elaborate on those gaps?

Mr. Andrew Brett: There are many gaps. Actually, for a high-income country with a strong health care system, Canada is surprisingly doing pretty poorly in terms of access to testing, treatment and care. Just to compare, Robin had mentioned earlier that we have committed ourselves to the global strategy of achieving 90% tested, 90% on treatment and 90% virally suppressed. In Canada, altogether, only 63% of people living with HIV are virally suppressed, and that's because of a lack of access to testing and a lack of access to treatment. If you compare, in the United Kingdom, 97% of people living with HIV who are on treatment are virally suppressed; in Canada, it's only 91%.

We have a public health care system, so that should not be a thing in Canada. Really, it comes down to access to treatment and care. For example, if you look at indigenous communities, in terms of access to testing on reserves and access to treatment on reserves, for some communities, it's not possible to see an HIV specialist. These are the types of barriers we're seeing across the country.

Mr. Ali Ehsassi: Thank you.

Another thing I came across in your publication was where you talked about other policy and resource issues that need to be addressed. There were a number of issues you identified. You talked about inadequate access to harm reduction services, insufficient spots in addiction services and inadequate sexual health education.

One thing in particular that caught my attention is where you talked about regressive prison reforms that are inhibiting our ability to deal with this challenge. Could you elaborate on what regressive prison forms would be?

Mr. Andrew Brett: It's hard to speak to that, because I don't have the full document in front of me. However, at the time that document was written, for example, supervised injection sites were not available in prisons. Prisons are where HIV and hepatitis C transmission is at some of its highest levels in Canada.

Now there is a process under way in terms of piloting a new project. I'm not sure if that's the example you're referencing. That would be one example where we could be doing better in terms of HIV and hepatitis C in prisons.

Mr. Ali Ehsassi: Given that it's such a challenge, do you have data for prisons?

Mr. Sean Hosein: We don't have recent data. We're waiting on the Correctional Service of Canada to provide that update.

Mr. Ali Ehsassi: Okay. Thank you for that.

Ms. Montgomery, you talked about how there have been some catalytic changes. In particular, you talked about the 2018 directive and how it's important that we accelerate efforts to get the provinces on board.

Do you think it's important for the federal government to ensure that this issue is addressed at the next federal-provincial-territorial meetings? Would that assist?

Ms. Robin Montgomery: Yes, I do believe that would assist as a starting point, and then I would hope that it would involve closer coordination and co-operation with public health officials and with civil society groups, and in particular, communities affected by HIV. Bringing everyone together would be the most positive, holistic and comprehensive way of addressing these reforms.

However, yes, I do think it's a step in the right direction.

Mr. Ali Ehsassi: Okay.

Mr. Salam, would you like to comment on that as well?

Mr. Khaled Salam: I agree with everything that Robin said. As I mentioned as well, obviously we welcome the new directive and we think it's a huge step forward in finally addressing this very important topic. However, for it to be fully effective, and effective with the priority populations, people living with HIV, in terms of epidemiological data and things like that, it would definitely have to trickle down to the provinces.

Ontario, where we all are, is one of the provinces with the highest rates of people living with HIV. I know Ontario had started doing some work around this particular piece, but unfortunately it seems to be on hold right now and hasn't followed through to the point where the federal directive has. Unless there is a standardized and consistent directive all across Canada, we won't see the full impact in terms of the eradication, hopefully, of the criminalization of HIV non-disclosure.

● (0935)

Mr. Ali Ehsassi: Thank you for that.

Mr. Khaled Salam: Is there a possibility for me to respond to your question about recklessness?

The Chair: It's up to Mr. Ehsassi.

Mr. Ali Ehsassi: Sure, absolutely.

Mr. Khaled Salam: Could you define what you mean by recklessness?

It's one of the things we haven't talked about. It seems like the onus of disclosure, of not being reckless, of doing everything by the book is always on the person living with HIV.

When two people are engaging, we all have responsibility for our own health. I only had eight minutes today to talk, so I didn't specifically zoom in on that. The onus needs to shift away from the person living with HIV to everybody. When we are engaging with someone else, we shouldn't be under the assumption that the criminal law is replacing the use of a condom, or whatever thoughts we might have that everybody is going to be disclosing to us. We have that responsibility in terms of how we handle our own health.

When you talk about reckless behaviour, I'm not sure what the definition of reckless behaviour is. I think that nobody in this room can say they have never engaged in any reckless behaviour when it comes to engaging with someone else. If you could clarify that, it would be easier to answer the question.

The Chair: We have exhausted Mr. Ehsassi's time. We're now into Mr. Garrison's time.

Again, I think the definition of recklessness exists in criminal law, so I would advise you to look at that.

We'll go to Mr. Garrison.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Thank you very much, Mr. Chair.

I have to start where I always do, as a gay man who has spent most of my life being impatient with the government on HIV issues.

I want to thank Robin for bringing attention to the Oslo Declaration on HIV Criminalisation, which is dated February 2012.

We are in a state where we have a positive directive that's of limited application, and these hearings are, of course, very useful. However, they are occurring at a time in this Parliament when nothing of substance is likely to happen. Now, I'm trying to be the optimist again. That means we have time to look at doing this right.

My question is about some of the other aspects of the Criminal Code.

CATIE has given us the definitive scientific reasons for not criminalizing HIV non-disclosure, and I think that case has been made many times. There are other things in the Criminal Code that I think affect access to testing and treatment, and I wonder if there are other things we should be considering in the committee.

Maybe I'll start with Mr. Salam, since he was cut off the last time.

Mr. Khaled Salam: Sorry, what was your question? What are some things we should be considering in terms of how...?

Mr. Randall Garrison: As well as decriminalizing non-disclosure, there are some other aspects of the Criminal Code that affect access to testing and treatment.

Mr. Khaled Salam: I think this new directive is a big part of it.

One of the things I can share with you in terms of what we have noticed is probably the most powerful.

Very quickly, last year in Ottawa was our year of U=U. We did a lot of work with our community partners around “undetectable and untransmittable”. Since the messaging has been out there and there has been an official endorsement by the Canadian government, the shift we have seen in people living with HIV, and also people who are at risk and don't know about their status, has been massive and significant. We have done art projects around it, in terms of how this has impacted lives. We have talked to people at risk in terms of whether they are more comfortable getting tested for HIV now, or if they feel it has made a difference. The answer has been overwhelmingly, yes.

Now I know that if I get tested and I am positive and have the opportunity to go on treatment and be undetectable, I'm no longer a vector of transmission. There's a much smaller chance of being criminalized in terms of passing on the virus to someone else. It's made a massive, massive difference in that particular way.

In terms of other aspects of the Criminal Code, I am not a lawyer. I think folks from CATIE mentioned that the experts on that are HALCO, the HIV and AIDS Legal Clinic Ontario, for example, and the Canadian HIV/AIDS Legal Network. They would be much better suited to answer that particular question.

The one thing I can tell you is that sexual assault law needs to be completely removed from any cases that involve HIV non-disclosure.

● (0940)

Mr. Randall Garrison: In your work, do you find that the criminalization of drug use and the criminalization of sex work inhibit access to treatment?

Mr. Khaled Salam: For sure. They're all interconnected, absolutely, 100%.

Mr. Randall Garrison: Maybe I can ask our friends in Toronto, either LEAF or CATIE, if they want to respond to the impact of the criminalization of sex work and the criminalization of drug use on access to treatment and testing.

Mr. Andrew Brett: Thank you for raising that issue.

I didn't want to veer too far away from what we are here to talk about, but CATIE absolutely similarly sees criminalization—our drug policy and in terms of sex work—as having an impact on access to HIV services across the continuum of care, from testing to treatment and care.

Ms. Karen Segal: I'll just add to it that we know that women working in that industry, whether you call it work or something else, are particularly vulnerable to violence and may be in a particularly difficult place in regard to disclosing their HIV status. There are cases of women who have experienced significant violence following disclosure of HIV status, including murder.

Again, when it comes to the issue of requiring condom use, we know that women who are exchanging sex for money don't always have control over the condom use of their partner or may be paid not to use a condom. That is a group of women that is particularly vulnerable to over-criminalization under the standard and is particularly vulnerable to the kinds of violence that might flow from HIV non-disclosure or the requirement to use that protection. That may make it impossible to meet the legal standards required of them.

Mr. Randall Garrison: Thank you.

The Chair: Thank you very much, Mr. Garrison.

Ms. Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, Chair, and thank you to the witnesses for coming in today.

Ms. Montgomery, you mentioned the 90-90-90 strategy and that Canada is way behind in implementing that strategy. Can you give us some examples from around the world of where this strategy has been implemented and what their criminal laws look like with respect to HIV non-disclosure?

Ms. Robin Montgomery: Sure, thank you very much.

First off, it would be very helpful if I could follow up with some more detailed information following today's session as I don't have the full breadth of information at my fingertips, but what I can say is that according to UNAIDS—and I'm going to refer to some background information here just because I'm not great with short-term memory—across the world in terms of where we are standing globally on reaching our 90-90-90 targets, we are off track. While we are seeing general prevention or new infections start to decline, in many areas of the world we're still seeing them rise.

In 2017—these are statistics from World AIDS Day, December 1, 2018—if we're looking at the 90-90-90 cascade, three out of four people living with HIV knew their HIV status. That makes it about 75% knowing their HIV status worldwide. Among people who knew their status, about four out of five were accessing treatment. That is about 79%. Again, we are still far off from 90. Among people accessing treatment, four out of five were virally suppressed, or 81%, and 47% of all people living with HIV around the world are seen as being virally suppressed. We have a considerable way to go.

This is a strategy that has been widely endorsed by all UN member states. It is the key global public health strategy that is being implemented in order to reach the 2030 goals. But we are seeing a slowdown in progress largely because of drops in funding to HIV prevention activities, particularly within the community, as well as a slowdown in terms of political will, where it's no longer seen as being the priority issue amongst governments and decision-makers but rather has fallen to the side of the agenda.

However, it is an incredibly critical issue and if we are to reach that 90-90-90 target in countries around the world, we really do need to step up the fight, which also means more resources and political will.

Ms. Iqra Khalid: Thank you very much.

I'll turn to Mr. Salam, if I may.

You spoke a little about non-disclosure and intentional versus unintentional negligence—and is it negligence or is it irresponsible or dangerous in that regard—with respect to how our criminal laws are currently structured. We see that HIV non-disclosure provisions rest within a sexual assault case. If we were to take it out of there, where would such an intentional exposure to HIV be housed?

● (0945)

Mr. Khaled Salam: I would love to be able to answer the question, and I last night honestly thought that this question would come up to one of us. It's too bad that we don't have someone today from the Canadian HIV/AIDS Legal Network or HALCO to address that because they are the folks who have that knowledge. I don't have any legal background. I would love to be able to answer the question in terms of where that would be housed when there is actual proven intentional transmission of HIV.

In terms of my own experiences in working with a lot of folks living with HIV, I can tell you that I did a lot of support work with a lot of different folks, and I never once encountered—or through my colleagues or through other sources—anyone living with HIV who ever went out there actually trying to transmit the virus to someone else. I can tell you that people living with HIV are, for a fact, the most cautious and the most concerned about the health of those around them, including potential sexual partners. I've never met a community that is more concerned and more cautious than people living with HIV when it comes to protecting other people's health. When you're talking about intentional transmission, it is in the rarest of cases that might happen. It would definitely also have to be 100% proven that there was actual deliberate intent, which doesn't happen all the time. I think that a lot of the cases that we have seen have been driven and fuelled by HIV stigma more than anything else when it comes to prosecution.

Unfortunately, as I said, I'm not a lawyer, so I can't answer your question in terms of where that should be housed. However, it's a great question, and hopefully you will, as a committee, be following up with the legal sources to get that answer.

Ms. Iqra Khalid: Ms. Montgomery, I think you have something to add.

Ms. Robin Montgomery: I fully agree with Khaled. I think it's a question that really warrants a very careful review, including a review of what other countries around the world, other jurisdictions, have done. I have a couple of examples here: Australia, Kenya, Switzerland. Switzerland, in 2016, adopted a referendum for a new law that limits criminalization to intentional transmission of HIV. There are a lot of good practices out there. The best answer to your question would be to do a comprehensive review of what has worked in other countries and what might be applicable to our Canadian settings.

Thank you.

Ms. Iqra Khalid: Thank you very much.

The Chair: Thank you.

You have 20 more seconds if you want.

Ms. Iqra Khalid: Twenty seconds is not enough, thank you.

The Chair: If you don't mind, I'm going to take it. I want to ask Ms. Segal a question.

Ms. Segal, I'm in complete agreement that this should not be sexual assault law. I'm in complete agreement that we need to radically change the way that we frame this. Where I have difficulty.... Pretty much each and every person who has come before the committee has said that there has to be both transmission and the intention to transmit.

I have great difficulty. You're the first witness who has mentioned recklessness. I'm not sure whether it's recklessness or wilful blindness, but there has to be something beyond an intention to transmit. An example would be in the case of two partners where one partner specifically asks the other, “Do you have any STDs?” and the other person lies. To me, that's at a standard where, if there's transmission, then there should be legal consequences, even if there was no intention to do so.

Can you talk about where LEAF is with regard to recklessness and why you chose recklessness as the standard?

Ms. Karen Segal: Thank you very much for asking me that question. I've been listening to this conversation hoping for the opportunity to weigh in.

In terms of the issue of intention, first of all, intention is nearly impossible to prove. Proving intention means proving the subjective state of mind of the individual at the time. If the requirement is to prove intention, we might as well completely decriminalize HIV non-disclosure because it will be near impossible for the Crown to prove intentional transmission.

Similarly, you gave a really excellent example of why intention alone is not a good enough standard. In that case where someone says, “No, I don't have HIV; thank you for asking” and proceeds to have sex without protection, that person might not want to transmit the virus but just is indifferent to whether they transmit the virus. We do see scope for some protection for people who have incurred some bodily harm, some interference with their bodily integrity as a result of the indifference of their sexual partner to their own physical health.

In terms of the requirement of transmission, I think that is a good way to balance between the concerns over what recklessness is and what will be defined as recklessness. As you mentioned, recklessness is defined in criminal law, and it would be a question of fact to be determined by every judge. It would be informed by the federal prosecutorial directive. It should be informed by the most recent science, the most up-to-date science. The requirement of transmission would also act as a proxy for having taken some steps. It would reduce the concerns around total over-criminalization while also providing some protection for people who have been denied the opportunity to make an informed choice about their own health and their own bodily integrity.

Since I have the floor here, I'll quickly talk about the issue of where in the criminal law it should be. I think that's a question for the committee to seriously sit down and look at, consider what exists in Canada's criminal law and think carefully about where it can be placed. There has been some suggestion that criminal negligence causing bodily harm might be a standard. The focus, in LEAF's submission, should be on transmission with some backup for recklessness where transmission did actually occur but the accused took some sort of reasonable steps to prevent transmission.

● (0950)

The Chair: Thank you so much.

If you want to look at what California just did, and if you have any thoughts on it, please email the committee. That would be interesting. There's a California senate bill that treats HIV like all communicable diseases and treats its intentional transmission like actual transmission of a communicable disease.

I really appreciate everyone's help today. Your submissions have all been really thought-provoking.

I'd like to ask the second panel to please come forward. I know both people from the second panel are here.

Thank you to everyone on this panel. We're going to briefly pause while we change panels.

● (0950)

(Pause)

● (0955)

The Chair: We are reconvening now with our second panel on the criminalization of non-disclosure of HIV status. I'm delighted to be joined here by Professor Kristopher Wells from MacEwan University. From HIV Edmonton, we have Ms. Shelley Williams, the Executive Director. By video conference, from the BC Centre for Disease Control, we have Mark Tyndall, Lead of Research and Evaluation.

Welcome.

Mr. Tyndall, we tend to go first with the people on video conference because we don't want to lose them, so I'm going to ask you to go first. You have eight minutes to present to the committee.

Dr. Mark Tyndall (Lead of Research and Evaluation, BC Centre for Disease Control): Hello from Vancouver.

It's a pleasure to be asked to address the Standing Committee on Justice and Human Rights as you consider criminalization of HIV non-disclosure.

This is a very important issue that has public health implications that go far beyond the individuals who have been criminally charged. I would like to focus my comments on these unintended consequences.

I am an infectious disease specialist and epidemiologist. I was recently the director of the BC Centre for Disease Control and the deputy provincial health officer of British Columbia. I have been working in the area of prevention for over 30 years. I started medical school in 1982, the year this new disease, later called AIDS, was described among gay men in New York and San Francisco. I have worked in clinics and have conducted research with hemophiliacs, gay men, indigenous peoples, sex workers, and more recently, people who use drugs. I spent four years living in Kenya, working on HIV prevention when no treatment existed. I have had the opportunity to work and collaborate with global leaders in HIV prevention and have presented at literally hundreds of conferences and meetings about HIV testing, treatment and prevention.

I can state emphatically that I cannot recall speaking to anyone in the field of HIV who felt that criminalizing people for HIV transmission was useful as a deterrent to prevent HIV transmission. Further, I cannot recall speaking to anyone who thought that charging people under a criminal code that included aggravated sexual assault was anywhere close to fairness, even if HIV was transmitted.

I have been involved in three cases as an expert witness. In none of these cases was HIV transmitted, and in all cases there were considerable actions on the part of the accused to reduce the risk of transmission through condoms and/or antiretroviral medications. I was amazed how the lawyers for the Crown were so fixated on the difference between “no risk” and “negligible risk” of transmission. It is basically the same thing for all practical purposes. Among the estimated 60 million HIV infections that have occurred worldwide, it is very likely that someone was infected even though a condom was used properly, or transmission occurred through oral sex, but the odds are in the same range as winning, or in this case losing, the lottery. It is clear that many of the potential exposures that are considered in criminal proceedings in Canada pose no practical risk for HIV transmission.

In public health, it is always better to engage, inform and educate, and create environments where people feel at ease to discuss their concerns. Punitive actions and sanctions, especially at the extreme end of the criminal justice system, will fail. Pushing people into the shadows based on fear is always counterproductive. Consider the criminalization of drugs.

However, it is the unintended and unmeasurable consequences of these laws that make them particularly damaging to HIV prevention in general. The evidence to support this is clearly outlined in two consensus documents that have been submitted as part of these proceedings. These are the “Expert consensus statement on the science of HIV in the context of criminal law”, from 2018, and the “Canadian consensus statement on HIV and its transmission in the context of criminal law”, published in 2014, on which I am the co-lead author.

Like many of the topics in HIV, ideology and fear drive the debate and not so much science and evidence. If it were based on science and evidence, there would have never been any consideration of criminalizing HIV non-disclosure in the first place. While you may hear from other expert witnesses that the science has changed and so must the laws, I do not think these non-disclosure laws were justified 30 years ago when we were just learning about HIV transmission.

Even if it was found that HIV transmission was still possible while taking antiretroviral therapy or that condoms were not that effective in preventing HIV transmission, the laws were still unjustified from a public health perspective. There is simply nothing in public health that warrants criminal sanctions for sexual behaviours. There are already more than enough tools at the disposal of public health officials to identify any individual who may fall into the rare situation of trying to infect others.

There are three main public health implications of criminalization of non-disclosure. The actual extent of these public health implications are difficult to measure empirically, but they are critical to this debate.

● (1000)

Implication number one is the impact on HIV testing. Expanding and normalizing HIV testing is a priority in HIV prevention. It is estimated that 20% of HIV-positive Canadians do not know their status. Any policies that discourage HIV testing need to be eliminated, and the threat of criminalization for non-disclosure is at the top of the priority list. Why would people get tested knowing the risk? I can honestly say that I would think twice knowing these implications.

We want to encourage people who may be at risk of HIV infection to get regular HIV testing. It should be like getting tested for diabetes or high cholesterol. You have a test, you get a diagnosis and you receive treatment and information.

Implication two is the impact on disclosure itself. While we can all agree that people should disclose their HIV status to a sexual partner, these laws paradoxically discourage people from disclosing. If people understood the very small odds of transmission, even with sex that is totally unprotected, then they would likely take their chances. Why complicate the relationship knowing the potential implications? Many of the criminal cases have involved relationships that have gone wrong, and criminal proceedings are used as a means of getting back at a particular individual, often long after the encounter occurred.

The third implication is that the criminal penalty far exceeds the crime. Even if HIV was transmitted during a sexual exposure that did not include disclosure of HIV status, a sexual assault conviction far outweighs the actual consequences of becoming HIV positive. The life expectancy of an HIV-positive person on antiretroviral therapy is now equal to an HIV-negative person. The treatment is that good.

It certainly is true that living with HIV carries with it other emotional and psychological challenges, but this is largely due to the stigma that still surrounds HIV in Canada. Further, the people who end up being charged are often victims themselves. The only way that these cases come to the attention of law enforcement is that someone got angry, had a personal grudge or some other unusual situation.

The law is not enforced with any consistency and only a relatively small proportion of people are impacted. If we really thought that non-disclosure should be a central tool for reducing HIV transmission, then we would have every new HIV infection reported to the police, and they would do a thorough investigation around the circumstances of that transmission. We would find that most new infections occur when people are involved in situations where they either do not know or do not ask about the HIV status of their partner. Clearly this would be a disastrous policy.

HIV non-disclosure laws were a mistake from the outset. Now, decades later, we are debating something that should never have been enacted in the first place. While it may seem like criminalization acts as a deterrent, we know that this is not the case. I feel strongly that it is time that the Criminal Code around HIV non-disclosure be amended, as it is causing serious injustice to the people being accused and has immeasurable unintended negative consequences in the fight to eliminate HIV transmission in Canada.

Thank you.

● (1005)

The Chair: Thank you very much, Dr. Tyndall.

We will now go to Professor Wells.

Dr. Kristopher Wells (Associate Professor, MacEwan University, As an Individual): Thank you.

Good morning. My name is Dr. Kristopher Wells and I'm an Associate Professor in the Faculty of Health and Community Studies at MacEwan University, which is located in Edmonton.

The focus of my research, teaching and scholarship centres on sexual and gender minority—or LGBTQ2—youth, education, health, sport and culture. Thank you for the opportunity to participate in this committee hearing this morning.

In his 2013 Massey Lecture series entitled “Blood: The Stuff of Life”, noted Canadian author Lawrence Hill asks, “How does blood unite us and how does it divide us?”

These are important questions, especially when we examine the history of HIV and AIDS and how it has forever changed the landscape of our world, nation and laws. When we ask whose blood matters, I would suggest that we are also asking whose lives matter. Our current Canadian laws and policies would imply that some blood is perceived to be more dangerous than others and, therefore, must be regulated and controlled.

It is shocking to know that Canada has one of the highest rates of prosecution in the world, including over 200 documented cases for alleged HIV non-disclosure. Canada's recent path to the criminalization of HIV has been described as “exceptionally punitive” and a potential violation of human rights for those living with HIV.

The question that should be asked is this: Why has HIV been singled out for such heavy-handed and disproportional treatment? For example, there have been very few prosecutions for other communicable diseases, such as HPV and hepatitis B or C. Perhaps what this differential treatment really indicates is the ongoing and pervasive misinformation and stigma that still surrounds HIV in our society, particularly within the criminal justice system.

It is well documented that the fear of unjust prosecution disproportionately impacts individuals from marginalized or vulnerable communities, such as those who are from racialized, indigenous, two-spirit or sexual and gender minorities. Criminalization also serves as a significant barrier in accessing HIV testing and treatment, as you've heard.

The ongoing criminalization of HIV non-disclosure is no longer in keeping with our evolving scientific knowledge, advances in medical treatment and the international consensus that "undetectable equals untransmittable", which means that the risk of HIV transmission is effectively zero when a person living with HIV has an undetectable viral load. HIV is not an easily transmitted virus, and its specific roots or pathways are well documented.

The article "Expert consensus statement on the science of HIV in the context of criminal law", which was published in June 2018, states that there are 68 countries that have laws that specifically criminalize HIV non-disclosure, exposure or transmission. Most prosecutions, including those in Canada, are related to perceived rather than actual risk of HIV acquisition.

Many of these laws and prosecutions have not been guided by the best scientific and medical evidence available, and are not reflective of advances in HIV treatment and care; however, they are greatly influenced by misinformation, societal stigma, fear and what some have described as an HIV panic. For example, we now know that HIV cannot be transmitted via contact from food or drink, or from inanimate objects such as chairs or toilet seats, nor from hugging, kissing, biting or spitting, yet at one time, these were all commonly held beliefs about modes of HIV transmission. In fact, until recently, many public and Catholic schools had policies banning HIV-positive students from attending class or sharing meals.

The Criminal Code is a blunt and often crude instrument, which should only be used in cases where there is intentional, actual or significant risk of harm. Instead, our primary attention should be on education, treatment and prevention. For example, our educational efforts should focus on science-based, non-judgmental and age-appropriate comprehensive sexual health education as a mandatory requirement in all K-12 schools across Canada.

We need to empower our young people to reduce stigma and increase their knowledge about sexual health. Research indicates that the vast majority of students want sexual health education provided by their teachers, whom they trust to share accurate and informed information, yet we need only read the news headlines across Canada to realize that inclusive and comprehensive sexual health is still not the norm and is frequently misunderstood and actively contested.

Canada has been a world leader in HIV research, with groundbreaking scientific discoveries that are now on the global front lines of HIV prevention and treatment efforts. Recently, several provinces have begun to provide free pre-exposure prophylaxis, or PrEP, to vulnerable populations.

● (1010)

PrEP is an anti-HIV medication that is scientifically proven to be more than 95% effective in preventing HIV acquisition. PrEP is one of the fastest growing and most promising and effective tools that we have in the fight against HIV. The Canadian government ought to work to make PrEP more readily available and publicly accessible across Canada as one of the most effective and cost-efficient prevention tools currently available.

There also needs to be enhanced funding to provide increased access to STI clinics and testing options, including rapid testing and other methods that empower individuals to look after their own sexual health.

First and foremost, HIV should be understood as an important public health issue, not a criminal one. Clearly, following the most recent medical science, criminal laws and codes should not apply to any person living with HIV who has engaged in sexual activity without disclosing their status if they have maintained a suppressed viral load.

The November 2018 prosecutorial guidelines issued by the Attorney General of Canada are an important first step forward; however, more needs to be done to reduce stigma, prejudice and the disproportional impact our laws have on indigenous, racialized and sexual and gender minority communities. We must finally end all unjust criminal prosecutions against those living with HIV if we are to meet Canada's commitment to eliminate HIV as a public health threat by 2030.

Currently, we are behind the 90-90-90 target for 2020, which requires that 90% of people living with HIV know their status, 90% of those diagnosed be receiving antiretroviral treatment and 90% of those on treatment achieve viral suppression. Removing the fear of unjust criminalization may help meet these important target goals. Many believe that the end of HIV is a realistic possibility if we focus concerted attention and scale up funding for accessible testing and treatment.

For these reasons, I urge this committee to closely examine the call to action contained within the "Community Consensus Statement: End Unjust HIV Criminalization", which has been endorsed by over 170 Canadian civil society organizations. Clear evidence-based prosecutorial guidelines need to be developed, the Criminal Code of Canada should be reformed and all levels of government and public health agencies ought to work together to provide education and training to end the fear, misinformation and stigma that still surround HIV.

On November 29, 2017, I had the incredible privilege to be here in the House of Commons to witness the Prime Minister's historic apology to LGBTQ2 Canadians. It was an absolutely incredible day, a day that many of us thought we might never live to see. The Prime Minister's apology—indeed, Canada's apology—should not represent a one-time act but an ongoing commitment to end discrimination and unjust legislation, laws and practices that continue to target sexual and gender minorities.

Much work remains to be done, especially when it comes to current discriminatory policies on blood and organ donations and the increased backlash we are currently witnessing against LGBTQ2 equality in schools across our nation. For too long, the Criminal Code and the courts have been used as instruments of prejudice, violence and discrimination that have unjustly targeted those who are or who are perceived to be different in our society. The criminalization of HIV is only one very recent and tragic example.

Returning to Lawrence Hill's Massey Lectures, he eloquently reminds us:

> Blood reveals and also protects us.... Blood...defines who we are: in our emotional states, in our social ranking, in our state of innocence or...guilt, and most important of all, in our relationships to each other.

Laws should not be used to unjustly prosecute people living with HIV. Rather, our laws should be used to protect us from discrimination and persecution, based on who we are and who we love and not on what is or isn't in our blood.

Thank you.

● (1015)

The Chair: Thank you very much. It's much appreciated.

Now we will go to Ms. Williams, from HIV Edmonton.

Ms. Shelley Williams (Executive Director, HIV Edmonton): Thank you.

On behalf of the HIV Network of Edmonton Society—referred to as HIV Edmonton—I would like to thank this committee for asking me to present before you. It is with absolute appreciation that I am a participant in such an important dialogue on the criminalization of non-disclosure of HIV status. I have worked with HIV Edmonton since 2011. My 37 years in community service organizations have also included working on issues of differing abilities and women's issues including violence against women, poverty and homelessness.

I was also chair of a coalition devoted to and successful in developing access to supervised consumption services in Edmonton, another important justice and human rights issue. I have tremendous respect for the work of the committee and for your desire to hear from an array of individuals, including people living with HIV and others who can provide their expertise and perspectives. I have read some of the statements presented to the committee thus far and my presentation will be in support of what you have already heard.

HIV Edmonton is a small but mighty charitable community service organization devoted to the mission of zero new HIV transmissions, zero stigma and discrimination, and zero AIDS-related deaths. This vision was adopted based on UNAIDS' 2011-15 strategy, "Getting to Zero". We do not think 90-90-90 is enough, although it's an important mid-term outcome. It is now possible to get to zero, but we need society to adopt the vision and undertake the work of reform in law, legislation and policies to help us get there. Tremendous work over the past three decades has brought us to this point. Now let's leverage it to move beyond.

The directive is a definite step forward in acknowledging that HIV is a public health issue and that the law has disproportionately affected people who are marginalized and stigmatized. The directive also acknowledges the changing science in the treatment of HIV in recognizing that maintaining a lower viral load does not pose a realistic possibility of transmission.

While these are positive steps, HIV Edmonton signed the community consensus statement in 2017 and we believe that there is more work to be done at the federal level, specifically and for the purposes of today, on reform of the Criminal Code. The directive of November 30, 2018, is not enforceable in most jurisdictions across the country, and it is too vague, which leaves room for inconsistency in application.

Criminalization of non-disclosure of HIV status should not be considered a sexual assault and the use of the Criminal Code should be limited to situations where there is proven malicious intent to harm and actual transmission of HIV.

HIV is a public health issue and not a crime, and because it doesn't go far enough, the marginalization identified in the directive continues.

The social determinants of health and health equity are important considerations to ensure the law does not negatively impact people accessing health and community supports. Health Canada shows that the broad range of personal, social, economic and environmental factors determine individual and population health. Reducing health inequities means helping to give everyone the same opportunities to be healthy, no matter who they are or where they live.

Many different people come to HIV Edmonton for its education, prevention and support services. There are many stories that can highlight these key points and show why this committee has more work to do.

On more than one occasion in Edmonton, people have had their pictures plastered on the front page, identifying their alleged HIV status and asking for the community to contact authorities if connected with or if they have knowledge of the person. These are pictures of human beings, one as young as 16. This young woman was a guardian of the province and was considered highly dangerous, an alleged criminal because of her HIV status. One person called me and told me that this young woman might as well have taken an AK-47 into a mall and started shooting. Ignorance and sensationalism result in stigma and discrimination and perpetuate ongoing community misconceptions about the facts of HIV. Efforts at all levels of government must work together to consistently debunk these myths and normalize HIV in the realm of public health.

● (1020)

Publications of pictures and outing an alleged HIV status also does zero in encouraging people to be tested. We know that testing is key to getting a diagnosis and treatment. The majority of people who are diagnosed with HIV access and maintain treatment. The law should not deter a strategy we know is crucial to maintaining health. People living with HIV and struggling to access and maintain treatment need a full range of health and social supports that will work for their identified needs and circumstances.

At HIV Edmonton we have a peer-to-peer program for people living with HIV and fewer social and economic supports. They identify that the space is the only place where they can be themselves, safe to talk about HIV medications and their treatment as well as other aspects of their lives. Why? Because to do so in other spaces puts them at risk of discrimination and violence. The power differential cannot be underestimated for people living with HIV. For many, their personal, family and community relationships are negatively impacted because of a health status, and their health, legal and community supports may become more difficult to navigate depending on the knowledge and the understanding of the person they are receiving support from.

Government legislation, public policies and the Criminal Code must be cohesive and consistent in supporting the first and third statement of the directive, which acknowledges that HIV is a public health issue and that persons from marginalized backgrounds are disproportionately impacted. More must be done on access to prevention, education, testing, provision of support specifically addressing individual needs as well as broader policies and supports for programs addressing racism, abuse, domestic violence, substance use and poverty, including living income and affordable housing.

This committee has heard from a broad spectrum of people discussing the directive. I implore you to continue consultations with people living with HIV and with legal, social and scientific experts to hear opinions and develop reforms together that would put an end to the use of sexual assault as a means of criminalization of HIV non-disclosure and limit any use of the Criminal Code to cases of malicious intent and actual transmission.

It is a justice and human rights issue. I hope this committee will do the work and be resolved to know that getting this work right will be a huge step in moving towards zero new HIV transmissions and zero HIV and AIDS stigma and discrimination.

Thank you.

The Chair: Thank you very much to all the witnesses. We'll now move to questions.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair.

Thank you to the witnesses.

I'll direct my first question to Ms. Williams. You stated that in your opinion the directive issued by the Attorney General is vague in some areas. Could you, perhaps, elaborate on what areas you find it to be vague?

● (1025)

Ms. Shelley Williams: I'll admit I'm not a lawyer, but it's in the area of the third statement in the component of "lower levels of blameworthiness", which I definitely have difficulty understanding. I think it makes it difficult, but as a lawyer I can't comment.

Mr. Michael Cooper: Thank you for that.

Professor Wells, are you satisfied with the directive overall?

Dr. Kristopher Wells: As was mentioned by all of us, I think, the directive is an important first step but it needs to go further. I think it's really important, as was mentioned, that we consult directly with the communities that are impacted, with those living with HIV.

With the directive, I think we need to ensure that there's standardization across the provinces so a directive is not being used in one province and then not being used in another province. It creates this notion not only of inequity across the country but of people just unsure of what the current practices are and what the law has to say, and that continues to perpetuate fear, misunderstanding and stigma.

If there's one thing that we can do in this country, it's to work towards ending stigma. If we work towards ending stigma, I think we'll start to see some of the other changes that are needed come along the way.

Mr. Michael Cooper: If you had the federal government taking the lead and working with the provinces to establish a consistent prosecutorial standard, would you be satisfied that the standard would be consistent with the federal directive?

Dr. Kristopher Wells: I think the federal directive, as others have said, still needs some work. It needs some areas of particular clarity. I think that's where you want to particularly involve the legal experts, the Canadian HIV/AIDS Legal Network, who have some specific recommendations. I think a big part, as we've heard, is around the use of sexual assault as being inappropriate as one specific example.

Mr. Michael Cooper: I would like to continue along that line in terms of sexual assault and the use of it. You made reference to changes you'd like to see in the Criminal Code. Perhaps you could elaborate. I presume it's consistent with what you just stated.

Dr. Kristopher Wells: Yes...and looking again, consulting with those communities impacted and consulting with the legal experts who particularly work in the area of HIV non-disclosure. We want to look at other particular tools. I'm not going to make those suggestions myself as that isn't my area of expertise. I'm not trained in the bill field.

I certainly think we need to move further than the legal field. As I mentioned, schools and education become a big component. The fact is that right now young people are not even getting good accurate science-based education to know how to protect themselves and to deal with issues of consent. We're talking about consent as being the very core of much of our discussions.

The Chair: Mr. Barrett.

Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC): My question is to Dr. Tyndall.

In your remarks, you talked about the seriousness of the risk of transmission. We continue to see a pretty steady rate of new infections and an increase in infections. Would you say that it is, in fact, a public health risk when individuals infected with HIV do not disclose to their partners that they're infected.

Dr. Mark Tyndall: HIV is transmitted when people expose their partners to the virus. We get at that by educating people. We want to encourage people to get tested and to be up front with their partners.

I've probably told hundreds of people that their first HIV test is positive. Part of our conversation is how they can prevent exposure to other people. People are quite open to that kind of education 99% of the time. It's not an easy conversation that they have to have. With the right support, almost everybody does it.

My point is that the threat of criminalization does not have any role except to discourage people from going that route and discussing it with their partners. The steady number of people getting infected in Canada mostly affects gay men populations. Almost all of those cases are people who have not been tested and don't know their status, or have decided they want to keep it quite secret and have decided not to be on antiretroviral therapies. Those kinds of decisions are somewhat influenced by the risk they think they face when they get tested and when they disclose stuff.

● (1030)

Mr. Michael Barrett: With the changes we'll see in terms of prosecutions in light of the federal directive, and if there was harmonization by the provinces, do you think that would change that steady rate of infection in Canada?

Dr. Mark Tyndall: I think it would have an impact. Again, it's very difficult to empirically measure people's decisions around this and how they internalize and understand the criminal risk they face. I think the undetectable equals no transmission is an extremely important message to get out to people, but the fact is also that, in a criminal case, people could still be trying to prove that people weren't taking their medications during that sexual exposure.

People need to understand that although we've been fairly successful in getting people on consistent treatment, from day to day and month to month, probably at least 20% of people are not undetectable at one particular time. We're asking people to take daily medications for their whole lives, and we know this is difficult for a lot of people to maintain. If it got down to a criminal case, and this has been my experience, trying to prove whether people were undetectable during that exposure when their last viral load test was months before is a technicality that's very difficult to prove at that time.

It's a great message to have and that would really help, but I think in a court situation people could still be in trouble because they'd be accused of not taking their medications within two weeks or so of the exposure.

The other thing it doesn't mention is condoms, and if people are using condoms, we know that is essentially a foolproof way to prevent HIV transmission, and I think the Criminal Code should embrace that. If you use condoms, there's no foul. Then oral sex is still part of that, and again, there's no evidence that oral sex is a way to transmit HIV. Those other two things that people can do to prevent transmission should be part of this directive.

The Chair: Thank you very much.

We're now going to Mr. Boissonnault.

Mr. Randy Boissonnault (Edmonton Centre, Lib.): Thanks, Mr. Chair.

Thanks to all the panellists.

It's been a while, I think, since we travelled on the human trafficking study, that we've had a panel entirely of westerners, so thank you all for being here. Two from Edmonton, one from B.C., it's fantastic.

Dr. Wells, I was at the apology as well and will remember that for the rest of my life.

I have six minutes, minus these 15 seconds I just took for the preamble, so I'm going to ask some short snappers of each of you, basically yes or no questions to start.

Shelley, is it true that criminalizing HIV in Canada has increased the stigma of HIV status, yes or no?

Ms. Shelley Williams: I believe so, yes.

Dr. Kristopher Wells: Yes.

Dr. Mark Tyndall: Yes.

Mr. Randy Boissonnault: Is it true there are people in Canada who are not seeking to know their status, that people are not getting tested because of a fear that knowing they're positive might put them at criminal risk later, yes or no?

Ms. Shelley Williams: Yes.

Dr. Kristopher Wells: Yes.

Dr. Mark Tyndall: Yes.

Mr. Randy Boissonnault: Is it true that if we were to change the Criminal Code to remove those provisions, we could see more people feeling comfortable knowing their HIV status?

Ms. Shelley Williams: Yes.

Dr. Kristopher Wells: Yes.

Dr. Mark Tyndall: Yes.

Mr. Randy Boissonnault: Is it true that if more people knew their status, we would be able to provide more people with HIV with the treatment they need to reduce the public health risk?

Dr. Mark Tyndall: Yes.

Ms. Shelley Williams: Yes.

Dr. Kristopher Wells: Yes.

Mr. Randy Boissonnault: Dr. Tyndall, in your experience, what is at the root of criminalizing HIV when we don't do that for hep B or hep C or herpes?

Dr. Mark Tyndall: It's fear and stigma. There's still so much stigma around HIV. I always argue you can't destigmatize something that's criminalized, whether it's drugs or this kind of issue. We're talking of two totally different ends of the spectrum. If our goal is to destigmatize HIV, how can you live in a society where it's a criminal offence?

● (1035)

Mr. Randy Boissonnault: Thank you.

Shelley.

Ms. Shelley Williams: I'm in total agreement.

Mr. Randy Boissonnault: Dr. Wells.

Dr. Kristopher Wells: Yes, I think a lot of it comes back to the early origins when people thought this was a disease impacting gay men. I think we still largely deal with much of that stigma surrounding this and have to look at the role of homophobia through our courts, through our Criminal Code. That quite simply must end. It's 2019. This country defends human rights, LGBTQ issues across the world, and we must lead by example. Currently in this area we're not leading by example.

Mr. Randy Boissonnault: Half my time is almost up.

Dr. Tyndall, could you share any studies with us that bear out what you said, that new infections are happening predominantly among communities that don't know their status, and the virus is being transmitted? That would be extremely helpful, because that tells us where the new infections are coming from.

Dr. Wells, we have a deputy minister of Alberta Crown Prosecution Service that indicated in January that they're respecting the Supreme Court of Canada Mabior decision and the federal directive. No more policy was put in place before the provincial election.

I'll say this plainly: I have concerns about what the new government might do vis-à-vis GSAs. Shelley, you said something about how we don't want to out kids in school who are trying to figure out their identities, yet we out people who are also youth because of their HIV status, so both are unfair and both are harmful.

Dr. Wells, what more can we do at the prosecutorial level in Alberta and at the enforcement level, at the police training level, so that people aren't charged inappropriately and they're not prosecuted inappropriately?

Dr. Kristopher Wells: First, the Alberta example would be that the solicitor general needs to come out with a public statement reiterating support for the Attorney General's commitments regarding the prosecution of persons living with HIV and non-disclosure.

Secondly, I think we need to have training for not only our Crown but for our police services. That training needs to be done in partnership with organizations like HIV, where those individuals who are directly impacted are sharing their experiences. It's that process of humanization that often changes behaviour. It's the process that changes our laws. It's really the process that changes our understanding in society.

It's clarity, consistency, education and training.

Mr. Randy Boissonnault: We just had a historic apology from the Edmonton Police Service to the LGBTQ2 communities. That was not the end but the beginning of a new relationship.

I know that you sit on an advisory committee for the Royal Canadian Mounted Police in our region. Is there any sort of training or work that's happening in this space yet, to your knowledge?

Dr. Kristopher Wells: Not directly, to my knowledge.

Mr. Randy Boissonnault: Thank you.

I have a question for both of you.

Do you think it would make sense for us to have a working group of justice officials, perhaps parliamentarians and civil society members, on the issue of the changes to the Criminal Code?

Ms. Shelley Williams: I think it would be fabulous to have that, not only at the federal and provincial level but also the municipal level. We're talking about the police services at the municipal level working to increase education, understanding and developing the right strategies to use to help mitigate any sudden missed ways of doing it.

Mr. Randy Boissonnault: Dr. Wells, could you see wisdom in having a federal-provincial-territorial meeting of the ministers of justice? Would that be helpful in having more uniformity and applicability across the country? Would that be useful in this issue?

Dr. Kristopher Wells: Absolutely. I think it's not only useful but it's desperately needed.

Mr. Randy Boissonnault: Shelley, I'll ask this quickly, because I have about a half a minute left.

With regard to intersectionality, this issue that you see every day —indigenous, queer, people of colour, women, street sex workers— how does this issue touch people with multiple intersectionalities?

Ms. Shelley Williams: It really goes back to those initial determinants of health that I mentioned in the presentation, and the issues of racism and all of the other aspects of power differentials.

What's really important is that our legislation looks toward changing those health inequities to make it so that testing and treatment are accessible, and that education and prevention are also available, no matter where you are.

Mr. Randy Boissonnault: Thank you all very much.

The Chair: Thank you very much.

Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

Thank you to our witnesses, who really illustrate the kind of coalition that's brought progress on the fight against HIV/AIDS—the front-line services, the academics and the medical research people. It's a good, well-balanced panel for that.

I think we've heard a lot of evidence, and I think people are unanimous in saying that the criminalization of HIV through sexual assault has to go. However, there are some other things I've been trying to get us to look at when we're talking about reform of the Criminal Code. That's the impact of other parts of the Criminal Code on non-disclosure and on the barriers to testing, and that's the criminalization of drug use and the criminalization of sex work.

I'm going to start with Ms. Williams on those questions.

Do you see these aspects of criminal law as having an impact here?

● (1040)

Ms. Shelley Williams: Absolutely, both in the aspect of sex workers and in the aspect of drug policy and working with the supervised consumption services. Testing is key. That's an element that's absolutely necessary to allow at the sites, and to ensure treatment.

However, treatment becomes difficult...and that's why I'm also suggesting that when HIV is diagnosed, it's important that it's wrapped around the individual and it's meeting their particular needs. We don't just say you have to take a pill, but we're supporting the individual to be able to take the medication.

Mr. Randall Garrison: Mr. Tyndall, on the same question about the other aspects of the Criminal Code that might inhibit access to testing and treatment...?

Dr. Mark Tyndall: If you're using drugs, this non-disclosure thing is pretty low on your priority list.

We're trying to give people the message that this is really dangerous. You should not be exposing people to HIV because of criminalization. I mean, in that situation, we're dealing with people who are multiply criminalized for situations that they didn't ask for. I think they're all highly intertwined.

I'm very much on the forefront of pushing for legalization of drugs. We need to reform our sex work laws. We do a lot of damage to people, which certainly is terrible for them individually but also has huge implications for society in general.

I think they're all quite linked, and HIV non-disclosure is not high on their priority list, for the most part.

Mr. Randall Garrison: Mr. Wells.

Dr. Kristopher Wells: I agree. The common thread is that we need to treat these all as public health issues and concerns, and develop a multi-faceted strategy that really starts to take this out of the shadows, shame and stigma, and puts it together to say we need to help to support vulnerable populations to get the education, the treatment and the support that they not only need but deserve as Canadian citizens.

Mr. Randall Garrison: Thanks.

The Chair: Thank you very much, Mr. Garrison.

Now we're going to go to Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): Thank you all for coming here today.

Ms. Williams, you said that the directive doesn't go far enough. I understand, of course, that the directive only applies in certain jurisdictions. I don't want to talk about the jurisdictions where it doesn't apply, but on the directive itself, could you give us more specifics? I know it's been talked about already, but maybe you could drill further into that.

Ms. Shelley Williams: Again, I think the directive is absolutely a step forward and is extremely welcomed and positive. The fact that we haven't reformed so that it actually removes it from the law, from the sexual assault components of the law, is problematic, as is that it's not based on transmission.

Because it doesn't go far enough and there are elements of vagueness to it, we, HIV Edmonton, feel that it needs to be stronger.

Mr. Ron McKinnon: Thank you.

I have another question here from Mr. Boissonnault. I'll get to that shortly.

There's no time left in this Parliament to change the law, but there is potentially time to change the HIV directive. If we had some specific changes that you could recommend, that might be something we could act on more proactively. Is that something you can respond to or anyone can respond to at this point?

Dr. Kristopher Wells: Again we talk about what was mentioned by all the speakers, the modes of transmission. We know specifically, for example, the use of condoms virtually gives zero chance of transmission. We heard about oral sex as well. I think those are immediate things that we can do. We can make sure that we're clarifying with the most recent scientific data following, for example, the June 2018 international scientific consensus on criminalization. I think that's a good starting point to make sure that those guidelines are in keeping with the international scientific expert consensus.

Mr. Ron McKinnon: Thank you.

Ms. Williams, could you speak about the availability of rapid testing?

● (1045)

Ms. Shelley Williams: Do you mean point-of-care testing? Rapid testing, it's just not around enough. At least, I don't think it's consistent across the country. It needs to be absolutely accessible and available to people so that individuals who want to get tested right away can get tested right away and know the results quickly.

Mr. Ron McKinnon: I understand there are no kits available for that in Canada.

Ms. Shelley Williams: There aren't kits available in terms of your take-home testing kits. Some health areas are looking at kits that people can pick up, take and then take that to a lab, but they're still not accessible everywhere and they're not at-home, take-home testing. I think all of them should be available because it will move us forward.

Mr. Ron McKinnon: Drs. Tyndall and Wells, would you care to comment as well?

Dr. Kristopher Wells: I can give an example. In the United States, in Fort Lauderdale, if you go out to the LGBT community and you go out to a bar, you can walk into a van, walk out the other side and know your status before you even enter a nightclub. That's immediate rapid testing.

I think it's incredibly important that those options are available because, as we've heard, knowing your status is one of the core ways that we can address this issue so that we don't get to the route of criminalization or supporting people with disclosure as well.

Mr. Ron McKinnon: Dr. Tyndall.

Dr. Mark Tyndall: I would agree that we need to increase the access to testing but part of the drive to have anonymous testing and rapid testing is because of the stigma and criminalization part of it. As I stated in my remarks, it should be like a diabetes test or a cholesterol test. We're not blaming people for it. People need to know their status. They need to be in care. We like the testing to really link closely to treatment, so we actually want to encourage a lot of people out there who know their status to be in care and treatment.

I'm all for increasing capacity for people to get easy, accessible testing, but we also want to try to connect people as best we can to the treatment that they need. I think it needs to be part of our whole approach to people who are at risk of HIV.

Mr. Ron McKinnon: I think some of you have commented that this is the only communicable disease that is criminalized in this way. Of course we see the problem in that. I'm wondering about other communicable diseases. Are there cases where they should be prosecuted in some manner under the criminal law?

Dr. Mark Tyndall: From a public health standpoint, there are quite a lot of regulations that are at the disposal of public health officials in each province and territory that will allow public health to put sanctions on people who are knowingly spreading communicable disease. TB is probably the most used. There are cases. There are two or three people in British Columbia right now who have sanctions because they have active TB and they were not being treated. From a public health point of view, there are ways to corral them and to make sure they're followed very closely and required to take treatment. There are tools like that in public health, rarely necessary, but TB would be one example where we don't need a criminalization. We don't need to send police out and try to find all the contacts. We just need to work with those people and put them in a situation where they can consistently take their medications.

Mr. Ron McKinnon: Thank you.

The Chair: Thank you, Mr. McKinnon.

I just want to say again, just for record, that HIV is not the only disease that is criminalized. I just want to keep putting that back on the record. There have been people prosecuted for the transmission or reckless behaviour that potentially leads to transmission of syphilis and hepatitis C. It's just that HIV has been overly prosecuted and disproportionately prosecuted, and that's what has been clear. Again, I share everyone's concerns about the sexual assault rules related to HIV and the over-criminalization.

I want to thank all the witnesses. As Mr. Boissonnault pointed out, this is the first panel we've had in a long time in which everybody is from western Canada. We thank the participants from that part of the country in our deliberations.

I wanted to share with members that you received two documents yesterday. One was the schedule for the committee for the rest of the year until June. If anybody has any concerns about that schedule, could you please share it with the clerk and me today or tomorrow, before Thursday's meeting?

● (1050)

Mr. Michael Cooper: Thank you, Mr. Chair.

One item that I would like to bring up is something that arose from the PROC committee. At PROC, a request was made by our members, which was supported by the NDP, to hear from the commissioner of Elections Canada. The Liberal members on the committee opposed hearing from the commissioner of Elections Canada simply on the basis that, under the estimates, it actually falls under the director of public prosecutions, and therefore, it falls within the realm of the justice committee.

Consistent with that, I would request that we set aside time to hear from the commissioner of Elections Canada in light of the position of the Liberal Party.

The Chair: Since I'm not aware of that, could you just send an email today to us? I'll share it with the committee, so it doesn't have to be translated, if you don't have time to translate it—but if you can, that's great. Just explain what that is and we'll deal with it on Thursday, because I'm not aware.

Mr. Michael Cooper: Yes.

The Chair: Other than that, could everyone look at the schedule that we've provided? There are a few days when, because we're doing reports and the analysts need really quick instructions because we're getting close to the end of term, we've scheduled witnesses and then the briefing of the analysts for reports. There are four days when we would be going longer than two hours. If everybody could just look at that, we'd really appreciate it.

The second thing is that we also circulated the proposed letters to the CEOs of Facebook, Google, Reddit and Twitter to invite them to our online hate study. If anybody has any comments on those letters as well, could you please send them today? If not, we'll be asking the chair and vice-chairs to sign those tomorrow.

Mr. Michael Cooper: I have no objection.

The Chair: Thank you, everybody.

Thank you again to the witnesses. We really appreciate it.

The meeting is adjourned.

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