

# THE IMPACT OF CRIMINALIZATION OF NON-DISCLOSURE OF HIV POSITIVE STATUS ON RACIALIZED COMMUNITIES

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Race, Risk and Response: Issues in African, Caribbean and Black Communities  
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**CHANGING THE COURSE** OF THE  
**HIV PREVENTION, ENGAGEMENT** AND  
**TREATMENT CASCADE**

# 1. LOCATING MYSELF IN THE RESEARCH

## 2. BACKGROUND

- In Canada, since the late 80's, there have been over 70 convictions and more than 90 HIV-positive people have been on trial for having unprotected sex, even when no HIV transmission occurred (Mykhalovskiy, 2010).
- Court decisions resulting in criminalization of non-disclosure (From Cuerrier to R. v. Mabior)
- African/Black/Caribbean communities and their relationship with Canada.

## **3. RESEARCH OBJECTIVES**

**3.1 To examine the impact of criminalization of non-disclosure of HIV positive status and HIV/AIDS stigma on African/Black women and men living with HIV/AIDS in the GTA.**

**3.2 To inquire into the experiences and responses of mental health service providers (therapist, case workers, social workers) and agency directors working in the HIV/AIDS sector and in other community agencies, their experiences, and their understanding of the “duty to warn” implications derived from the recent court rulings.**

**3.3 To examine the perspectives of academics, lawyers, government officers, politicians, and judges regarding criminalization and the impact of legislation on disclosure.**

**3.4 To examine how an anti-oppression approach can support individual and collective empowerment and inclusive research.**

## 4. Methods and Data Collection

### Methods

- Qualitative methodologies drawing from feminist participatory, anti-oppression methodologies, expressive arts, and art-based inquiry.
- Utilized an integrated theoretical framework which I call “Resistance Education”.
- There are seven features of this approach. One feature is entitled Creative Resistance, which occurs by incorporating art-making methods as a tool for knowledge production and empowerment in the research process. Resistance education and Creative Resistance were integral elements in the research.

### Data Collection

- Comprised semi-structured interviews and art-based methods.
- Interviews gathered information about individual participants, their history and experiences with criminalization, HIV-non-disclosure /disclosure.

### Participants

- 62 individuals from three groups:
  - a) African/Black women and African/Black men living with HIV/AIDS in the GTA.
  - b) Mental health service providers or agency directors working in the HIV/AIDS sector, and in other community agencies in the GTA.
  - c) Academics, lawyers, government officers.

## 5. PRELIMINARY RESULTS

## 5.1 Preliminary themes from African/Black women and men living with HIV/AIDS

- The importance of identity in dealing with the threat of HIV and criminalization.
- The impact of racism/anti-Black racism and intersectional violence on the lives of African\Black PHA's in relation to criminalization.
- The impact of racism and sexism, specifically sexual violence on African/Black women living with HIV/AIDS is also not discussed in the criminalization and HIV discourse.
- Immigration status/language affiliation/class-SES/disabilities impacts African/Black women and men living with HIV's ability to address racism and intersectional violence.

- Impact on mental health.
- Isolation and “risky behaviour”.
- Historical and contemporary context of suspicion/surveillance from the state.
- Lack of understanding of criminalization.
- Stigma and discrimination from health care providers-mismanagement of PHAs' privacy and health information.
- Finding solutions and strategies to resist against/deal with the impact of criminalization on a daily basis, and how they can support change.
- Impact of criminalization on children.

## 5.2 Preliminary findings from service providers and agency directors working in the HIV/AIDS sector

- Significant lack of knowledge of criminalization and disclosure and how it impacts their clients.
  - Empathy and passion to support clients with often scarce resources.
  - Mental health workers working “outside” the HIV community felt isolated from the HIV community, in spite of working with many people who are affected and infected with HIV/AIDS.
  - Stressed the issue of mental health and the need for more services, more therapists, and breaking the notion that African / Black people don't use mental health services.
- Service providers and agency directors working in the HIV sector in most cases agreed that there was no consensus among PHAs regarding criminalization and disclosure.
  - Major emotional impact on agency staff of vicarious trauma/trauma from HIV/AIDS and criminalization.
  - Need to include and expand on the relationship between the notions of unwilling and unable, mental health impairment, and the duty to warn in the discussions around the criminalization of HIV non-disclosure.



## 5.3 Preliminary findings from the legal sector (academics, politicians, lawyers and/or judges)

- Gaps in the legal community in relation to anti-oppression work/intersectionality.
  - Important to integrate historical and contemporary notions of criminalization, instead of looking at it as separate.
  - “There are not enough statistics to demonstrate that there is a racialization of criminalization”, results in not often connecting racism and other intersectional oppressions with client cases.
  - Public health workers often indicated their belief that people should be prosecuted if they did something wrong, and that they felt that they could support people to disclose;
- Black academics and other critical scholars reported that they are doing countless work on anti-oppression, but that this scholarly work is not being used in the discussion of criminalization.
  - Current efforts around prosecutorial guidelines need to take into account the specificities of the African/Black community and the context of racial oppression and exclusion, especially with the Canadian government’s history of racist legal policy.
  - Stereotypes within the legal community in relation to what the “black criminal or victim” looks like need to be dismantled.

## 6. NEXT STEPS

- **Finalizing data analysis**
- **KTE: Final Report & Community Forum**



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