

The background of the slide features a close-up photograph of a traditional Indigenous garment, possibly a tunic or robe, made of light-colored, textured material. It is adorned with several horizontal rows of wooden pins or toggles, which are traditional fasteners. A large, dark, circular opening is visible on the right side of the garment. A semi-transparent dark teal banner is overlaid across the middle of the image, containing the title and date.

The Impacts of the Criminalization of HIV Non-Disclosure on Indigenous People A Case Study of Regina

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Written By

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This research is based on a community partnership with All Nations Hope Network.

All Nations Hope Network has been providing education, service and support to communities, families, schools and organizations in the province of Saskatchewan since 1995. All Nations Hope Network (ANHN) was established as a collective of Aboriginal people, organizations and agencies who care about HIV, AIDS and Hepatitis C (HCV) among First Nations, Inuit and Métis people. All Nations Hope is the only Aboriginal AIDS Service organization in Saskatchewan.

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This report does not constitute legal advice.

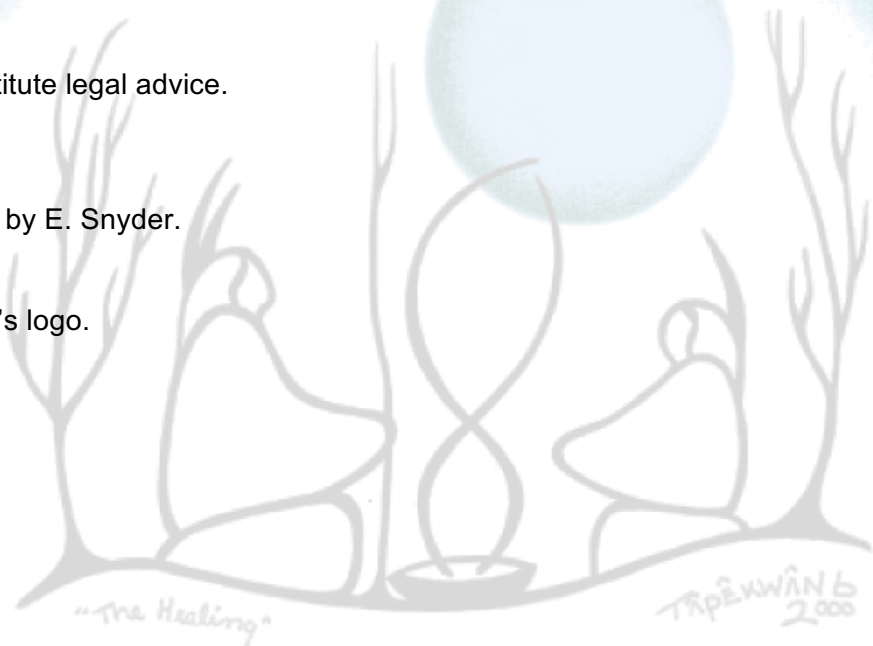
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Photograph of a tipi taken by E. Snyder.

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All Nations Hope Network's logo.



Summary of Key Findings and Conclusions

- The criminalization of HIV non-disclosure is impacting Indigenous people who are HIV positive in distinct and negative ways. The legal impacts on Indigenous people are complex with multiple layers and experiences of stigma and discrimination intersecting. Indigenous women who are HIV positive are especially impacted.
- An urban context, with a focus on Regina, is also part of what is shaping Indigenous people's experiences with HIV and the law in this case study.
- While some participants were familiar with the *issue* that there could potentially be repercussions for not disclosing one's HIV status to a sexual partner, participants were generally not familiar with the *details* of the legal issues.
- Overall, it was expressed that there is a need for more accessible information related to the law and HIV – for people who are HIV positive, for people in the community, for support workers, and for legal and healthcare professionals.
- It was expressed by the majority of participants that there is a need for revised and expanded services in Regina for Indigenous people who are HIV positive.
- Understanding the findings from this case study necessitates an analysis of colonialism and the ways in which settler laws are imposed on Indigenous peoples and can undermine Indigenous legal responses and practices.
- The impacts of Canadian HIV non-disclosure legal practices on Indigenous people who are HIV positive need to be acknowledged, analyzed, and further researched. It is also evident that there is a need for broader research on the experiences of Indigenous people who are HIV positive and that this research needs to centre Indigenous communities and Indigenous people who are HIV positive.
- Despite significant challenges and the need for several recommendations, it is also important to recognize the strengths and resilience of the participants and Indigenous communities more broadly.

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1. Introduction

Disclosing one's HIV positive status to a sexual partner raises complex issues pertaining to sex, consent, relationships, privacy, and well-being. Disclosure of HIV status to a sexual partner is further complicated by an unclear and harsh Canadian legal climate. The criminalization of HIV is uneven in that some groups of people who are HIV positive can experience heightened stigma, as well as very different experiences with state laws. Indigenous people who are HIV positive, and Indigenous communities, are being impacted in particular and negative ways.

The focus of this report is on Canadian law, though criminalization occurs in a multitude of ways for people who are HIV positive – from other institutions (e.g., healthcare, social service providers) and in other relationships (e.g., family shunning people who are HIV positive). “Criminalization” in this report does not refer to the mere existence and use of criminal law (e.g., someone is convicted and therefore “criminalized”) rather it also refers to the ways that HIV positive status is associated with deviancy and that some groups of people are targeted (via criminal law and other sources) as deviant or criminal – for example, Indigenous people who are HIV positive.

It is important to acknowledge that other people of colour who are HIV positive also face HIV stigma and criminalization in distinct and difficult ways.¹ There is much to be learned from the intersections of racism and the criminalization of HIV in other communities, though this report will focus on this issue in terms of the ways that Indigenous people are impacted in a settler-colonial context. There has been, and continues to be, an urgent need for policy

and legal professionals, healthcare professionals, researchers, and advocates to understand the realities of HIV in Indigenous communities and to approach that understanding in a way that centres Indigenous experiences, knowledge, and responses.

There is little research that examines the impacts of Canadian criminal laws around HIV non-disclosure on Indigenous people.² Yet as this report shows, there are distinct ways that legal responses related to non-disclosure affect Indigenous people and communities. Indigenous peoples have unique experiences with state laws and with HIV – experiences shaped by historical and ongoing colonial realities.³ HIV stigma intersects with other forms of discrimination that Indigenous people face, including already being criminalized just for being Indigenous.⁴ The intersections of colonialism, racism, sexism, homophobia, transphobia, poverty, and ability all need to be central in research and recommendations related to HIV non-disclosure. Such an approach is crucial for service providers but also for policy-makers and legal practitioners. It is crucial to understand how Indigenous people and communities are impacted by the laws around HIV non-disclosure as debates and calls for action about criminalization circulate. Although this report is based on a case study of Regina, Saskatchewan, the findings of the research have broader implications beyond this one region and the recommendations in this report are written to address regional but also broader issues.

A Case Study of Regina

This report is based on 26 interviews that were done in the summer of 2017. The

interviews took place in Regina, which is in Treaty 4 territory – the territory of Cree, Saulteaux, Nakota, Lakota and Dakota peoples, and the homeland of the Métis. Based on 2016 census data, Regina has an overall population of 236,481 people, with Indigenous people making up approximately 9% (21,650 residents) of the population.⁵

Interviews were done with Indigenous people who are HIV positive and with people volunteering and working to support this community in Regina [hereinafter referred to as community workers]. These community workers include the 6 Elders that were involved. The interviews were done at All Nations Hope Network and were conducted by Krista Shore (a member of, and leader in, the community) with Snyder (author of this report) alongside.

The objectives of the research were to identify and understand:

- 1) the leading impacts of laws around HIV non-disclosure on Indigenous people in Regina;
- 2) the implications of these laws for community organizations providing services and support to this community in Regina;
- 3) the needs and recommendations from Indigenous people living with HIV and from the people working with them;
- 4) to centre Indigenous knowledge and perspectives in policy and legal recommendations;
- 5) to create a base of information from which future research can be created.

Participants were asked about their familiarity with the laws around non-disclosure, about impacts of the law on themselves (if applicable) and the community, and about existing supports and

needs in Regina for navigating legal issues with the Canadian criminal justice system.

The Participants

Of the 26 participants:

- 96% (25 people) were Indigenous.
- 81% were women (21 women and 5 men participated).
- 65% were Indigenous and HIV positive.
 - 14 people were community members who are HIV positive;
 - 3 people were community workers and HIV positive;
 - 9 people were community workers and not HIV positive.
 - This includes 6 Elders who were involved.
- Participants have been HIV positive from a couple of months to over 20 years, though for most participants they have been positive for under 10 years.
- Participants have lived in Regina from a couple of months to most of their lives.

Pseudonyms have been used for participants.⁶

Learning From A Case Study

Indigenous people in Canada represent 4.3% of the total population, yet are overrepresented in HIV statistics, making up 12.2% of new infections, and 8.9% of the overall number of people living with HIV (in 2011).⁷ Although injection drug use is the most common way that HIV is transmitted among Indigenous people,⁸ urgent questions about HIV non-disclosure

during sexual activity remain. The second most common reason for HIV infection among Indigenous people is heterosexual sex.⁹ The high rates of HIV that Indigenous people are facing are related to historical and ongoing colonial oppression which maintain socio-economic, political, legal, health, and cultural marginalization.¹⁰

The statistics for Saskatchewan are troubling. HIV rates in the province have been increasing over the past couple of years.¹¹ The national rates for HIV in 2016 were 6.4 per 100,000, whereas the 2016 rates for Saskatchewan were 14.5 per 100,000 – more than double the national average.¹² Indigenous people made up 79% of all new HIV cases in the province in 2016, which is a decrease from 81% in the previous year (though is an increase when compared to 2014),¹³ however these numbers are still very high given that Indigenous people represent approximately 16% of the provincial population.¹⁴ Of all of the males newly diagnosed with HIV in the province in 2016, Indigenous males made up

72% of these cases, and Indigenous females made up 88% of all new female cases.¹⁵

Between 2005 and 2014, the Saskatoon region represented 40% of HIV cases in the province, followed by the Regina region (24%), and Prince Albert region (12%).¹⁶ Although Saskatoon has the highest proportion of urban HIV cases, our research focuses on Regina, as the HIV rates are high in this city and there is a need for increased HIV supports and capacity building.¹⁷

This case study of Regina is not meant to be representative of all Indigenous people living with HIV (in Regina or beyond). The specifics of people's experiences with HIV and the law can be shaped by where people are living – urban, rural, reserve, or remote locations, as well as the region that they are living in.¹⁸ Despite this case study approach, the results can be drawn on to engage with broader underlying themes and issues related to non-disclosure that are arguably more widely experienced.

2. Backgrounder: HIV Non-Disclosure and Canadian Criminal Law

This backgrounder begins from a different place than many summaries of the laws around HIV non-disclosure. It begins with the importance of Indigenous laws – that is, Indigenous peoples' own legal orders and traditions, which are vital resources for responding to vulnerability, harm, well-being, and are central to Indigenous self-determination.¹⁹ It begins from a position that the Canadian criminal justice system (and other state legal mechanisms and institutions) is a settler colonial institution, historically and presently. This institution has been central in undermining Indigenous

legal orders and in attempting to assimilate Indigenous peoples.²⁰ There are historical and ongoing problems with racism throughout the justice system – racial profiling, police violence, surveillance of Indigenous people and communities, over-incarceration, and disproportionately punitive responses to Indigenous people.²¹

Too often, research about “law” imagines settler laws as the only form of law that exists, and treats settler laws as the only resource for addressing conflicts and problems.²² Although the focus in this report

is on the impacts of a particular area of Canadian law, the depth and complexities of Indigenous laws, and the impacts of settler colonial claims to legal jurisdiction over them, needs to be understood. HIV non-disclosure is not only a legal issue. However, when law is needed, it is crucial to not assume that state laws are the only means for addressing harm, and to recognize the harms that can be caused by state laws. Ignoring or denying Indigenous laws and these inter-societal legal realities means that there will be an incomplete understanding of the impacts of state laws around HIV non-disclosure on Indigenous peoples. Further, overlooking these complexities means that responses to the problems with state non-disclosure laws will not only be incomplete, but can end up furthering settler colonial oppression.

Canadian Criminal Law Response

There are various legal issues that could be examined. In a legal needs assessment report, the Canadian Aboriginal AIDS Network (CAAN) and the Canadian HIV/AIDS Legal Network (the Legal Network) identify not only non-disclosure, but also the following legal issues that Indigenous people who are HIV positive face: privacy in relation to healthcare; rights in prisons; legal rights and privacy related to employment; legal issues related to gender-based violence towards Indigenous women; legal issues related to drug use and access to harm reduction services, particularly in small or remote communities; legal rights related to child custody, discrimination, and one's HIV status; specific legal needs of youth; and issues with stigma, discrimination, and privacy more generally.²³ Further, Kevin Barlow has produced a report for the Aboriginal Healing Foundation wherein he notes that "[w]ithin the past ten years, while there have been

numerous articles written regarding HIV/AIDS and hepatitis C virus in the Canadian prison system, there is little in-depth analysis regarding their effect and prevalence among the Aboriginal inmate population."²⁴ Criminal law is not the only state legal response to the issue of non-disclosure. HIV non-disclosure is also regulated, for example, through health and privacy-related legislation.²⁵ The focus in this report is on criminal law and the Canadian criminal justice system, though as already noted, criminalization of people who are HIV positive can occur through multiple legal and non-legal sites.

There are not specific laws in the *Criminal Code of Canada* about HIV non-disclosure, rather non-disclosure has been regulated through interpretations of existing offenses. For example, in the 1990s, nuisance charges were used but the criminalization of non-disclosure has intensified with the most common convictions now being aggravated sexual assault²⁶ – a conviction that can result in a federal sentence, incarceration, and registration as a sex offender.²⁷ Legal responses to HIV non-disclosure have become more punitive, though Erin Dej and Jennifer M. Kilty argue that the cases have not become more violent.²⁸

In 1998, the *Cuerrier* case went to the Supreme Court of Canada (SCC) in an attempt to set out some guidelines on when people should or should not have to disclose HIV status in sexual relationships, but the guidelines were vague.²⁹ Because of the problems with the *Cuerrier* decision, two additional cases went to the SCC together in 2012 – *Mabior* and *DC*, where it was decided that if there is a realistic possibility that HIV could be transmitted and a person in this context does *not* disclose their HIV positive status before sex, then they could be charged criminally.³⁰

The decision was made that there is not a realistic possibility of transmission (and therefore one should not have to disclose their HIV status) if one has a low viral load and a condom is properly used (the context in the case was heterosexual vaginal sex).³¹ There have been concerns that the requirement of a low viral load and condom are not in line with current medical knowledge – that requiring these two criteria calls for a higher standard than is necessary.³² Although there is this decision from the SCC, risk of transmission has been contextually interpreted in different ways in HIV non-disclosure cases since.³³

In their 2017 research on HIV non-disclosure criminal cases, Colin Hastings, Cécile Kazatchkine, and Eric Mykhalovskiy found that “[a]t least 184 people have faced charges related to HIV non-disclosure in 200 cases in Canada since 1989.”³⁴ Indigenous people represent 6% of the 184 people charged, though it is noteworthy that the race/ethnicity of 34% of the 184 people is unknown³⁵ (when that 34% is removed, then Indigenous people make up 9% of those charged in cases where the race/ethnicity of defendants is known).

Often, people who are HIV positive want to know what the rules are in relation to non-disclosure, but unfortunately it is a complicated area of law wherein risk, consent, and even which criminal code offenses to use are interpreted in varied ways.³⁶ If ever accused, the burden would fall on the person who is HIV positive to have to prove things such as having a low viral load and proper use of a condom.³⁷ Concerns have been raised that the legal response to HIV non-disclosure has been too punitive, that it does not make sense to apply sexual assault laws, that the current approach contributes to stigma and pushes people to conceal or be in denial about their

HIV status, and that disclosure is not a straightforward issue (for example because of stigma or violence).³⁸

Canada has one of the more punitive responses to HIV non-disclosure, when compared to other countries.³⁹ Importantly, the Department of Justice Canada acknowledged the need for changing how HIV non-disclosure is approached.⁴⁰ As Justice Minister Jody Wilson-Raybould noted, the present response to non-disclosure “discourages many individuals from being tested and seeking treatment, and further stigmatizes those living with HIV or AIDS.”⁴¹ In a report released by the Department, they outline transmission scenarios of no risk, negligible risk, low risk, and high risk, based on medical research.⁴² They note for example that “[s]exual activity with an HIV positive person poses a negligible risk of transmission where that person is taking HIV treatment as prescribed and has maintained a suppressed viral load based on consecutive tests done every four to six months.”⁴³ They also outline low risk scenarios of 1) being on HIV treatment but not yet having a suppressed viral load, 2) using just a condom, or 3) having oral sex.⁴⁴ The categorization of risk in their report is not as strict as that in *Mabior*, which is based on a low viral load *and* a condom. Overall, while it is important to assess risk based on accurate medical evidence and the report signals a shift to a less punitive approach, several challenges remain:

- Risk, consent, viral load, condom use, etc. still have to be proven and are all interpreted in court. Even their report notes that there are many factors that complicate the idea of risk (e.g., oral sex is low risk but if a person has a cut in their mouth, than risk is increased);⁴⁵

- It is unclear at this point if and how their report will influence future legal decisions or law reform. This area of law is still very unclear, perhaps even more so now in light of this government response in which this area of law is shifting;
- Power dynamics operate at all levels of the justice system and problems with, for example, racism and sexism, can end up being perpetuated through this institution. Although the report mentions that Indigenous

communities are experiencing disproportionate HIV rates,⁴⁶ and acknowledges that Indigenous people who are HIV positive can experience marginalization,⁴⁷ the overall context that Indigenous people face in relation to criminalization is not addressed. The impacts on Indigenous people who are HIV positive are inadequately engaged.

3. Understanding HIV in a Colonial Context

You know I live in this community and I see it every single day. I know so many people living with HIV and they act like it's normal, like it's nothing you know and- and it's big! It's- it's like... they really don't understand because so many people have it now and they just act like it's normal and you know they don't realize that it's tearing our community apart. –*Meewasin, an HIV positive woman who is a community worker.*

It is necessary to understand the connections between colonialism, HIV, and the criminalization of non-disclosure. In this section, connections are made between HIV stigma, indigeneity, gender, sexuality, family issues, abuse, and poverty, as these factors intersect and can shape Indigenous people's experiences generally with HIV. They are also part of the underlying context to understand before turning to the impacts of the laws around non-disclosure.

HIV Stigma

The Canadian HIV/AIDS Legal Network has emphasized that “HIV-related stigma and discrimination intersect with other forms of stigma and discrimination such as those based on sexual orientation, race,

immigration status, poverty, drug use and/or sex work.”⁴⁸ The intersection of HIV stigma and other forms of discrimination create situations where marginalized people with HIV are especially vulnerable in terms of isolation and regulation. In their work on the criminalization of HIV non-disclosure, R. Jürgens et al. argue that “criminal sanctions are often directed disproportionately at those who are socially and/or economically marginalized.”⁴⁹

Overall, participants in the case study of Regina expressed concerns about HIV and discrimination. Participants have felt labelled, harassed by police, nurses, and other people in the community, including experiencing lateral violence within Indigenous communities. Experiences with HIV stigma created feelings of fear, isolation, and breakdown of relationships for many participants. Fear was discussed in relation to the criminal justice system (e.g., fear of police, of being incarcerated), but also in terms of being afraid to access services, fear for one's health, fear of spreading HIV, and fear of getting tested because of the health realities that one would then have to face but also because of

a fear of being stigmatized. Many participants discussed concerns about silencing, shame, and isolation. Kisik, an HIV positive woman who is a community worker, noted,

I just wanted to keep [it] secret, you know, due to all the stigma going out there and, you know, all that cruelty towards it and, um, I just felt, you know, ashamed and- and embarrassed about me- about myself and, you know, because I was, like... the most popular girl that always- was always there to help someone but nothing changed. I was still me. It was just my thoughts that kept me going in that negative direction because that's what your thoughts do.

Concerns were expressed by a couple of participants about isolation and shame leading to suicide for Indigenous people who are HIV positive.

Several participants talked about difficulties in telling their families and being shunned by those close to them and by people in their community. While those experiences are not unique to Indigenous people who are HIV positive,⁵⁰ it is important to understand that these lost relationships with family and community can risk disconnecting people from kinship systems and cultural connections. Concerns were raised by Old Lady Buffalo, for example, about the need to ensure that people who are HIV positive are not being stigmatized or excluded at ceremonies. She noted, "we can't put ourselves higher than the one that's hurting. We have to stay at their level" and try to understand what will be most useful for a person's well-being.

Indigeneity

It is evident from directly asking participants about their indigeneity, as well as from what people said in their interviews, that overwhelmingly, being Indigenous shapes

participant's experiences with HIV and non-disclosure. Rochelle, a community member who is HIV positive, noted how HIV is a significant problem in Indigenous communities, and therefore, shapes Indigenous people's experiences with it. Granny, a non-Indigenous Elder (who is a white settler), also talked about the high rates of HIV but noted that it is more dangerous for Indigenous people to disclose their HIV status because they get treated differently than non-Indigenous people. Further, a community worker who is an HIV positive woman noted, "the racism is very, very big in Regina, in Saskatchewan."

Several participants discussed how experiences with racism and discrimination intersect with HIV discrimination, as well as with location (in Regina). Mike, who is HIV positive, talked about how people say that HIV is a "native disease." Likewise, Melissa conveyed that people say that if you are with anyone in Regina that you will get "AIDS." Mahinigan, who is HIV positive, felt that Indigenous people are the only racialized group being judged for having HIV as she hears comments in the community like, "all Indians have AIDS." Further, Peyesis, an HIV positive woman and community member, noted, "the cops pick on us more" as Indigenous people. One of the Elders, Old Lady Buffalo reflected that "our people are afraid to say 'I have HIV' because they've been discriminated because of other things." Stereotypes exist that Indigenous people in Regina are HIV positive and that the Indigenous community is "diseased."

Gender and Sexuality

There are distinct ways that these stereotypes are made about Indigenous women, as well as distinct gendered experiences related to HIV and non-disclosure. Mahinigan felt that Indigenous

women are targeted as transmitting HIV. Melissa talked about the stereotype that Indigenous women are “diseased” and that these assumptions are especially made about Indigenous women who are involved in sex work. Similarly, Sunshine, who is HIV positive, said, “they do paint us as the ones, the Native women. Because it’s been shown all over the news that we were hard hit, and it shows on the – that we’re on the top. So – so there – there’s...definitely affects Native women more. And I am one so yeah.” She went on to say that she does think that the laws around non-disclosure target Indigenous women. Elder Clement talked about how the responsibility to disclose should not fall on one group of people over another, regardless of one’s gender or sexuality.

A few participants also pointed out that Indigenous women who are HIV positive have distinct experiences in relation to nurturing and motherhood. Marie, a community worker who is HIV positive, talked about unfair expectations that are placed on women regarding nurturing and health, when compared to men: “sometimes I get the feeling that they – different ones figure that I should have known better, that with being a woman that, um, that we take better care of ourselves, more than the men do.” Her and the interviewer reflected that these expectations can create feelings of shame for women who are HIV positive.

Musqua, a community worker who is not HIV positive reflected, “for women, we’re bearers of children, you know, and women living with HIV, you know, they produce babies, [...] the doctors are scared it might transfer, you know?” Meewasin shared a difficult story about coerced sterilization because she is HIV positive. She reflected,

I had gotten my tubes tied which, you know, I wish I didn’t. Um... but they pushed me in and

they basically said ‘there’s a chance that your child could come out with HIV. Do you really want to live with that?’ and basically they like... told me the best thing to do was to have... my tubes tied. [...] I didn’t have the knowledge at that time. ... I didn’t have the knowledge that I have today [...] I just don’t want any- any- it to happen to anybody else. You know a lot of people should un- I wish a lot of people could hear that, you know, and realize that they have options; that regardless of what these nurses think you know a lot of people have that option to have more children. It doesn’t matter that we’re HIV positive. We can have children. Maybe we- maybe we can’t breastfeed them but we can still have babies.

The criminalization of Indigenous motherhood has a long colonial history and still happens today through stereotypes about Indigenous women as unfit mothers, through coerced sterilization, and through child welfare policies.⁵¹

It was also noted that HIV positive women’s contexts are distinct in relation to gendered violence, for example being stereotyped as sexual objects, being threatened by male partners, and experiencing sexual violence. Indigenous women already face disproportionately high rates of violence, and Indigenous women who are HIV positive experience particular risks that make them vulnerable.⁵² These issues with gendered violence in relation to HIV disclosure are discussed further in section four of this report.

Participants were also asked about two-spirit issues. While most participants felt that people who are two-spirit face distinct and additional challenges, they did not speak to direct lived experiences. Granny reflected, “I do think... that possibly [...] transgender – and this is just my thinking, I don’t know this 100% - I think transgender [people] live in a far more dangerous situation [...] police-wise and public-wise.” Another

participant, when reflecting on discrimination against two-spirit people who are HIV positive, said, “I think, um, they have to be very, very careful because they’re targeted for violence and, you know, some of them probably do get killed over that... being two-spirited and pos- being positive.” One of the Elders, Esikwew spoke about a young two-spirit man in Regina that was killed but that no one would talk about how he had been targeted – “it was hush hush.” Another Elder who contributed to the research emphasized the importance of accepting two-spirit people – “it’s their own way of living” and how they “got put on this Earth.” While there is research that exists on LGBTQI HIV experiences, two-spirit or queer Indigenous HIV experiences are under-researched and inadequately addressed in discussions about policy and law.

Family Issues, Abuse, Poverty

Participants who are HIV positive talked about diverse experiences in terms of their

personal lives, however there were common issues that arose. For example, family issues and experiences with abuse were often talked about. These issues included abuse experienced as a child, trauma related to being in foster care, abuse in state institutions (such as residential schools, in hospital, in correctional facilities), and having children taken away. Participants spoke of trauma and survival related to domestic violence and sexual abuse and violence. Many of the participants were also struggling or had previously struggled with addictions and several participants noted that they became HIV positive through injection drug use. Inter-generational trauma, violence, family issues, and addictions have an interconnected and intimate relationship with ongoing colonial oppression.⁵³ Participants were also struggling in relation to poverty, and in particular housing issues were emphasized. Several participants did not have access to stable and safe housing either currently or previously.

4. Impacts of the Criminalization of HIV Non-Disclosure on Indigenous People and Communities

Participants were asked about their familiarity with the law around HIV non-disclosure, and their understanding of the law was also assessed based on how they spoke about the issue of non-disclosure. Overall, the responses to questions about familiarity with the law show that only 42% (10 out of 24) of participants were familiar with the *issue* of HIV non-disclosure being regulated via Canadian law.⁵⁴ Of these 10 people, 9 were women, and the majority was HIV positive. Half of the respondents that showed familiarity were community workers.⁵⁵ It is noteworthy that while 42%

of participants were familiar with the *issue* – that people could be charged if they do not disclose to a sexual partner, few participants talked about *details* in relation to the laws around HIV non-disclosure. In the interviews, when participants were not familiar with the law, Snyder verbally provided information so that participants could then engage with questions related to impacts and services.

Overwhelmingly, participants felt that the Indigenous HIV community in Regina needs more information about the law and non-

disclosure.⁵⁶ When the laws were described to Marie, a community member who is HIV positive, she said, “[n]o kidding. I didn’t know that. Wow.” She later went on to say, “how many other Indigenous women like me, you know, don’t even *know* that [these laws] exist?” and remarked that “we need to be informed. We need to know what the laws are.” Granny, noted, “I’m not sure that I think anybody, Indigenous or not, is really aware of... what the law is.”

There is a need generally for education in this area – for people in the community, for doctors, nurses, lawyers, etc., however in creating accessible resources, there is a need for resources that meaningfully engage with the particular experiences that Indigenous people have with HIV and the law. In 2016, CAAN and the Legal Network published a summary of their research about what legal resources Indigenous people who are HIV positive might want and need.⁵⁷ Although the report was about a range of legal issues, with respect to non-disclosure, they noted, similar to the findings in our research, that there is a need for more understanding about the law and “a pressing need for greater education, support and counseling for Indigenous PLHIV [people living with HIV].”⁵⁸ CAAN and the Legal Network produced an important question and answer resource guide about non-disclosure for Indigenous communities, however there is a need for additional community and educational resources about non-disclosure.⁵⁹

Specific Impacts

When asked directly about the impacts of the laws around non-disclosure, the majority of participants noted that the law impacts Indigenous people who are HIV positive.⁶⁰ These impacts were discussed as being personally felt or in terms of what people

had observed in the community and with people that they know. While there were a few participants who perceived the non-disclosure laws to be about preventing the spread of HIV, protecting the rights of people who are HIV negative, and punishing those who transmit HIV, the majority of participants discussed the negative effects of the law.⁶¹ Participants spoke of emotional, mental, spiritual, physical, social, cultural, and legal impacts. Specific yet interconnected issues talked about included: 1) fear of incarceration; 2) negative impacts on sexual relationships; 3) gendered violence; 4) discrimination from the police; 5) criminalization for being Indigenous and HIV positive. As has been found in other research, non-Indigenous people also experience some of these impacts, broadly speaking,⁶² though there are particular ways that these issues are experienced by Indigenous people who are HIV positive.

1) Fear of Incarceration

Several participants expressed concerns about how Indigenous people who are HIV positive fear being incarcerated:

I heard those rumours [about her ‘sleeping around’ while HIV positive], you know, I did have, um, cops come to my door and threaten to arrest me for those kinds of reasons and I right away called my dad to, you know, call his lawyer to help me out. So, you know, cause I was fr- I was very frightened, I was scared, I didn’t know what to do. [...] Because I literally freaked and thought it [going to prison] was gonna happen to me. But it wouldn’t, um, you know, I don’t think I would’ve been charged because they were just accusations knowing that I didn’t sleep with anybody. [...] So for a bit, yeah, I- I felt bullied for a bit, you know, from these people [spreading the rumours] including the cops because they, you know, made it a habit of always coming around and just for nothing. - *Kisik, a community member who is HIV positive.*

there's a lot of danger and uh emotional trauma in even having to disclose... to disclose whether a person is HIV or not because of uh... of the way it's looked upon. [...] where the criminal law fits in in that situation to me is it um, it pushes away the person that might need more counselling and... or not counselling but information and help and whatever else. Um... they may not get that help or whatever it is they need simply because... the criminal law is gonna nail them to the cross for something that really shouldn't be happening. [...] I would be [afraid of the law] if I was [HIV positive]. -Granny, non-Indigenous Elder.

they think they're going to go to jail. That's why they don't tell. -Sunshine, community member who is HIV positive.

Overall, this fear of being incarcerated came from various sources – from a fear of police, a fear of prison, a fear of what others in the community will say about you, to a fear of sexual partners.

2) Negative Impacts on Sexual Relationships

Many participants talked about family and community relationships being damaged because of their HIV positive status, though when asked about non-disclosure and the law, several participants spoke of their intimate/sexual relationships being negatively impacted. For example, Munson, a community member who is HIV positive, noted that he now shies away from dates and puts distance between himself and others. Other participants spoke also about detrimental effects on intimacy and sexual well-being:

Yes, I do want a boyfriend but I'm scared- I'm scared to tell them... I hate the ha- I don't want to have sex with you because I have HIV. ... You know? I'm scared to even... go to bed with anybody. Even to kiss them or anything. I just push them away all the time. It's just frightening

you know. -Joe, an HIV positive woman and community member.

Um, well actually since I have found out I was HIV positive, we haven't been intimate that way, my man and I. Um, [laughs] with intercourse we've done it in other ways [laughs]. So, yeah, because I've been scared even with the viral load down and using a condom that, um, you know, something might happen and he gets it. -Marie, a community member who is HIV positive.

A lot of people think they're going to be alone for the rest of their lives um because- because of those laws. [...] those laws are... uh... they've... given us basically no options. -Meewasin, a community worker who is also HIV positive.

One of the Elders, Old Lady Buffalo, talked about inter-generational effects from residential schools, in terms of shame toward sex, bodies, and intimacy. Her reflections speak to broader issues regarding the impacts of colonialism (and the imposition of settler norms regarding gender and sexuality) on healthy sexual relationships. The criminalization of HIV non-disclosure is another way in which healthy sexuality is being undermined through state policies.

3) Gendered Violence

Concerns have been raised in research, advocacy, and policy reports that women who are HIV positive are at an increased risk of experiencing violence, as partners may use women's HIV status to coerce, manipulate, and harm them.⁶³ It may also be difficult for women to ask a male partner to wear a condom or to disclose their HIV status to a sexual partner, out of fear of violence.⁶⁴ For Indigenous women, these realities concerning HIV and gendered violence, intersect with already high rates of

violence against Indigenous women and girls in Canada.⁶⁵

Gendered violence was an issue noted by several participants in the case study, not only in terms of male partners manipulating and threatening women who are HIV positive (threatening them to do things or they will tell others about the woman's status), but also concerns about men trying to get women incarcerated as a means of punishment or revenge. These problems can cause issues with trust, fear, and trauma. Further, concerns were raised that even if a woman discloses her HIV status to a male sexual partner, that she will not be believed by those working in the criminal justice system. A couple of the women reflected:

say, um... all of a sudden my partner wants to, um... charge me for this, you know because... he thought- ... um, wants to charge me for, um, you know, for giving him whatever? ... And I told him before that, you know? It's totally up to you. ... And then, all of a sudden, turns around and wants to charge me for that and put me in jail for something, you know, stupid. *-Isqotew, community member who is HIV positive.*

I usually just tell them [that she is HIV positive] and then... we use condoms and then they... they actually take the condoms off and then I didn't know, like I didn't realize that if they say no to that they... I was like 'what are you doing? Why are you doing that?' you know and... 'I told you, I'm sick' and I'm trying to push them away but they just want to keep trying to... and then I always let them and it's... I know it's wrong but it's just you know we're both intoxicated, we're both, you know, whatever we're doing at the moment and then... and then uh... it's like I- I get full blame for it and I know I shouldn't be because he's the one willingly doing that like he knows my status. *-Peyesis, community member who is HIV positive.*

Regarding consent, Peyesis went on to say, "When you say 'no' you mean 'no.' You can't... it's hard though. ... That's the- just,

you know, in an abusive relationship that's really... you have to learn your boundaries." She did then say that women hurt men too, and talked about punching and screaming at men, but she gave a specific example of screaming at a male police officer.

Delores, a community member who is HIV positive also spoke of being victimized and taken advantage of – having her bank card and money taken from her, and being harassed and threatened by a male partner. Gendered violence can happen in terms of using the vulnerabilities that the laws around non-disclosure create, to harm Indigenous women who are HIV positive. With the realities of over-incarceration, distrust of the criminal justice system and other settler institutions, police harassment, concerns about children being taken by the state, access to safe or stable housing, and stereotypes about Indigenous women as sexually deviant (all of which were touched on in the interviews), it may not be easy or safe for Indigenous women to report experiencing HIV related gendered violence or to fully defend themselves in the justice system if accused of transmitting HIV to a sexual partner.

4) Discrimination from Police

Indigenous people of all genders can experience discrimination from police (though how this discrimination happens can relate to being a woman, two-spirit, or a man). Several participants expressed concerns about Indigenous people who are HIV positive being targeted and harassed by the police. For example:

I know people on the streets, the police picked them up, they know they're positive they'll take them outside Regina and beat them up and leave them there just because they're positive and they[re] working the streets and stuff... Um, stories of people... I've sa- actually I've sat-

when I- last time I got put in the drunk tank I seen people being dragged by the hairs by cops down the hallway and, you know, being Native and all that and they don't care. *[pseudonym withheld]*

they wouldn't even get help from the police [the police wouldn't help them]. They wouldn't even get help from the police or they would be um... trashed even from the police because of their status of being whoever they were or whatever they were. I'm not saying every single one has that happen to them but... a lot do. *[pseudonym withheld]*

I know one person, he's been diagnosed uh... quite a few years, like um... and he hasn't been with a woman because the police had actually went right into the hospital and told him that if he is to be with another woman or tries to be with another woman that they were gonna charge him. So you know and this man, today, he hasn't been with a woman for like 15 years, you know? [...] You know because of the- the laws and... [...] and then they really enforced them on him and scared the crap right out of him. *[pseudonym withheld]*

Issues were raised by some participants about the police regarding increased surveillance, discrimination, harassment of people who are HIV positive and their family members (showing up at people's houses without reason, making a mess in people's homes), police violence, breaching confidentiality, and flagging HIV positive individuals in internal police records.

5) Criminalization for Being Indigenous and HIV Positive

Participants expressed feeling impacted directly by non-disclosure laws but also negative impacts of being targeted more generally by the criminal justice system because they are Indigenous and HIV positive. These issues are intimately connected – if people feel targeted by the police, courts, and/or correctional officers

for being Indigenous and HIV positive, this creates increased vulnerability in relation to non-disclosure laws in that one is already under increased surveillance, treated as deviant, and at risk of experiencing discrimination within the criminal justice system.

A community worker who is also HIV positive, talked about her children (who are HIV negative) experiencing discrimination because of their association with her, and because she is Indigenous and HIV positive. For example, she spoke of a situation in which she tried to intervene when the police were talking with her son. The son's friends were present and the police told her to stay back because of her HIV status (the police knew of her status and then ended up disclosing it to everyone). Her son reacted negatively to the response from the police, the situation escalated, and she said that her son was assaulted by the officers.

Musqua, a community worker who is not HIV positive, expressed concerns about Indigenous people being treated as criminals, and this impacting how Indigenous people who are HIV positive are treated in relation to non-disclosure. She explained:

Um [pauses] like Indigenous and non-Indigenous are very... two different category in groups of people being treated as a criminal. Like, you know, obviously Indigenous people always get the short end of the stick when it comes to criminal charges or whatever cause they get the maximum of whatever, right? [...] But Indigenous people, no, um... I- I think they will have a hard time to disclose because then they're- they'll be labelled, like, right away. ... People will label them, you know and... that's my view.

When asked if he feels impacted by the laws, Mike, a community member who is

HIV positive, noted that he feels socially stigmatized because of how ignorant people are about HIV in general. He noted people saying things like, “is that the HIV gang?” When asked the same question about feeling impacted by the law, Mahinigan, a community member who is HIV positive, responded, “I feel shameful, I feel dirty, I feel it has to be kept a secret.”

These issues with criminalizing people who are HIV positive translate to stigma for many of the participants, and create challenges for disclosing. Challenges related to non-disclosure that came up in the interviews (and have been cited elsewhere as well⁶⁶) included a fear of being HIV positive, being in denial about one’s HIV status, and being ashamed to have HIV which in turn could impact whether a person seeks support regarding treatment and well-being, and/or discloses to a sexual partner.

When reflecting on the impacts of the laws on Indigenous people, Granny, who is not Indigenous, commented:

The chances of um... spreading – how do I say it? I’m trying to think of the right words but spreading it or making it... being more contagious are higher I think because of the way the laws are and the way people are treated and the way it’s being, being held right now. Like people should be able to go out there and feel safe in saying such and such and so forth. And I don’t know if I should be saying this but... I think it’s even- it’s more dangerous for Indigenous people because it’s, if an Indigenous person and a white person were to go and claim the same... thing as being HIV positive or something... I just know in my heart and soul the Indigenous person would have a far more negative time than the non-Indigenous person.

Granny describes this reaction almost as a feeling, though the criminalization of people who are HIV positive has been well-

documented.⁶⁷ Further, the criminalization of Indigenous peoples has been central to settler colonialism (historically and presently) and is extensively documented.⁶⁸

Alternative Approaches

When asked about other ways for responding to HIV non-disclosure, instead of the current approach in the criminal justice system, participants suggested:

- **more information and education for people who are HIV positive** (e.g., telephone information line, information cards, community barbecues, more places where people can go for information/to learn);
- **more information and education for police, courts, lawyers, and healthcare workers;**
- **counselling, mediation;**
- **safe, supportive spaces.**

One of the Elders, Clement, commented:

I would leave the [Canadian] law out because what the law is gonna do is gonna throw you in that jail and forget about you. [...] Instead of, like, having these big jails full of people... we should be having a big place where ... for Indigenous people, you know? [...] People that need help, people that have to be there, work together, deal with this issue [...] talk about it, spread our heart out, bring the people in. [...] You know... get together. Show some love and show some people that you can be loved no matter what you have [...] This is what I think should be done.

The interviewer (Krista Shore) and Clement talked about this kind of love as related to kinship laws and the importance of trying to support everyone in the community.

5. Supports in Regina

There are many complex reasons why people who are HIV positive may or may not use support services, of which the issues related to the legal regulation of non-disclosure are just one factor. It is important to acknowledge though, that the laws around non-disclosure do impact the lives of people who are HIV positive, as well as those working in support of this community. Feeling like one cannot have intimate relationships can impact well-being (physically, mentally, emotionally, spiritually). Gendered violence can cause isolation, fear, a lack of trust, an inability to safely reach out, as well as physical, mental, emotional, and spiritual harm. Further, a fear of being incarcerated, fear of police, and being treated like a criminal have significant negative effects on well-being.⁶⁹ As discussed by some participants, these realities, along with related problems (such as addictions, safe and stable housing, health issues) can cause people to be isolated and to not seek out support.

In the case study of Regina, many community worker participants (and other members of the community) noted concerns about people who are HIV positive not getting tested (so that the realities of being HIV positive – including having to disclose to sexual partners, do not have to be faced). Concerns were also expressed about Indigenous people who are HIV positive not feeling like they can trust support workers, as well as concerns that people are not seeking out services because of shame and fear. Old Lady Buffalo noted, “[t]rust is a big issue with our people.”

For the community workers, they were interested in supporting Indigenous people who are HIV positive, supporting Indigenous communities more broadly, and

fostering safe, non-judgmental, culturally grounded support. The information that follows combines the insights of what these participants have observed and hope to provide, as well as the insights from community members who are HIV positive in terms of what has worked for them and what they want to happen in Regina.

Overall, there is a need for revised and expanded services in Regina to support Indigenous people who are HIV positive, but also a need to support, listen to, and learn from Indigenous communities more generally as they are faced with high rates of HIV. There is a need to better recognize the strengths of organizations such as All Nations Hope Network (ANHN) (as identified and expressed by participants) and of the people in the community, especially Indigenous people who are HIV positive. Participants were very interested in learning and working to support their community and the strengths and well-being of Indigenous people.

Urban Context

Participants overwhelmingly expressed that being in an urban centre shapes their experiences with HIV. Many of the participants had experiences living elsewhere, including on reserve (and have friends, family, and acquaintances living on reserve). Most participants felt that living in the city is positive when compared to reserves and small towns, in particular because there are more health and social services available, the city affords more anonymity, and people are more open about HIV in the city. The Canadian HIV/AIDS Legal Network and CAAN found similar results in their legal needs assessment, where concerns were noted about HIV

stigma on reserve and a lack of services on reserves.⁷⁰ There are tensions though with the framing of the city as a more open and supportive place for Indigenous people who are HIV positive. The interviews show, for example, significant experiences with racism, stigma, discrimination, and violence.

Review of Services

Despite preferring to live in the city because of access to services, most participants expressed concerns about the need for revised and expanded services to support Indigenous people in Regina who are HIV positive. Participants were not asked to evaluate specific types of programs or organizations; rather the questions about services were open-ended so that participants could focus on the issues of importance to them.

Barriers to services that were noted by participants include:

- **accessibility** (physical challenges in terms of getting to service providers);
- **location of services** (needing to be able to easily get to services but also services need to be discreet so that people do not feel labelled for going into certain buildings);
- **lack of culturally-informed services** (ANHN is an exception);
- concerns about **confidentiality and trust**;
- concerns about a **lack of safe, non-judgmental spaces**;
- concerns about a **lack of HIV positive people working as service providers**.

A few participants spoke about experiencing racism and stigma from nurses, though mostly, responses about services were

focused on social supports, rather than on healthcare experiences. It is noteworthy though that healthcare services also shape Indigenous people's experiences in Regina. The A-Track survey found that:

Among those [Indigenous people in Regina] who visited a health care provider, 99 (12%) had difficulty accessing needed health care. Approximately a third of the respondents who experienced problems accessing needed health care cited long wait time to see a doctor (38%), difficulty getting an appointment (32%) and long wait time between appointment and physician visit (27%) as barriers.⁷¹

Regarding key services for Indigenous people who are HIV positive, ANHN was identified as a strength in the community,⁷² especially in relation to culturally-informed services, however concerns were raised about the need for more services like ANHN, the need for more people who are HIV positive working at ANHN (and elsewhere), and concerns that people are hesitant to access ANHN because of stigma associated with going into the building.

Supports Related to the Law and Non-Disclosure

It is evident from the interviews that there is generally a lack of supports related to HIV legal issues and non-disclosure in Regina. **Suggestions** that emerged from the interviews about supports related to the law and non-disclosure included:

- **Workshops and information sessions** about the law (that are well-advertised and provide incentives for people to attend [e.g., food]),⁷³
- **Gathering and supporting** one another;
- Having **more people on the frontlines** that can help,

particularly Indigenous people who are HIV positive;

- **Improvements in healthcare:**
 - That legal information be provided in health contexts (e.g., doctors let HIV positive patients know about non-disclosure);
 - Training of doctors and nurses in relation to the law but also discrimination.
- **Improvements in relation to justice:**
 - Police, lawyers, courts need more information and need to be educated;
 - Teaching about these issues in law schools so that future lawyers are informed;
 - Access to lawyers in the community;
 - Private courtrooms for those who are accused (unless if an individual is consistently putting many people at risk);
 - Approaches that focus on health and well-being (e.g., counselling, mediation) instead of incarcerating people.
- **The creation of an organization in Regina that can help people to deal with legal issues and criminalization or a specific position for someone with specialized legal knowledge.**

When asked about what role participants thought that the provincial and federal government should have in relation to support programs and issues related to non-disclosure, funding was primarily emphasized, but so was the need for the government to be supportive, to listen, to learn, to work with communities, and to take action.

General Supports for Indigenous People who are HIV Positive

Legal supports are important, particularly given the impacts that the laws around non-disclosure can have on people. Despite the call from the Department of Justice to take a less punitive approach and to focus on non-disclosure as a public health issue,⁷⁴ how those calls will be taken up in action is not yet known. Further, HIV and non-disclosure are criminalized via many sites and issues, and Indigenous people are still targeted via criminalization, including being criminalized for being Indigenous and HIV positive. It is very clear from the interviews that there is a need for more general supports, not only law-focused supports. General suggestions included: more community events, more cultural events; more safe spaces, better harm reduction strategies (e.g., more discreet services and services available 24 hours); recreation and activities for youth; services and/or programs run by Indigenous people who are HIV positive; a house for Indigenous people who are HIV positive; Elder training; training more generally for people to build capacity in the community; and more funding put toward programs.

As was discussed in several of the interviews, challenges with the laws around non-disclosure do not exist in a silo – they are one aspect of a broader range of issues for Indigenous people who are HIV positive. Furthermore, issues with HIV in Indigenous communities are entangled with social, economic, legal, and political realities in a historical and contemporary colonial context.⁷⁵ The criminalization of HIV non-disclosure is not simply a matter of needing Canadian criminal law to work better or a matter of educating people about these laws – it is a complex issue situated in a broader context and the problems with criminalization cannot be addressed unless if these broader issues are meaningfully engaged.

Community Strengths

It's to make yourself think [...] 'That road may be narrow but I'm gonna keep my feet upon that road of healing.' -*Old Lady Buffalo, Elder.*

In the interview with Old Lady Buffalo, she was speaking to the importance for all Indigenous people to be supported, regardless of the path(s) that they are on. Overall, participants talked about the importance of not judging others, and to support people where they are at, in ways that matter for them. Many of the Elders emphasized being there for people who are struggling – to listen and to talk with them. Sarah reflected, “I like working with people, listening to people... you know and uh... really listening to them and... doing my best to uh give answers, um suggestions and all that, not telling them what to do but listening and giving advice when they asked.” Another Elder noted that younger people need to teach Elders about HIV. He said that Elders can share their knowledge about the past and young people can teach Elders about HIV now, as it never existed in the past. He noted this reciprocal learning and that the knowledge of Elders is not above others – that everyone has different theories and that everyone can come together on the same level to share with one another.

Despite the significant challenges that Indigenous communities and people who are HIV positive are dealing with, the interviews illustrated significant strengths and resilience. When Munson talked about the problem of HIV stigma, for example, he promptly noted that he is “not going to be silenced.” Another participant reflected, “I enjoy working in community. Um, I really do. Um, I enjoy helping vulnerable- other women like me that are HIV positive.”

Meewasin reflected on learning from others in the community. When Meewasin was talking about her initial fears of being HIV positive and what she could do or share with her children, the interviewer, Krista Shore, had previously supported her. Meewasin said, “you were one of the women that told me you know, ‘we’re allowed to do that. We’re allowed to share with them. We’re allowed to cry with them. We’re allowed to you know, drop our tears on them.’” Meewasin in turn was focused on teaching and helping others, “I want my own people, my family, the community to know about it [HIV] [...] Basically, I would love to be a part of teaching [...] Teaching the people [...] teaching the community.”

Clement, one of the Elders, emphasized the importance of opportunities “where the people can meet and meet friends and talk together and do it together.” Community-created and -oriented responses were emphasized in the interviews, including the importance and successes of peer mentoring, the ongoing need for capacity building, and the importance of drawing on but also building knowledge within the community in ways that are inclusive and safe. Kisik, a woman who is HIV positive and a member of the community talked about the need for

[m]ore speakers, and us [as] speakers and get us involved in exactly with what’s going on. I think we should have a big part of like – because we’re positive, you know? We should be the ones here doing a lot more work than a lot of others. Give us that opportunity. Let us grow! Give us the chance to grow. Let us heal. Help us. And if we fall and falter, bring us back up. Help, don’t just let us stay there. Grab us back and – and if we’re going to be using our stories and going out there and saying everything and then like don’t just throw you away in there. [...] Keep us involved.

6. Ways Forward

The recommendations that follow are meant to productively work alongside calls to action from organizations, advocates, and researchers working to support Indigenous people who are HIV positive, as well as working with relevant calls and principles found in the Truth and Reconciliation Commission of Canada Calls to Action, and the United Nations Declaration on the Rights of Indigenous Peoples. The recommendations that follow are focused on legal issues around HIV non-disclosure, as they relate to Indigenous people who are HIV positive.

Recommendations

Approaches to HIV Non-Disclosure

- **Evaluations and discussions of Canadian criminal laws around HIV non-disclosure need to centre the experiences and knowledge of Indigenous people living with HIV.**

This is not to suggest that other people should not also be engaged, but that Indigenous people need to be centred in these discussions, and that responses to HIV issues in Indigenous communities should be led by Indigenous people living with HIV.

- **Approaches to HIV non-disclosure need to centre Indigenous knowledge, communities, and self-determination.**
- **Evaluations and discussions of Canadian criminal laws around HIV non-disclosure need to meaningfully acknowledge and engage with the broader legal and settler colonial contexts that Indigenous peoples have historically dealt with and currently face.**

The importance of acknowledging and challenging colonialism has been made many times by Indigenous people and groups, however this point needs to be reiterated, as HIV research and reports continue to be produced which do not engage with colonialism.

- **HIV non-disclosure needs to be approached from an intersectional perspective.**

Such an approach involves examining how people who are HIV positive experience multiple forms of discrimination (e.g., in relation to one's race, gender, sexuality, ability), *but also* entails understanding how systemic (or structural) forms of discrimination are interconnected with one another (e.g., that colonialism and gendered oppression do not operate in isolation from one another).

Law and Justice

- **The current use of Canadian criminal law around HIV non-disclosure is negatively impacting Indigenous people and needs to change.**

It is noteworthy that even if the use of Canadian criminal law is “scaled back” as it relates to non-disclosure, that there are still significant broader justice issues that Indigenous people are facing regarding discrimination. Further, if shifting to a fuller public health approach, issues with discrimination and criminalization that Indigenous people who are HIV positive face in the healthcare system still need to be addressed.

- **There is a need for further discussion and engagement with experts in relation to Indigenous laws and Indigenous legal responses to the issue of HIV non-disclosure.**

Education and Training

- **More research needs to be done about the impacts of the criminalization of HIV non-disclosure on Indigenous people living with HIV.**

There is especially a need for research on two-spirit HIV issues related to non-disclosure.

- **There is a need for more resources and education about HIV non-disclosure and the law for the Indigenous HIV positive community in Regina, and beyond.**

Some suggestions from participants, for getting that information out included:

- Community barbecues;
 - Pamphlets;
 - Newsletters;
 - Using the Internet;
 - Information about consent;
 - Support groups;
 - Community meetings;
 - Workshops;
 - Organizations holding information sessions, multiple organizations where people can go for support;
 - Doctors educating patients about legal issues;
 - Educating teachers and chiefs and councillors;
 - Educating youth (in schools and correctional facilities).⁷⁶
- **There is a need for more education and training for police, lawyers, judges, and healthcare workers so as to better understand the complexities of Indigenous people’s experiences with HIV non-disclosure (and HIV more generally).**

- **While information and knowledge about the existing legal situation is important and could be empowering for Indigenous people who are HIV positive, having this knowledge will not necessarily solve all of the challenges in relation to non-disclosure.**

Again, there are many complicated reasons why people do not disclose their HIV status (e.g., abuse, fear of discrimination) and knowledge and education need to occur at a broader social level to challenge the social conditions that enable HIV stigma and other forms of discrimination and violence to exist.

Supports and Services

- **There is a need for increased and new supports in Regina regarding non-disclosure and the law that are accessible to Indigenous people who are HIV positive.**

“Accessible” here refers not only to ability but also to supports that are safe, discreet, confidential, and culturally-informed.

- **There is a need generally for accessible revised and expanded HIV services in Regina for Indigenous people who are HIV positive.**
- **There is a need for more frontline workers who are Indigenous and HIV positive, so as to build capacity within the community but to also create services meaningfully informed by lived experiences and knowledge.**
- **There is a need to recognize not just the challenges, but also the strengths of the Indigenous HIV positive community in Regina, and beyond.**
- **There is a need for increased funding and for those in leadership positions to listen, learn, and act in collaboration with the community.**

7. References

- ¹ See for example: Colin Hastings, Cécile Kazatchkine and Eric Mykhalovskiy, “HIV Criminalization in Canada: Key Trends and Patterns,” Canadian HIV/AIDS Legal Network, 2017, 4-5 <http://www.aidslaw.ca/site/hiv-criminalization-in-canada-key-trends-and-patterns/?lang=en>; Akim Adé Larcher and Alison Symington, “Criminals and Victims? The Impact of the Criminalization of HIV Non-Disclosure on African, Caribbean and Black Communities in Ontario,” The African and Caribbean Council on HIV/AIDS in Ontario, 2010, http://www.accho.ca/Portals/3/documents/ACCHO_Criminals_and_Victims_Nov2010_LoRes.pdf; Emily A. Arnold, Gregory M. Rebhook, and Susan M. Kegeles, “‘Triply Cursed’: Racism, Homophobia and HIV-Related Stigma Are Barriers to Regular HIV Testing, Treatment Adherence and Disclosure Among Young Black Gay Men,” *Culture, Health & Sexuality* 16, no. 6 (2014): 710.
- ² For an exception, see the WATCH Research Team’s work on body mapping to engage with the issue of non-disclosure on Indigenous women – presentation by Saara Greene and Krista Shore, available online: <https://watchhiv.ca/documents/integrating-indigenous-approaches-to-using-body-mapping-as-a-form-of-arts-based-research.pdf>. There is also an excellent video resource, “The Criminalization of HIV in Canada,” about non-disclosure and Indigenous people who are HIV positive, produced by the BearPaw Legal Education and Resource Centre, available online: <https://www.youtube.com/watch?v=1P8Dkvn4exA&t=989s>. Otherwise, the largest study to date on the impact of non-disclosure laws on HIV positive people’s lives in Canada included some Indigenous people, though they were not adequately represented in the research nor was colonial context accounted for, see Barry Adam et al., “HIV Positive People’s Perspectives on Canadian Criminal Law and Non-Disclosure,” *Canadian Journal of Law and Society* 31, no. 1 (2016): 1. Reports on Indigenous people and HIV tend not to address the issue of non-disclosure. Occasionally non-disclosure is mentioned, though not the focus of a report – see for example, Canadian HIV/AIDS Legal Network [the Legal Network], “Indigenous Women, HIV and Gender-Based Violence,” March 2017, <http://www.aidslaw.ca/site/indigenous-women-hiv-and-gender-based-violence/?lang=en>; Canadian Aboriginal AIDS Network [CAAN] and Canadian HIV/AIDS Legal Network [the Legal Network], “Summary of Legal Needs Assessment,” December 2016, <http://www.aidslaw.ca/site/indigenous-communities-summary-of-legal-needs-assessment/?lang=en>. Though not a research document, a legal information resource has been produced that focuses on Indigenous people and HIV non-disclosure: Canadian Aboriginal AIDS Network [CAAN] and Canadian HIV/AIDS Legal Network [the Legal Network], “Indigenous Communities and HIV Disclosure to Sexual Partners: Questions and Answers,” April 2016, <http://www.aidslaw.ca/site/indigenous-communities-and-hiv-disclosure-to-sexual-partners-questions-and-answers/?lang=en>.
- ³ Regarding distinct experiences with the law, see for example: Benjamin J. Richardson, Shin Imai, and Kent McNeil, eds., *Indigenous People and the Law: Comparative and Critical Perspectives* (Oxford: Hart, 2009). Regarding distinct experiences with HIV, see for example: Saskatchewan Indigenous Council on HIV and AIDS (SICHA), “Saskatchewan Indigenous Strategy on HIV and AIDS: 2014-2019,” <http://allnationshope.ca/userdata/files/187/Saskatchewan%20%20Indigenous%20Strategy%20on%20%20HIV%20and%20AIDS%202.pdf>; Margo E. Pearce et al., “The Cedar Project: Historical Trauma, Sexual Abuse and HIV Risk Among Young Aboriginal People Who Use Injection and Non-Injection Drugs in Two Canadian Cities,” *Social Science & Medicine* 66, no. 11 (2008): 2185; Kimberly Hawkins, Charlotte Reading, and Kevin Barlow, “Our Search for Safe Spaces: A Qualitative Study of the Role of Sexual Violence in the Lives of Aboriginal Women Living with HIV/AIDS,” 2009, Canadian Aboriginal AIDS Network, <http://www.caan.ca/wp-content/uploads/2012/05/Sexual-Violence-Documents-ENGLISH1.pdf>. Regarding distinct experiences with HIV and the law, see: CAAN and the Legal Network, “Legal Needs Assessment”; J. Kevin Barlow, “Residential Schools, Prisons, and HIV/AIDS among Aboriginal People in Canada: Exploring the Connections,” Aboriginal Healing Foundation, 2009, <http://www.ahf.ca/downloads/hivaids-report.pdf>.
- ⁴ See for example: CAAN and the Legal Network, “Legal Needs Assessment.”
- ⁵ Statistics Canada, Census Profile, 2016 Census, for Regina, <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=CMACA&Code1=705&Geo2=PR&Code2=47&Data=Count&SearchText=Regina&SearchType=Begins&SearchPR=01&B1=All>.
- ⁶ Ethics approval was granted for this project through the University of Saskatchewan.
- ⁷ Public Health Agency of Canada, “HIV/AIDS EPI Updates,” 1.
- ⁸ Public Health Agency of Canada, “HIV/AIDS EPI Updates, Ch. 8: HIV/AIDS Among Aboriginal People in Canada,” 2014, 1.

⁹ The most common reason for HIV infection among the general Canadian population is men having sex with men, with heterosexual contact being the second most common reason. These rates are for the year 2011. Public Health Agency of Canada, “HIV/AIDS EPI Updates,” 3.

¹⁰ See for example: Pearce et al. “The Cedar Project”; Hawkins, Reading, and Barlow, “Our Search for Safe Spaces”; Barlow, “Residential Schools, Prisons, and HIV/AIDS”; the Legal Network, “Indigenous Women.”

¹¹ Saskatchewan Ministry of Health, Population Health Branch, “HIV Prevention and Control Report for 2016,” 10. Provincial statistics for 2017 exist, however at the time of writing the data was still only preliminary.

¹² Saskatchewan Ministry of Health, “HIV Prevention,” 11.

¹³ Saskatchewan Ministry of Health, “HIV Prevention,” 16.

¹⁴ This data is based on the 2011 National Household Survey. Statistics Canada, “Aboriginal Peoples: Fact Sheet for Saskatchewan,” released March 14, 2016, <http://www.statcan.gc.ca/pub/89-656-x/89-656-x2016009-eng.htm>.

¹⁵ Saskatchewan Ministry of Health, “HIV Prevention,” 16.

¹⁶ Saskatchewan Ministry of Health, Population Health Branch, “HIV and AIDS in Saskatchewan 2014,” December 1, 2015, 5.

¹⁷ This is not to suggest that other urban centres or regions in the province are fine as is. Phil, for example, a participant who is a community worker and HIV positive said, “Services are lacking up North. In Prince Albert, there’s nothing there for people with HIV, yet it’s the gateway to the North and it’s a place where the people are going, where HIV is spreading at a high rate. ... There’s nothing like All Nations Hope or AIDS Programs South Saskatchewan in PA. There’s, uh... they try their best but they don’t understand how to, uh... to create [an] organization that- that is adaptable for people living on the street. Because there’s a lot of homelessness there too. And that has to do with the problem too. Poverty, you know, unemployment, you know, homelessness. All these things are affecting our people, and are affecting the high rate of spreading HIV.”

¹⁸ See also: CAAN and the Legal Network, “Legal Needs Assessment,” 2.

¹⁹ See for example, John Borrows, *Canada’s Indigenous Constitution* (Toronto: University of Toronto Press, 2010); Val Napoleon and Hadley Friedland, “Indigenous Legal Traditions: Roots to Renaissance,” in Markus D. Dubber and Tatjana Hörrnle, eds., *The Oxford Handbook of Criminal Law* (Oxford: Oxford University Press, 2014) 225.

²⁰ See for example, Napoleon and Friedland, “Indigenous Legal Traditions.”

²¹ See for example: Elizabeth Comack, *Racialized Policing: Aboriginal People’s Encounters with the Police* (Winnipeg: Fernwood Publishing, 2012); Lisa Monchalin, *The Colonial Problem: An Indigenous Perspective on Crime and Injustice in Canada* (Toronto: University of Toronto Press, 2016); Sherene Razack, *Dying From Improvement: Inquests and Inquiries into Indigenous Deaths in Custody* (Toronto: University of Toronto Press, 2015).

²² In CAAN and the Legal Network’s research for their legal needs assessment report, they asked the following in one phase of their project: “Please let us know if any of the following topics would be important to cover” – under “What law applies?” there is a sub-question of “When do Indigenous laws apply vs. State laws” (13). Indigenous laws do not otherwise come up in the assessment report though.

²³ CAAN and the Legal Network, “Legal Needs Assessment,” 1-5.

²⁴ Barlow, “Residential Schools, Prisons, and HIV/AIDS,” 19.

²⁵ Department of Justice, Government of Canada, “Criminal Justice System’s Response to Non-Disclosure of HIV,” December 1, 2017, Part C and Part F, <http://www.justice.gc.ca/eng/rp-pr/other-autre/hivnd-vihnd/hivnd-vihnd.pdf>.

²⁶ Erin Dej and Jennifer M. Kilty, “‘Criminalization Creep’: A Brief Discussion of the Criminalization of HIV/AIDS Non-disclosure in Canada,” *Canadian Journal of Law and Society* 27, no. 1 (2012): 55. See also, Department of Justice, “Response to Non-Disclosure,” 15.

²⁷ Isabel Grant, “The Boundaries of the Criminal Law: The Criminalization of the Non-Disclosure of HIV,” *Dalhousie Law Journal* 31 (2008): 148.

²⁸ Dej and Kilty, “‘Criminalization Creep.’”

²⁹ See for example, Sophie E. Patterson et al., “The Impact of Criminalization of HIV Non-Disclosure on the Healthcare Engagement of Women Living with HIV in Canada: A Comprehensive Review of the Evidence,” *Journal of the International AIDS Society*, 18, no.1, 1-2.

³⁰ Hastings, Kazatchkine, and Mykhalovskiy, “HIV Criminalization in Canada,” 1.

³¹ Hastings, Kazatchkine, and Mykhalovskiy, “HIV Criminalization in Canada,” 1; Patterson, et al., “The Impact of Criminalization,” 2.

³² Alison Symington, “Injustice Amplified by HIV Non-Disclosure Ruling,” *University of Toronto Law Journal*, 63, no. 3 (2013): 486; Patterson et al., “The Impact of Criminalization,” 2.

³³ Department of Justice, “Response to Non-Disclosure,” 12-13.

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- ³⁴ Hastings, Kazatchkine, and Mykhalovskiy, "HIV Criminalization in Canada," 2.
- ³⁵ Hastings, Kazatchkine, and Mykhalovskiy, "HIV Criminalization in Canada," 4.
- ³⁶ Department of Justice, "Response to Non-Disclosure," 12-13. Symington notes that for people who are HIV positive, there is "uncertainty regarding when disclosure is legally required" ("Injustice Amplified," 485).
- ³⁷ See Symington, "Injustice Amplified," 490-491.
- ³⁸ See for example, Symington, "Injustice Amplified"; Patterson et al., "The Impact of Criminalization"; Adam et al., "HIV Positive People's Perspectives," 6; Canadian HIV/AIDS Legal Network, "Consent: HIV Non-Disclosure and Sexual Assault Law," 2015, film, available online: <http://www.consentfilm.org>.
- ³⁹ Symington, "Injustice Amplified," 486; Patterson et al., "The Impact of Criminalization," 1.
- ⁴⁰ Department of Justice, "Response to Non-Disclosure."
- ⁴¹ Department of Justice, "Response to Non-Disclosure," Annex 1, 32.
- ⁴² Department of Justice, "Response to Non-Disclosure," 8.
- ⁴³ Department of Justice, "Response to Non-Disclosure," 9.
- ⁴⁴ Department of Justice, "Response to Non-Disclosure," 9.
- ⁴⁵ Department of Justice, "Response to Non-Disclosure," 9-10.
- ⁴⁶ Department of Justice, "Response to Non-Disclosure," 4, 17.
- ⁴⁷ Department of Justice, "Response to Non-Disclosure," 16.
- ⁴⁸ Canadian HIV/AIDS Legal Network, "Consent: HIV Non-Disclosure and Sexual Assault Law: A Community Engagement Discussion Guide," 2016, <http://www.aidslaw.ca/site/consent-community-engagement-discussion-guide/?lang=en>, 6. See also, Symington, "Injustice Amplified," 491.
- ⁴⁹ R. Jürgens et al., "Ten Reasons to Oppose the Criminalization of HIV Exposure or Transmission," *Reproductive Health Matters: An International Journal on Sexual and Reproductive Health and Rights*, 17, no.34 (2009): 168.
- ⁵⁰ See for example, Symington, "Injustice Amplified," 492.
- ⁵¹ See for example, Karen Stote, *An Act of Genocide: Colonialism and the Sterilization of Aboriginal Women* (Winnipeg: Fernwood Publishing, 2015); Nico Trocmé, Della Knoke, and Cindy Blackstock, "Pathways to the Overrepresentations of Aboriginal Children in Canada's Child Welfare System," *Social Service Review*, 78, no. 4 (2004): 577.
- ⁵² See the Legal Network, "Indigenous Women"; Hawkins, Reading, and Barlow, "Our Search for Safe Spaces."
- ⁵³ For a discussion about this, see for example, Barlow, "Residential Schools, Prisons, and HIV/AIDS."
- ⁵⁴ This total is out of 24, rather than 26, as one participant's answer was not clear and could not be assessed, and another participant did not have data in relation to the issue of familiarity.
- ⁵⁵ Three out of five of these volunteers/workers are also HIV positive.
- ⁵⁶ When asked if there is a need for more information, only one participant responded negatively, as she felt that there is adequate information available but that people are unwell because of trauma and are not able to fully receive/take in the information.
- ⁵⁷ CAA and the Legal Network, "Legal Needs Assessment."
- ⁵⁸ CAA and the Legal Network, "Legal Needs Assessment," 1-2, quote from 2.
- ⁵⁹ CAA and the Legal Network, "Indigenous Communities and HIV Disclosure."
- ⁶⁰ There are a couple of exceptions, for example, a participant who said that he is not impacted because he has one sexual partner, and a participant who felt that she is not impacted as she had only been HIV positive for about half a year at the time of the interview.
- ⁶¹ When asked, 38.5% of participants said that they do not agree with the ways that Canadian criminal law has been used in relation to non-disclosure; 42.3% had mixed feelings, 15.4% agreed with the laws, and 3.8% (1 participant) had not yet formed an opinion/was not sure how to respond. Only 1 participant (Phil) agreed with the laws and did not feel impacted by them (otherwise, there were contradictions where people agreed with the laws yet noted negative impacts, or did not think there were impacts but disagreed with or had mixed feelings about the laws). There are not discernible patterns in terms of HIV status, gender, or community member/volunteer-worker status and whether or not one agreed with the laws.
- ⁶² See for example, Symington, "Injustice Amplified"; Adam et al., "HIV Positive People's Perspectives."
- ⁶³ See for example, the Legal Network, "Indigenous Women"; Hawkins, Reading, and Barlow, "Our Search for Safe Spaces."
- ⁶⁴ Symington, "Injustice Amplified," 492-493; Patterson et al., "The Impact of Criminalization," 3.
- ⁶⁵ The Legal Network, "Indigenous Women," 4; Hawkins, Reading, and Barlow, "Our Search for Safe Spaces," 14-16.
- ⁶⁶ See for example, Symington, "Injustice Amplified," 485; Jürgens et al., "Ten Reasons," 165.

⁶⁷ See for example, Monchalin, *The Colonial Problem*.

⁶⁸ See for example, Monchalin, *The Colonial Problem*.

⁶⁹ See Boyer on the idea of law as a social determinant of health: Yvonne Boyer, *Moving Aboriginal Health Forward: Discarding Canada's Legal Barriers* (Purich Publishing: 2014).

⁷⁰ CAAN and the Legal Network, "Legal Needs Assessment," 2.

⁷¹ Canadian Aboriginal AIDS Network [CAAN], "Summary of Key Findings From the 'A-Track' Pilot Survey Conducted in Regina, Saskatchewan." 2013, 4.

⁷² APSS (AIDS Program South Saskatchewan) was also identified as a key service, however many participants expressed that since APSS moved, it is less accessible/less of a key service.

⁷³ Similarly, CAAN and the Legal Network's legal needs assessment found that people wanted: legal fact sheets; information sessions; workshops; training for people working with Indigenous people who are HIV positive (e.g., service providers). CAAN and the Legal Network, "Legal Needs Assessment," 1.

⁷⁴ Department of Justice, "Response to Non-Disclosure."

⁷⁵ See for example, Pearce et al., "The Cedar Project"; Hawkins, Reading, and Barlow, "Our Search for Safe Spaces"; SICHA, "Saskatchewan Indigenous Strategy."

⁷⁶ It is worthwhile to also consider the results from the A-Track survey, which found that: "Advertising (71%), friends (51%) and family (46%) were the three information sources where the respondents have most often heard, seen or read about HIV. This was followed by television news (46%), doctors (41%), and newspaper articles (41%) as information sources on HIV" (CAAN, "Summary of Key Findings," 4).