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Canada high court lowers bar for HIV disclosure

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Canada's Supreme Court on Friday decriminalized the non-disclosure of HIV status prior to sex where no realistic possibility of transmitting the potentially deadly virus exists.

The ruling clarifies a 1998 decision that set a threshold for criminality by requiring persons to tell partners of their HIV status before having sex with them or face possible charges of aggravated sexual assault, which carries a maximum life sentence.

In revisiting that decision, the court acknowledged medical advances that make it possible to manage the virus that causes AIDS with greater success.

Health advocates argued that the law stigmatizes people living with HIV/AIDS.

But prosecutors in two cases from Manitoba and Quebec provinces maintained that not disclosing one's HIV status deprives a partner of the basic right to make an informed decision about a sexual encounter.

"HIV is indisputably serious and life-threatening," the court said. "Although it can be controlled by medication, HIV remains an incurable chronic infection that if untreated, can result in death."

"Failure to disclose (HIV status) amounts to fraud where the complainant would not have consented had he or she known the accused

was HIV-positive, and where sexual contact poses a significant risk of or causes actual serious bodily harm," it said.

However, if a person undergoing antiretroviral therapy has a low viral load at the time of intercourse and uses a condom, the risk of transmission and bodily harm is significantly reduced, it concluded.

The justices considered a pair of cases in their decision: acquitting a Quebec woman of aggravated sexual assault for having intercourse while her viral load was undetectable, and restoring the convictions of a Winnipeg man for having sex with four women without a condom and without disclosing his HIV status.

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