

Positive Sexuality: HIV, Gender, Power, Intimacy and the Law

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Background

- A growing body of research points to the shortcomings of the criminal law in governing HIV transmission.
- Canada stands out globally in its assertive approach to criminalizing HIV non-disclosure. People living with HIV have the legal obligation to disclose their HIV status to a sex partner unless a condom is used AND the person has an undetectable viral load.
- In the Canadian context, HIV non-disclosure is most commonly prosecuted as aggravated sexual assault and constitutes one of the most severe charges in the Canadian Criminal Code.
- Given the prevalence of gender-based violence, there is a critical need to better understand the gendered dynamics of negotiating sexuality and HIV among self-identified women living with HIV (WLWH) in the context of criminalization of HIV non-disclosure.

Methods

- As part of the SHAWNA Project (*Sexual Health and HIV/AIDS: Women's Longitudinal Needs Assessment*) – a collaborative community based cohort study, we conducted 56 qualitative interviews with WLWH (trans inclusive) in Vancouver, Canada between August and December 2015.
- The interviews were conducted by two experienced researchers, including a woman living with HIV, and were guided by a semi-structured interview guide, which was developed based on extensive consultation with WLWH and community organizations.
- Drawing on a feminist analytical framework and concepts of structural vulnerability, the analysis sought to characterize the gendered dimension of negotiating sex and HIV disclosure among WLWH in a criminalized setting.

Results

'My sexuality is broken' HIV diagnosis as the end of sexuality

- For many WLWH, in the context of ongoing HIV related stigma, their diagnosis initially symbolized the end of their sexuality. While some women recounted positive disclosure experiences with their partners accepting their diagnosis, many feared disclosure due to fear of legal consequences and fear of transmitting HIV to partners.

"He supports me no matter what. Loves me unconditionally, accepts me for who I am. So that was pretty freaking awesome because it's kind of hard to get into a relationship when I'm carrying this [HIV] on me and then having to tell somebody." Sonia, Cisgender women, 46 years, Indigenous

"I'm going through a lot of pains having HIV and it's not very nice. I can't even be sexually active and people wanted me to be and I tried and I said, 'NO, back off, man, back off' [...] I can't have sex because of HIV I'm scared. [...] My sexuality is broken" Eugene, Cisgender woman, 43 years, Indigenous

Fear of HIV disclosure pushes women to stay in abusive relationships

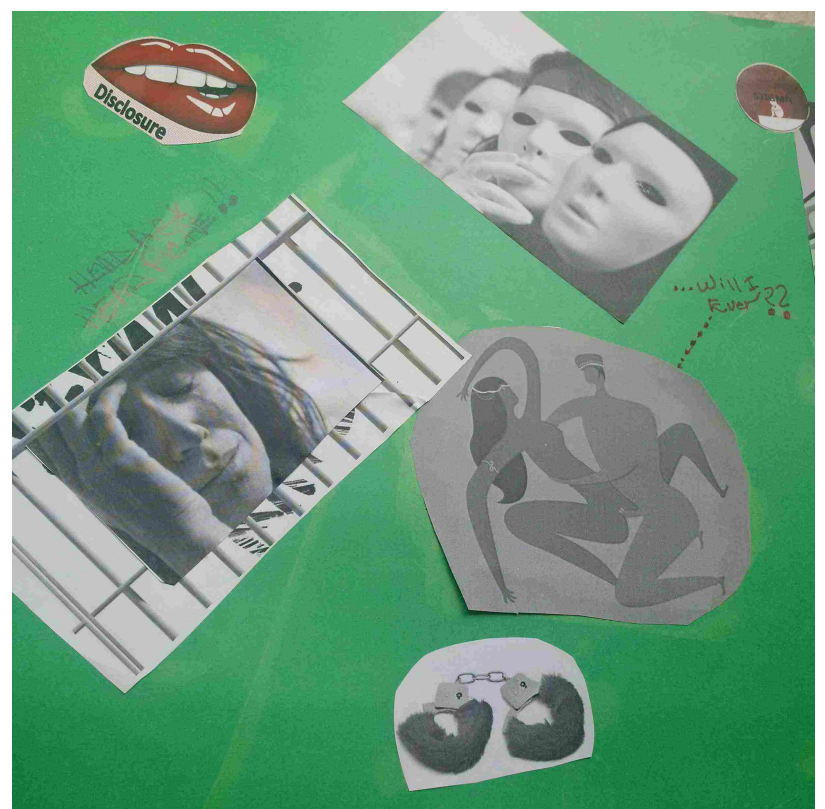
- Women recounted that disclosing their HIV status shifted the power dynamics in their sexual relationships and many feared rejection, violence, and being outed as living with HIV against their will. These fears were exacerbated for women living in poverty, in dependent relationships, and for women with a migration background. To reduce the potential for violence and prosecution, some women asked health care providers to witness HIV disclosure to their partners.

"[I was in an] abusive relationship, controlling relationship. [I went back to him] I think it was just out of loneliness because I didn't have to disclose or nothing. We could just do it. I don't have to think that way when I'm with him. [...] It's the wrongest reasons to stay in a relationship [...] Men take advantage if you're a woman with disabilities. They think we're vulnerable." Yvonne, Cisgender woman, 52 years, White/Asian

'Just don't come back and bite me' Condom refusal as gendered intimate partner violence

- Many participants emphasized that the negotiation of male condom use in the context of gendered power imbalances was difficult and put them at risk of prosecution. In a situation where a male partner refuses to use a condom, WLWH find themselves in a double bind where they either risk violence and rejection if they disclose their serostatus, or they break the law and make themselves vulnerable to prosecution for sexual assault. Accounts of condom refusal by male partners were highly prevalent in many WLWH's narratives. This constitutes a form of gendered intimate partner violence where a partner imposes an unprotected sex act outside of the wishes of WLWH. In this sense, WLWH are not only subjected to the gendered interpersonal violence of male condom refusal but, at the more upstream level, to the structural violence of legislation that is gender blind and does not account for the gendered power imbalance that shapes condom negotiation by insisting on condom use and a suppressed viral load in order to allow for HIV non-disclosure.

"I thought he was using it [the condom], but then, by the time we're done I realize, "Oh no, no we weren't. Because, I gave you one, it's still not"- of course he would open it, but then you can tell that he didn't use it. So we didn't. [...] So...it's just...I try, but, most men the idea of those things, kind of like ends up arguing, "So you don't trust me? Are you saying I have something else?" they kind of make you feel- so you just end up going, "Okay". Even though you know it's not- but I just go like, "Whatever, man. This is not my life. I tried. So when this backfires, just don't come back and bite me." Tabitha, Cisgender woman, 24 years, Southern African



Collage by SHAWNA Participant

Conclusions

- Despite frequently being represented as a law that 'protects' women, our findings indicate that the criminalization of HIV non-disclosure constitutes a form of gendered structural violence that exacerbates risk for gendered interpersonal violence among WLWH.
- In line with recommendations by international policy bodies, such as the WHO, UNAIDS and the Global Commission on HIV and the Law, these findings demonstrate the negative impacts of regulating HIV prevention through the use of criminal law for WLWH.

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