

HIV & the Law - When is HIV Status Disclosure Necessary?



Activity Overview

In this activity students will learn about the Supreme Court of Canada (SCC) decision that HIV carriers with a low viral load, wearing condoms do not have to disclose their HIV status to sex partners. Students will reflect on this ruling and examine the science behind HIV transmission.

Curriculum Connections

This activity is designed for the Biology 30 curriculum but also has connections to Social Studies, Health, and Legal Studies. It has the following learning outcomes:

- To understand what is HIV and under what conditions is it transmitted
- To explain how antiviral medications manage HIV
- To explore social issues related to HIV including stigmatization and criminalization of HIV positive people

Time Required

Approximately 80 minutes

Materials Required

- Student handouts
- Computer access for research

Lesson Format

- Pre-discussion
- Activity
- Group Discussion

Pre-requisite Knowledge

- None

For the Teacher

Instructions

Pre-discussion

Use the pre-discussion to assess student's prior knowledge and to connect the information to everyday life.

1. If you have a sexually transmitted infection should you legally required to inform your partner before you have sex? Provide reasons why or why not.
2. Do you have a different moral obligation to tell your partner?
3. Would you want to know if your partner has a STI? Would this change your decision to have sex with that person?
4. Would you still need to know if your partner's STI was not contagious? For example a condom is used and transmission is not very likely?

Activity

Pass out copies of the "For Student" portion of this lesson. Students will write a response to the following question:

After examining the scientific evidence on how HIV is transmitted, do you support the Supreme Court of Canada ruling on HIV disclosure?

Allow students time to complete the activity and conclude the lesson with a final group discussion.

Group Discussion

Write the research question on the white board and draw an opinion spectrum like the one below:



Ask students to write their initials at the point that best describes their position. Once your students have finished this ask some of your students to explain their position and if their opinions changed from the beginning of the lesson after learning about the science behind HIV transmission.

Assessment

Assessment criteria are found in the student handout materials.

Extension Activity

The lesson could be extended by watching the The Criminalization of HIV in Canada by Bear Paw Media Productions. This video explores the key issues discussed in this lesson plan. More information about this video can be found on the website <http://www.bearpaweducation.ca>.

For the Students

Supreme Court of Canada

The Supreme Court of Canada (SCC) is the ‘highest court’ in the land (and has been since 1949). It has the final say on how a law is to be interpreted. Most cases come before the SCC in a formalized procedure, with many steps. Not all cases make it to the SCC but each year about 600 try and usually about 80 of those cases make it through.

The Supreme Court Act provides the criteria used to determine what will be decided by SCC

- It raises an issue of public importance (in other words, the case must raise an issue that goes beyond the immediate interests of the parties to the case); and
- It should be decided by the Supreme Court of Canada.

Canadian Law and HIV

Consent to sexual activity is a voluntary agreement to engage in sex. “Sex, without consent is sexual assault under s. 265 of the Criminal Code, R.S.C. 1985, c. C-46.”

There was a previous case *R v. Cuerrier*, [1998] 2 S.C.R. 371 that established that not telling a partner about one’s HIV status may be considered fraud that cancels your partner’s consent to sex.

HIV can potentially cause serious bodily harm and, therefore, it could be considered aggravated sexual assault under s. 273 of the Criminal Code with a maximum sentence of life imprisonment.

In 2012 the Supreme court was asked to clarify in what situations involving a partner with HIV is consent cancelled and sexual activity becomes a criminal act? It is interesting to note that lying about your status is considered the same as not disclosing or telling your partner about your HIV status.

Supreme Court’s Rule on HIV Disclosure

The Supreme Court of Canada found that

“a person may be found guilty of aggravated sexual assault under s. 273 of the Criminal Code if he fails to disclose HIV-positive status before intercourse and there is a realistic possibility HIV will be transmitted. If the HIV-positive person has a low viral count as a result of treatment and there is condom protection, the threshold of a realistic possibility of transmissions is not met”

Your Task

You will create a report answering the following question:

After examining the scientific evidence on how HIV is transmitted, do you support the Supreme Court of Canada ruling on HIV disclosure?

You will support your answer with scientific evidence including how HIV is transmitted and the effectiveness of condoms and antiviral medication at preventing transmission.

Getting Started

1. Read the assessment criteria
2. Make a list of questions that are important to understand HIV transmission. Use the answers to these questions to support your argument.
3. Find information from a variety of reputable sources. Keep track of where you got your information and include it in your report.
4. Use what you have learned about HIV transmission to form a position. Support your position with the research you have collected.

Assessment

Criteria	Excellent	Proficient	Adequate	Limited	Insufficient
Make clear and logical arguments to defend a given position on an issue, based on findings	Develops a position and uses evidence in a compelling manner to support position	Develops a position and uses evidence in a credible manner to support position.	Develops a position and uses evidence in a simplistic manner to support position.	Develops a position and uses evidence in an inconclusive manner that does little to support position.	Insufficient evidence of student performance.