Canadian Judge Rules HIV-Negative Man Not at “Significant Risk”

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In a groundbreaking HIV criminalization case, a Canadian judge ruled that an HIV-negative insertive partner is not at “significant risk of serious bodily harm” if he had unprotected anal sex with an HIV-positive receptive male partner, aidsmap reports.

Because the risk of transmission was low, Justice Lauri Ann Fenion ruled, the positive person could not be charged with aggravated sexual assault in what was otherwise a consensual act, even though he failed to disclose his positive status.

As the Canadian HIV/AIDS Legal Network writes in a statement, the ruling “reinforces the basic point that not every risk of transmission will be considered ‘significant,’ and illustrates the importance of ensuring that courts consider carefully the scientific evidence before them in determining when there is a ‘significant risk’ of harm, rather than simply criminalizing non-disclosure in all circumstances.”

Fenion also ruled that the harm of HIV infection has diminished over the years because the virus “can generally be treated and held in check.”

The ruling is important in the history of HIV criminalization cases, wrote the Canadian HIV/AIDS Legal Network, “because as the severity of the possible harm decreases, the higher the risk of harm must be in order to warrant criminal prosecution.”

According to aidsmap’s details of the Vancouver case, the positive man did not reveal his status to his partner. They had sex three times, and in each case, the positive man was the receptive partner.

The prosecution’s expert witness testified that the cumulative risk of transmission for the insertive partner was 12 in 10,000. (The per-act risk for an insertive partner for both anal and vaginal sex is 0.04 percent, or 4 in 10,000.)

In other HIV criminalization cases involving nondisclosure, positive people have been convicted regardless of the risk of infection. The Canadian HIV/AIDS Legal Network said the Vancouver case illustrates the need for clear guidelines for HIV prosecution cases.

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