# Oh No Canada

The Supreme Court requires more HIV disclosure

December 19, 2012 By Trent Straube

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The Supreme Court of Canada took a step backward October 5. It decided that people living with HIV have a legal duty to disclose their status before any sexual activity that poses a “realistic possibility” of transmitting the virus. Failure to do so can result in a conviction of aggravated sexual assault. The only time disclosure is not required is during vaginal intercourse in which a condom is used and the positive person has a low viral load. All three requirements must be met.

The court’s earlier ruling, in 1998, required disclosure only when a “significant risk” of transmission was posed. But what, exactly, defined “significant risk”? Most lower courts ruled that if you used a condom, you didn’t have to disclose. By hearing two appeals cases, the Supreme Court was expected to clarify this.

No such luck. As Cecile Kazatchkine, a policy analyst with the Canadian HIV/AIDS Legal Network, points out, no one knows how the new decision will be applied to anal sex or oral sex. “There is uncertainty,” she says, “and it will be tested on the backs of people living with HIV.” That means more prosecutions, she notes, because “almost any risk is a ‘realistic possibility’” of transmission.

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