

The Positive Side

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“THEY DON’T WANT US TO HAVE SEX” Women consider life under threat of criminal law

Erin Scatter



AS ONE WOMAN WITH HIV PUT IT, “I didn’t know if I was screwed, not screwed, or still screwed.”

October 5, 2012, was a day of media confusion. The Supreme Court had issued its decision on the circumstances under which people with HIV must legally disclose their HIV-positive status to sexual partners. Based on news reports, it wasn’t clear if the law was the same, had gotten better, or had turned for the worse.

Several media outlets got it wrong, indicating the law had been loosened. Even Canada’s paper of record, the *Globe and Mail*, said, “The new legal standard means that a partner’s failure to disclose is no longer always a crime.”

In fact, before the latest court ruling, it had not always been a crime not to disclose. And the new legal standard created by the Supreme Court has actually broadened the reach of the criminal law when it comes to HIV non-disclosure.

What this means for women with HIV is complicated.

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FOURTEEN YEARS LATER, it was supposed to get better.

But the recent Supreme Court decision on HIV non-disclosure shows that stigma has a stronghold in Canada.

The original 1998 court decision on HIV non-disclosure, known as *Cuerrier*, indicated that condom use could make sex safe enough that people with HIV did not have to share their status with a partner before engaging in sexual intercourse. Conversely, if they didn't use condoms, people with HIV were legally obligated to disclose their status to partners before having sex.

It sounds straightforward enough, but turns out it wasn't. In later cases, judges interpreted the *Cuerrier* standard inconsistently, leading to uncertainty about the law. (Sometimes condom use was enough to make disclosure unnecessary, and sometimes it wasn't; sometimes oral sex was considered low-risk enough that disclosure was unnecessary, and sometimes it wasn't.)

The Supreme Court had an opportunity this past October to clarify and update the law through two court cases considered together. The *Mabior* case involved a man who had sex with several women without telling them he had HIV. None of the women involved in the case became HIV-positive. The *D.C.* case involved a woman who had sex with a man before sharing her HIV-positive status; after she disclosed, they went on to have a long-term relationship. He became abusive and she ended the relationship. He did not become HIV-positive.

HIV advocates had hoped that the judges would take into account advances in treatment that reduce viral loads and thus diminish the likelihood of transmission, making disclosure unnecessary in cases where the person with HIV has a low viral load.

Instead, the court decisions have produced more confusion and made life harder for people with HIV.

With the *Mabior* and *D.C.* cases, the Supreme Court judges implemented stricter rules: now, condom use is not enough to negate the legal duty to disclose. The new law says that people with HIV do not have to disclose their HIV-positive status before sex *only* if they use a condom *and* have a low viral load. In situations where people with HIV do not use a condom, or do not have a low viral load, they are legally obligated to share their HIV-positive status with partners before having sex.

In cases of non-disclosure, “judges used to instruct jury members that if they found that a condom was used, they had to acquit, but that is no longer the case,” says Micheal Vonn of the BC Civil Liberties Association.

In essence, the science has moved forward and the law has retreated backward.

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THE SUPREME COURT DECISIONS provide an illuminating window into Canada's top judicial minds.

The *Mabior* decision lays out the judicial reasoning for the new law.

In the decision, the judges make the breathtaking assertion that “to hold that a complainant consents to the risk of an undisclosed serious disease because he or she knew the act was sexual affronts contemporary sensibilities and contemporary constitutional values.”

Basically, the judges take offence to the suggestion that anyone has sex knowing there might be risks. This flies in the face of public health messaging, which emphasizes that about one quarter of Canadians with HIV don't know they have it and encourages everyone to take responsibility for their sexual health and make informed decisions about safer sex practices. Not to mention that HIV is not the only sexually transmitted infection out there. Whether they're engaged in a long-time relationship or a fling, whether they've inquired about their partners' health or just made assumptions about it, everyone puts themselves at some degree of risk when they willingly have sex.

The judges' understanding of risk is twofold. First, they say, there is the risk of transmission. Second, there is the “seriousness of the disease.” They argue that because HIV is a serious, harmful disease, the risk of transmission doesn't have to be high for there to be a “significant risk.” The seriousness of the disease alone is enough for there to be a significant risk.

And so people can be prosecuted for not disclosing their status even when their partners do not become infected. Canada's Supreme Court acknowledges that in other common law jurisdictions (i.e., England, Australia, New Zealand), people with HIV are not prosecuted for non-disclosure unless they have actually transmitted the virus to their partners.

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The judges deal with this interjurisdictional disparity not by aligning Canadian law more closely with that of other countries, but by suggesting that “other courts have not gone far enough.”

The judges also rule that “condom use is not fail-safe, due to the possibility of condom failure and human error,” again contradicting the public health emphasis on the efficacy of condoms when used correctly. This is how they justify the new requirement that people with HIV must disclose their status unless they use a condom *and* have a low viral load.

In short, the Supreme Court judges have made evaluations that go against the realities of sexual health, making Canada one of the most severe prosecutors of HIV non-disclosure in the world.

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IN AN ASTONISHING ACT OF DISSONANCE, these arbiters of justice also render a judgment on women.

First, in disagreeing with a historical set of cases beginning in the late 1800s that saw consent to have sex as consent to the risks that come with sex, they note, “To read these cases is to enter a world foreign to modern sensitivities — the world of Victorian morality.”

After expressing their distaste for such morality, the judges turn around to make a suggestion about women that would have suited the sexually and morally uptight Victorian age fairly well. “Should the trusting wife who does not ask a direct question as to HIV status of her partner be placed in a worse position than the casual date who does?” they ponder. This provocative query places the “trusting wife” against the “casual date,” elevating the married woman as inherently worthy of protection. The woman having sex outside of marriage shall be protected too, but she's not quite as deserving. (She's what the Victorians considered a “fallen woman.”)

Having constructed such a hierarchy among women, it ought to come as no surprise that the judges care little about the effects of gender-based violence and power inequities in relationships.

The *D.C.* case involves a woman with HIV, who began dating a man in 2000. They had sex at least once before *D.C.* disclosed her HIV status. Later they moved in together, an arrangement that lasted four years. *D.C.*'s

partner became violent, and she ended the relationship. When she went to the house to get her stuff, the man viciously attacked her and her son. She reported him to police, and he was charged and found guilty of assault.

In a bizarre twist, the man reported *D.C.* to police for HIV non-disclosure, and she was served notice that she was being charged with sexual assault and aggravated assault. She had to pursue her case all the way to the Supreme Court, whereas he received a discharge—meaning that although he had been found guilty, he was ultimately let off the hook for assault. In this instance, the logic of the justice system is exposed as anything but just or logical: an abused woman is turned into the aggressor and prosecuted, and an abusive man is reconfigured as the victim and absolved.

In their decision on the *D.C.* case, the Supreme Court judges do not concern themselves with such apparent reversals of logic. Horrifying contextual details are dispensed with in passing: the judges mention violence once, in relation to the assault of *D.C.* when she went home, and they mention vengeance once, in a quote from the previous trial judge, who had observed that the man seemed out for revenge. Rather than taking into account the nature of the relationship between *D.C.* and her former partner, the judges spend the entire decision dissecting the trial judge's use of evidence regarding condom use. They ultimately rule that the trial judge had inappropriately allowed suspect evidence and that it cannot be proven a condom was not used.

In sum, *D.C.* is acquitted not because she ought to be, but on a technicality.

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“EVEN WITH ABUSE IN THE EQUATION, the partner without HIV is considered the victim,” observes Vonn.

This is bad news for women with HIV, married or not. Even relationships that start off brilliantly can sour. HIV opens up the possibility of vengeance via the criminal law. A current or former partner can easily have a woman with HIV charged with aggravated sexual assault, just by saying disclosure didn't occur before sex and no condom was used. On the day of the Supreme Court decisions, AIDS Action Now wrote that the judges had “given abusive men a more powerful tool to coerce, control and to trap in abusive relationships women living with HIV.”

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What other disease carries such social and criminal consequences? This is a central question in the film *Positive Women: Exposing Injustice*, which explores the impacts of HIV non-disclosure law for four women living with HIV in Canada, including D.C. On a chilly day in November, almost two months after the release of the Supreme Court decision, a group of women gathers at Positive Women's Network to watch the film and talk about what the new law means for them. They are joined by Vonn, who answers questions about the court cases.

"I don't have the good news I was hoping to," Vonn explains regretfully, as she contrasts the original *Cuerrier* decision with the stricter law imposed through *Mabior* and *D.C.*

The women discuss how the complexity of disclosure is amplified by the added burden of safeguarding themselves from prosecution: they have to be able to prove they told sexual partners about their HIV. They ask Vonn how they can protect themselves, if bringing a partner on a clinic visit or having a partner speak with a doctor will be enough. Yes, says Vonn, adding that the more people who know about the disclosure and can attest to it, the better.

Given this added burden, which affects both the HIV-positive person and the HIV-negative partner, the women wonder how they will nurture healthy sexual relationships, or even have sex at all. Some express a sense of despair. There is a pervasive feeling that Canada's justice system isn't interested in their well-being. "We'll never be able to have sex," says one woman in response to hearing the outcome of the court decisions. "That's what they want," responds another, in a tone that belies the profundity of the statement. "They don't want us to have sex."

The details of the *D.C.* case in particular have a chilling effect. Vonn describes the Supreme Court's preoccupation with protecting wives whose husbands have HIV and the dismissal of abuse and inequities in relationships as factors in non-disclosure cases. "They had *D.C.*'s story before them, and they set it aside," says Vonn.

The discrepancy between the Supreme Court judges' ideas about protecting women and the reality exemplified by *D.C.*'s story is apparent to the women in the room. One woman wonders aloud what many must be thinking.

"Do the judges think they're doing good? Who are they protecting?" she asks.

THE SUPREME COURT DECISIONS what you need to know

Based on the recent Supreme Court decisions, you are legally required to disclose your HIV-positive status before having vaginal sex, unless you have a low viral load and use a condom.

A low viral load was indicated to be under 1,500 copies of the virus per millilitre of blood.

The court decisions did not address anal and oral sex. Because anal sex presents a higher risk of transmission than vaginal sex, the legal duty to disclose is at least as strict as for vaginal sex. For oral sex, the legal duty to disclose is unclear.

You can be charged for HIV non-disclosure even if your partner did not get HIV. Proving that you disclosed before having sex, or that you used a condom and had a low viral load at the time, can be difficult.

Here are some ways you can protect yourself:

- **Tell your partners before having sex that you have HIV.**
- **Try to get proof that you disclosed your HIV-positive status. (For example, you could disclose in front of a doctor, who could then document in a file that the disclosure took place.)**
- **Use a condom when you have sex and see a doctor regularly to establish a record of your viral load through test results showing a low viral load.**

Keep in mind that confidential records, including medical records, can be obtained by court order if you are prosecuted for HIV non-disclosure.

These basic guidelines do not constitute legal advice. Please consult a legal professional for guidance specific to your situation.

For more information about the implications of the Supreme Court decisions, contact the BC Civil Liberties Association (bccla.org) or Canadian HIV/AIDS Legal Network (aidslaw.ca).

Life Stories, Life Change CHIWOS researchers want to hear from positive women

Janet Madsen



Have you heard of the Canadian HIV Women's Sexual and Reproductive Health Cohort Study? Because that's quite a mouthful, it's usually referred to as CHIWOS (whew). CHIWOS is a study that wants to answer the question of whether women-centred care leads to better outcomes for women living with HIV. Investigators hope to meet with 1,250 women in Ontario, Quebec, and British Columbia. These provinces were chosen as they have the highest concentration of women living with HIV. It's hoped that future funding will expand the information gathering to other provinces, and in the meantime advisory input comes from all provinces and territories.

CHIWOS is a community-based research (CBR) project. Angela Kaida is the Simon Fraser University-based Principal Investigator for the CHIWOS BC team. She says community-based research starts with a priority identified by and for the community—in this case, the question is about women-centred services to support women with HIV. Research takes place in the community, with people from the community involved at all stages of the process. Those being "researched" have a say in what is asked and how the information can be used for positive change once it's completed—no one wants the research findings to just sit on a shelf.

CHIWOS is a longitudinal study that will be completed over five years. Women with HIV in the three study areas (including 350 in BC) will complete a survey with the help of other positive women who have been trained as Peer Research Associates (PRAs). But before information gathering can begin, foundation work is needed.

Year 1: Who's onboard?

The first year of CHIWOS has been dedicated to building relationships, starting with the research team. CHIWOS embraces the GIPA model of work—greater involvement of people living with HIV. This means that women with HIV take lead roles from start to finish in the decision and discovery process. The core research team includes positive women, doctors, and academic researchers from across Canada. A larger circle of people have participated in focus groups and the creation of the survey. This includes folks from health care, transgender, Aboriginal, HIV, and social support communities.

Building relationships also means connecting with people in Aboriginal, health care, and HIV support communities. Reaching out about the project helps to begin spreading the word about the study. Direct outreach, conference and meeting presentations, and

social media have helped make these connections as the study takes shape.

In year one, the group has also worked to make sure there is a shared understanding of women-centred care. Researchers did a literature review (looked at research articles), a scan of women's services, and focus groups with positive women to figure out what it means to individuals.

Four peer-facilitated focus groups were held in BC over the last year in Vancouver, Victoria, and Prince George. Women with HIV (including PWN members) gave input from their perspectives. According to CHIWOS BC Provincial Coordinator Allison Carter, themes did emerge, but discussion in the groups certainly underlined the fact that women aren't all the same.

For women with kids, women-centred care might include services where they can bring kids or have their kids' care delivered too. For another woman, it might mean adult only. Spiritual and cultural elements might be essential to some women, where others may see a range of services to meet various health issues under one roof as most important. In the end, CHIWOS researchers have developed a definition that recognizes the range of meaning for different women.

Year 2: Stories for change

As CHIWOS moves into the second year, preparation is underway to start the information-gathering part of the study. Positive women in each health region of BC will be trained as PRAs. They will learn about moving between the roles of community member and community leader, supporting women as they fill out the survey, dealing with grief and loss, the basics of research, and much more. They will also learn about the resources in each community, and be prepared to make referrals to HIV support organizations. PWN member Valerie Nicholson is part of the core research team and is helping guide the training for PRAs.

The survey uses an online tool, which may give some women concern about confidentiality. The researchers have great respect for the fact that the information they'll gather is highly personal and confidential—these are pieces from women's lives. They are committed to the highest data confidentiality standards and will ensure that survey responses are captured separately from any information that can identify a participant.

The survey was created with the input of 24 national working groups, which included a mix of researchers, clinicians, service providers, policy makers, and women living with HIV. Group members brought lived and professional experience, expertise, and passion to the process. It was then reviewed by the Community Advisory Boards in each study province. In addition, women of Aboriginal descent and transwomen were asked to review it to ensure the questions reflect their lives. The first draft of 250 pages has been whittled down to a length that can be completed in about two hours. This is where the input of positive women around BC comes in.

Your life experience matters and can matter to other women with HIV too. How? The survey has been designed to gather information about health care, support services, and community experiences. Everyone's responses will give researchers a better idea of women's lived experiences. This information will provide researchers an idea about what changes in policy and practice might be needed in delivering health care to women with HIV. It will affect not only you, but women who are diagnosed in the future.

The first interviews will start in May 2013, with follow-up interviews about 18 months later. Investigators have realized that HIV has related health issues, and questions about sexual, reproductive, and mental health are included in the survey.

If you wish to take part, stay tuned. We will share information about getting involved once we know more about dates and survey sites where you can meet with a PRA. If you have any questions concerning the study, feel free to contact Dr. Angela Kaida (kangela@sfu.ca) or Allison Carter (allison_carter@sfu.ca), or connect with the team online. We are glad to be working with CHIWOS to spread the word!

Community based research

http://www.communitybasedresearch.ca/Page/View/CBR_definition.html

CHIWOS on Twitter

<https://twitter.com/CHIWOSresearch/>

CHIWOS on Facebook

www.facebook.com/CHIWOS

CHIWOS website

www.chiwos.ca

Changes in Earning Exemptions for Disabilities Benefits

Janet Madsen

In November 2012, the Ministry of Social Development (MSD) announced the first phase of annualized earnings exemptions for people who receive the Persons with Disabilities (PWD) benefit.

For those who earn money on top of their disabilities benefits, there has been a monthly limit on how much can be earned before benefits are cut back. The changes to the system mean that instead of a monthly amount, there will be an annual amount that can be earned before benefits are affected.

This is good news for people who have jobs that earn them more than the monthly amount, but don't earn the same level of money all year round.

For example, imagine you have a seasonal job for two months and then don't work again for six months. Under the old system, if you made more than your monthly allowance in your two months of work, your benefits would have been cut back.

Under the annual plan, the amount you make can be spread over a year before any earnings will be affected. The idea of an annualized earnings

exemption was proposed by a number of disability groups, including the BC Coalition of People with Disabilities. It helps people with disabilities where health is unpredictable and can limit the option of working all year round.

The annual earnings exemptions will be phased in over the next year. In the first phase, from January 1, 2013, to December 31, 2013, only about 5,000 people will be invited to participate. If you're one of them, you'll receive a letter inviting you to participate in the new program. Participation is optional.

According to MSD, participants in the first phase must have:

- had the PWD designation for at least the past 12 months
- received the PWD benefit in at least the past two consecutive months
- in at least one of the past 12 months, had earnings over \$500 for families with one adult receiving the PWD benefit and \$750 for families where both adults are receiving the PWD benefit

These are the annualized earnings exemptions maximums, announced by MSD for the period of January 1 to December 31:

- \$9,600 for one-adult families, where the adult is receiving the PWD benefit
- \$12,000 for two-adult families, where only one adult is receiving the PWD benefit
- \$19,200 for two-adult families, where both adults are receiving PWD

If you don't receive a letter, you will be part of the second phase starting in January 2014. At that time, the annual earnings exemption will be available to everyone receiving the PWD benefit.

Frequently Asked Questions

<http://www.hsd.gov.bc.ca/pwd/aee/faq.html>

Contact your local ministry office directly if you have any questions.

Thanks to the BC Coalition of People with Disabilities for source info.



Getting (Back) Together Peer Support Training Reunion

Melissa Medjuck

Over three years, 30 members of Positive Women's Network (PWN) have participated in three Peer Support Training Sessions. The training consists of four days of intense interactive workshops and a variety of activities, including role playing, reading and writing, discussion, self-reflection, and more. A Peer Support Training Reunion was held at PWN on November 14, 2012.

Peer Support Training focuses on providing opportunities for PWN members to develop basic support skills on a variety of topics: HIV basics; treatment information; confidentiality; disclosure; law, human rights, and criminalization; being an ally; setting boundaries; oppression and identity; triggers; self-care; community resources.

During the three trainings, PWN worked with community partners to co-facilitate certain topics. Dalya Israel, an educator from Women Against Violence Against Women, covered topics related to oppressions, privileges, and violence. Kath Webster, STOP HIV Leadership Committee Community Representative and Community Facilitator, talked about HIV treatment information. Shelly Tognazzini and Gabriel (Gabe) Pausch, Peer Navigators with Positive Living BC, shared information on providing peer support and the Peer Navigator Program. As peers working in the HIV field, Kath, Shelly, and Gabe offer invaluable lived experience and knowledge about peer support.

After training, PWN members provide peer support to women in their communities. Most women provide support informally, and a few women are providing peer support through work and volunteer positions. Support can range from encouraging, sharing a moment, listening, and being there during hard times, to residence visits, hospital visits, accompaniment, and information and education. Women connect in person, via phone, text, and email. The peers they support are mostly women, but a few are men; are of all ages; and include friends, family, acquaintances, immigrants, community members, etc. PWN support staff follow up with training graduates regularly to offer debriefing and support.

"The reunion reminded me about the importance of listening and working together to support and educate each other," said one participant.

It was great to be able to bring the training participants together for the reunion. It included a focus group (led by Kath), which explored how women are using their peer support skills, and a discussion on HIV disclosure, led by Gabe. There was also time for networking and socializing. Women from the Lower Mainland and out of town attended. The opportunity for these out-of-town members to come to Vancouver for an event is extremely meaningful, as they experience isolation and stigma in rural communities. The reunion was overseen by support staff Sangam and Melissa.

The reunion gave women an opportunity to reconnect with their fellow "classmates," meet women who did the training in different sessions than theirs, and share stories about what it's like to provide peer support for women living with HIV. It strengthened the informal support networks among the diverse dynamic group of women. It also provided space for women to give PWN feedback about the Peer Support Training and ideas for the future of the Peer Support Program.

Women reported that post-training, they were more confident, better informed about HIV issues, felt more connected to PWN and the HIV community, and remained connected with their peers. They said they have a deeper understanding of each other after the training. The majority of graduates started to volunteer in their community after taking the training and reported using the skills they learned in the training in their volunteer positions. Women said they like being an approachable peer for others to come and talk to, and recognize they are a more informal option for support (rather than a professional clinical support worker).

"I have used my skills to be present and non-judgmental, and not expect anything from the people I am supporting," said one participant.

A large part of the discussion focused on how the training helped teach women about boundaries and self-care, which they applied to their own lives and personal relationships as well as to their relationships with peers. Women reported being more aware and able to recognize the importance of self-care and engage in self-care more regularly. This awareness has translated into better physical and mental health and well-being.

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Events and Announcements

Pill bottles for art

PWN member Peggy Frank has had a proposal selected for an art competition and needs pill bottles in order to make a large sculpture. She would like women to donate empty bill bottles, including HIV medication pill bottles or vitamins/supplements pill bottles. Plastic bottles preferred. You can drop off the bottles at PWN. Peggy will ensure that all names are off the pill bottles before using them, or you can take your name off the bottle or scratch it out yourself. You can also put a note in the pill bottle as a "message to the universe" if you'd like; the note will not be read.

Free workshops

Did you know that super support worker Sangam also leads workshops on HIV transmission and prevention? Contact her for details: sangam@pwn.bc.ca

Post-holiday lunch

The post-holiday lunch will be held **TUESDAY, JANUARY 22**. Watch for the word!

SpringBoard 2013

Our theme for this year's conference is Positive Parenting. Mark your calendar: **THURSDAY, MAY 2**, 10:30 a.m. to 2:30 p.m.

PAN leadership reunion

FEBRUARY 21 is the reunion for all women graduates of the PAN Leadership Training.

Wellness Retreat

APRIL 5 TO 7 at Springbrooke Centre. Applications available in February.

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The discussion on disclosure served as a reminder of the ever-changing legal landscape regarding HIV disclosure and criminalization and allowed women to share tips about supporting peers. The discussion also allowed women to provide support to each other regarding the challenges of HIV disclosure, particularly disclosing to children and sexual partners.

Overall, the Peer Support Training Reunion highlighted the valuable support skills that graduates are using and the meaningful contributions this group of women is making in their communities. Each reunion attendee is making change in her community in some capacity. The rich discussion members engaged in helped them to stay informed on current issues in the HIV community and share experiences, ideas, and support. Women shared challenges they face in providing peer support and celebrated each other's strengths and achievements since graduating from the training. It was a day of learning, sharing, and reconnecting that will not soon be forgotten.

KEY LESSONS LEARNED

- Not to turn the peer support around into something about yourself.
- Do not try to look for solutions; just be quiet and listen.
- There is a time to give and a time to receive.
- Set your own boundaries.
- Know how and when to say no.
- Accept people for who they are.
- It's simple but not easy.
- Peer support is a significant part of people's lives.
- We all need support.
- You are not alone.

Many thanks to the women who shared their experiences!

And thanks to ViiV Healthcare - Shire Canada HIV/AIDS Community Innovation Program (CIP) for funding the reunion.

Positive Women's Network

address 614-1033 Davie Street
Vancouver, BC V6E 1M7

phone 604.692.3000
toll-free in BC 1.866.692.3001

email pwn@pwn.bc.ca

hours office Monday to Friday, 9:00 to 4:00
drop-in Monday to Thursday, 11:30 to 3:30

online www.pwn.bc.ca

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**Challenging HIV.
Changing women's lives.**

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