

“CALLOUS, COLD AND DELIBERATELY DUPLICITOUS:”

Racialization, Immigration and the
Representation of HIV Criminalization in
Canadian Mainstream Newspapers

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Title

The quotation "callous, cold and deliberately duplicitous" comes from a newspaper article about the Johnson Aziga case. See Blatchford (2008b). For the full quotation see p. 46.

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SUMMARY



This report explores mainstream Canadian newspaper coverage of HIV non-disclosure criminal cases in Canada. It pays particular attention to how defendants' race and immigration status figure into the newspaper representations of such cases. We empirically enquire into claims made by African, Caribbean and Black (ACB) activists, people living with HIV, and AIDS service organizations (ASOs) that ACB people living with HIV are negatively portrayed and overrepresented in Canadian newspaper stories about criminal HIV non-disclosure cases (ACCHO, 2010, 2013). Our analysis is based on what, to our knowledge, is the largest data set of news coverage of the issue: a corpus of 1680 English-language Canadian newspaper articles about HIV non-disclosure criminal cases in Canada written between 1 January 1989 and 31 December 2015. This is a scholarly report based on original theoretico-empirical research. It provides the first comprehensive and systematic quantitative and qualitative analysis of Canadian newspaper coverage of HIV criminalization.

In recent years, social scientists, public health researchers and legal scholars have explored the public health implications of HIV criminalization and examined how criminalization affects the experiences, perspectives and activities of people living with HIV. This report extends that body of research by exploring how mainstream newspapers represent HIV non-disclosure criminal cases. **We give special attention to the role that racism and anti-immigrant discourses play in the popular representation of the criminal law regulation of HIV in Canada. Our quantitative and qualitative findings show that**

Canadian mainstream newspapers are a source of profoundly stigmatizing representations of ACB men living with HIV. This is of great concern because the mainstream media, including newspapers, are an important source of public information about HIV. Most Canadians do not have close, first-hand knowledge of HIV, people living with HIV or crime. They thus rely heavily on mainstream media representations for their

understandings of the presumed connections between HIV, crime, race and immigration. **This study offers a rigorous analysis of the deep problems associated with those representations.**

Goals

The key goals of this report are to: 1) provide a stable empirical foundation for settling claims about the overrepresentation of racialized defendants in mainstream newspaper coverage of HIV non-disclosure criminal cases in Canada; 2) provide a rigorous analysis of the key strategies of representation used to frame coverage of cases that involve defendants who are racialized immigrant people

living with HIV; and 3) contribute to public discussion about the role that racialization and immigration play in the ideological processes that drive HIV criminalization in Canada.

Research Questions

Our quantitative and qualitative research on newspaper coverage of criminal HIV non-disclosure cases in Canada **was guided by questions such as:**

- How is HIV criminalization in Canada patterned on the basis of race and immigration status?
- To what extent do mainstream newspapers

“... almost half (49% [820/1680]) of all coverage since 1989 is concentrated on just four racialized people, all of whom are ACB immigrant men”

overrepresent ACB men and ACB immigrant men in coverage about HIV non-disclosure criminal cases?

- How is newspaper coverage of HIV non-disclosure cases discursively structured?
- What representational strategies are used to frame racialized and immigrant defendants in HIV non-disclosure cases?

Research Approach

To develop our corpus of newspaper coverage of HIV non-disclosure criminal cases we conducted an English-language search of the Factiva database using the names of all known defendants involved in relevant criminal trials as well as other search terms. We identified a corpus of 1680 English-language Canadian newspaper articles about HIV non-disclosure criminal cases in Canada that cover the period 1989 to 2015. To address questions about the potential overrepresentation of ACB people living with HIV in newspaper coverage we updated existing data on HIV-related criminal cases in Canada and conducted a comparative quantitative analysis of our corpus of news articles.

To explore the content of news coverage we conducted a qualitative analysis of the key writing strategies used to represent HIV non-disclosure cases involving defendants who are Black immigrant people living with HIV. Throughout this report we rely on theories, concepts and methodologies from critical social science approaches to the analysis of discourse to explore community claims and concerns about stigmatizing mainstream media coverage of ACB

men living with HIV and HIV criminalization. Our approach draws heavily on the work of British cultural studies scholar Stuart Hall (1997).

Quantitative Findings

Our quantitative findings overwhelmingly support community concerns about the overrepresentation of racialized people living with HIV and racialized HIV-positive newcomers to Canada in mainstream newspaper coverage of HIV-related criminal cases.

- **68% (1141/1680) of our corpus of newspaper articles focuses on racialized defendants.**
- African, Caribbean and Black men living with HIV are highly represented among racialized defendants. While Black men account for 20% (36/181) of people who have faced criminal charges related to HIV non-disclosure in Canada, they are the focus of 62% (1049/1680) of newspaper articles dealing with such cases.
- **Immigrant and refugee defendants receive remarkably high amounts of coverage.** Only 18% (32/181) of defendants

are known to be immigrants or refugees, yet stories about immigrants and refugees account for 62% (1046/1680) of our corpus.

- There are more than **2.5 times the number of newspaper articles** featuring Black (1049) than White (412) defendants.
- Black men, and specifically Black immigrant men, are exceptionally overrepresented in our corpus. Black immigrant men are featured in newspaper articles **four times more often than would be warranted** on the basis of the proportion of all defendants they represent.

“Black immigrant men are featured in newspaper articles four times more often than would be warranted on the basis of the proportion of all defendants they represent.”

- **The overrepresentation of Black male defendants holds true over time.** In six of the years covered in our analysis (2005-2009 and 2011), more than half of the articles published on HIV non-disclosure criminal cases focused on ACB male defendants.
- **Newspaper coverage of HIV non-disclosure is highly concentrated on a small number of cases.** 75% (1258/1680) of all newspaper coverage focuses on just 8% (15/181) of defendants. It is especially noteworthy that **almost half (49% [820/1680]) of all coverage since 1989 is concentrated on just four racialized people, all of whom are ACB immigrant men:** Charles Ssenyonga, Trevis Smith, Johnson Aziga and Clato Mabior. Our qualitative analysis concentrates on newspaper articles that focus on these four defendants.

Skewed newspaper reporting represents HIV non-disclosure, in popular discourse, as a Black immigrant crime. It takes what in fact is a minority of cases and treats those cases archetypically, giving rise to a type of popular racial profiling of HIV non-disclosure. The numerical patterns of coverage and the consistent and repeated attention given to four cases in mainstream newspapers create the conditions for HIV non-disclosure to be covered as a crime of Black, heterosexual immigrant men

Qualitative Findings

Our qualitative findings unequivocally support community concerns about the negative and stereotypical ways ACB men living with HIV are represented in mainstream Canadian newspaper articles about HIV criminalization. Our qualitative analysis explores the representation of race and immigration status, as well as gender and sexual orientation in newspaper stories about HIV non-disclosure criminal cases. We emphasize how heterosexual ACB men living with HIV are represented as dangerous, “foreign others.” Our analysis

focuses on two key strategies of representation: **telling stories in criminal justice time and linking representations of racialized difference and immigration status with constructions of moral blameworthiness.**

The first strategy, **telling stories in criminal justice time**, refers to how news articles draw on concepts, descriptors and other forms of language associated with the criminal justice system. Generally, newspaper articles do not report on HIV non-disclosure as a complex problem, but as a type of “crime story.” Quotes from stories about Charles Ssenyonga illustrate this strategy:

- *An Ontario court has ordered a man with AIDS to abstain from having sex, the second celibacy order he has received. Charles Ssenyonga could be charged with contempt of court if he engages in any sexual activity, under an order issued yesterday by Mr. Justice Robert Montgomery (Armstrong, 1991a).*
- *A justice of the peace was to rule today whether a London man banned from having sex because he is infected with the AIDS-causing virus will be released on bail. A day-long hearing for Charles Ssenyonga, 34, was held yesterday under a publication ban on evidence and legal arguments. The former art store owner is charged with three counts each of aggravated sexual assault, criminal negligence causing bodily harm, administering a noxious thing and being a common nuisance (“AIDS-sex Man Free on Bail”, 1991).*

Writing stories in criminal justice time **objectifies the people living with HIV who are featured in them.** It situates people living with HIV within a standardized sequence of events through which criminal cases proceed and uses the language of the criminal justice system to write and talk about them. People living with HIV facing criminal charges are written about or referred to by others in ways that link them with a particular criminal offence and criminal proceeding, and are rarely quoted speaking on their own terms. We come to

know next to nothing about them other than their name, age, residence, occupation, the charges they face and the recent developments in their case that are the focus of media coverage. **This way of writing “others” people living with HIV who face HIV-related charges by treating them as nothing more than “criminal subjects.”** It also establishes a discursive ground upon which more specific racialized forms of othering and representation are built.

The second strategy involves writing that represents people living with HIV as morally blameworthy and links those **representations with constructions of racialized difference and immigration status.** Some techniques that represent people living with HIV as morally blameworthy are used throughout newspaper coverage, regardless of the race of defendants. For example, stories routinely represent all people living with HIV facing criminal charges related to HIV non-disclosure as **deceitful sexual predators.**

However, what is distinct about the coverage of ACB male defendants is how these strategies are linked with racializing forms of representation in ways that amplify connections between HIV, criminality, race and “foreignness.” Racial otherness is produced through newspaper articles that identify male defendants as Black and as “foreigners.” This happens by **including photographs of defendants, by referring to so-called “rare” strains of HIV that originate in African countries and by identifying defendants by country of origin.** For example,

- Newspaper articles about American-born

football player Trevis Smith refer to him as the “import from Montgomery Ala” (Maki, 2005) and the “Alabama native” (Cook, 2005a). Smith is represented as an ungrateful “guest” to Canada whose non-disclosure sullies the public image of the community-owned Saskatchewan Roughriders and disrupts the fantasy of the

Roughriders as local heroes and guardians of wholesome Prairie pride. Smith is represented as a hypersexual and dangerous figure who poses a risk to “cheerleaders,” “young girls who hang around the CFL’s version of the stage door,” “groupies,” and “the regular football fan” (Cole, 2005a).

- Much of the newspaper coverage of Clato Mabior focuses on the government’s efforts to keep him in custody until he can be permanently removed from Canada. Once he is ordered deported, reporting describes him as the “HIV sex attacker” (“Kicked Out of Canada/ HIV Sex Attacker Sent Back to South Sudan, 2012”), “dirtbag” (Turner, 2012), “HIV-positive ‘predator’” (McIntyre, 2008b), “HIV deceiver” (McIntyre, 2010) and “HIV assailant” who will be “kicked out” of Canada (“Kicked Out

of Canada/ HIV Sex Attacker Sent Back to South Sudan,” 2012). Mabior thus becomes the African outsider who needs to be expelled; a man who deserves to be sent “back to his native Africa” (McIntyre, 2008a) because he threatens Canada’s morality, health and security.

The overall result of these representational strategies is a popular image of Black immigrant men living with HIV as hypersexual lotharios. Canadian newspaper coverage of HIV non-disclosure criminal cases **stigmatizes Black**

“People living with HIV facing criminal charges are written about or referred to by others in ways that link them with a particular criminal offence and criminal proceeding, and are rarely quoted speaking on their own terms.”

heterosexual men living with HIV as dangerous, foreign sexual and public health threats to the safety of individual (White) women and, more broadly, the imagined Canadian nation.

Strengthening Alternative Perspectives on Race, Immigration and HIV Criminalization

This report makes a significant contribution to understandings of how mainstream media represent criminal HIV non-disclosure cases. It provides the first comprehensive, systematic analysis of Canadian newspaper coverage of HIV criminalization and draws on a much larger corpus of newspaper articles than is typical of the existing literature. Therefore, it provides a uniquely robust analysis of questions about the overrepresentation of Black men living with HIV in newspaper coverage. This study adds to knowledge about how mainstream media overrepresent Black men living with HIV and draws particular attention to ways that newspapers reproduce racist stereotypes about ACB people, treat ACB people as “outsiders” and reinforce false assumptions about Black people and criminality. Such stigmatizing representations of ACB people living with HIV

create a discursive context that can generate “fear and hostility toward ACB people” (ACCHO, 2010; ACCHO, 2013: 14).

Changing the nature of media coverage is no easy feat. Our report suggests possibilities for deepening and extending alternative ways of writing about and representing HIV criminalization. It may be possible to disrupt newspaper representations with the grounded, experiential accounts of how race, immigration status and other forms of social difference are implicated in HIV criminalization. **The profound silencing, othering and objectification of ACB defendants in newspaper coverage of HIV non-disclosure criminal cases calls for strategies that create an affirmative presence, in mainstream media, for ACB men living with HIV.** Developing and sustaining efforts to introduce alternative perspectives on Black men living with HIV and the criminal justice system is complex, resource-intensive work. Efforts to work toward that end on the part of ASOs and other organizations that are a part of African, Caribbean and Black communities and that work with ACB people living with HIV deserve widespread support.

INTRODUCTION



This report explores mainstream Canadian newspaper coverage of HIV non-disclosure criminal cases in Canada.

It gives special attention to how race and immigration figure into the representation of such cases. We empirically enquire into claims made by African, Caribbean and Black (ACB) activists, people living with HIV and AIDS service organizations (ASOs) that ACB people living with HIV are negatively portrayed and overrepresented in Canadian newspaper stories about HIV non-disclosure criminal cases (ACCHO, 2010, 2013). We explore these claims through what, to our knowledge, is the first rigorous and comprehensive quantitative and qualitative analysis of newspaper representations of HIV criminalization¹ in Canada.

The key goals of this report are to: 1) provide a stable empirical foundation for settling claims about the potential overrepresentation of racialized defendants in mainstream newspaper coverage of HIV non-disclosure criminal cases in Canada; 2) provide a rigorous analysis of the key strategies of representation used to frame newspaper coverage of cases that involve defendants who are racialized immigrant people living with HIV; and 3) contribute to public discourse about the role that race and immigration play in the ideological and other processes that drive HIV criminalization in Canada.

Our research findings emphatically support the claims and concerns about media representation made by ACB people living with HIV, activists and community organizations. Our quantitative findings show that Black immigrant men living with HIV are extraordinarily overrepresented in Canadian newspaper coverage of HIV criminal

non-disclosure cases. For example, Black immigrant men living with HIV are featured in newspaper articles more than four times more often than would be warranted on the basis of the proportion of all defendants they represent. Our qualitative analysis emphasizes how newspapers negatively represent immigrant ACB men who face HIV-related criminal charges as hypersexual dangerous “others.” We demonstrate how this occurs through three intersecting representational strategies used in newspaper coverage: writing news stories in “criminal justice time”, representing ACB men as morally reprehensible and linking criminality with “foreignness.”

This is an academic report. It uses theories, concepts and methodologies from critical social science approaches to the analysis of discourse to explore community claims and concerns about stigmatizing mainstream newspaper coverage of ACB people and HIV criminalization. We have conceptualized this report as a form of allied scholarship that responds to concerns raised by ACB communities through theoretically-informed empirical research. While we work in university settings, many of us have long histories of involvement with community-based AIDS organizations and engagement with HIV as activist scholars. As researchers and writers, we approach our study with deep concerns about how HIV criminalization organizes and is organized by relations of race, class, gender and sexual orientation in ways that exacerbate vulnerability and marginalization among people living with HIV.

This report is a critique of mainstream media coverage of HIV non-disclosure criminal cases. The report is not about the experiences of ACB

¹ In this report we use the term HIV criminalization to refer to the use of the criminal law to regulate the sexual activities of people living with HIV. In other research and writing, the term HIV criminalization is used, more broadly, to refer to the range of ways that the criminal law can be used to control HIV transmission risks and punish people living with HIV. Depending on the jurisdiction, people living with HIV may face criminal charges for not disclosing their HIV-positive status to a sex partner, for exposing a sex partner or another person to HIV, or for transmitting HIV to another person. They may also face criminal charges for biting, spitting, sharing equipment used to inject drugs, donating blood or failing to prevent mother-to-child transmission. HIV can also be treated as an “aggravating” factor that results in increased penalties for some criminal offences.

people. As White scholars, we neither speak on behalf of, nor represent the voices of, ACB people living with HIV. Our analysis of the racializing dimensions of newspaper coverage has greatly benefitted from discussion with and guidance from members of our advisory committee.

The Critique of HIV Criminalization

Using the criminal law to respond to people living with HIV who allegedly expose their sexual partners to HIV infection, fail to disclose their HIV status to them, or sexually transmit HIV to their sex partners is a prominent global HIV / AIDS policy concern (Global Commission on HIV and the Law, 2012). Canada has been a particularly important jurisdiction for HIV criminalization, both in terms of the formulation of criminal law requirements and in terms of activist and other responses to those requirements. Canada's framework for governing sex in the context of HIV establishes a connection between the criminal law and the practice of disclosure. In 1998, the Supreme Court of Canada established that people living with HIV have a criminal law obligation to disclose their HIV-positive status to sex partners before engaging with them in sexual activities that pose a significant risk of HIV transmission (*R. v. Cuerrier*, 1998). In 2012, the Supreme Court of Canada revised that decision, ruling that people living with HIV are required to disclose their HIV-positive status to their sexual partners before engaging in sexual activities that pose a "realistic possibility" of HIV transmission (*R. v. Mabior*, 2012). Those who do not can face criminal charges, most often for aggravated sexual assault, which carries a maximum punishment of life imprisonment.

In Canada and other countries, ASOs, human rights advocates, lawyers, health care providers, public health officials and people living with HIV, among others, have long expressed serious concerns about HIV criminalization. Some have called attention to the long history of

A Note on Terminology

HIV non-disclosure criminal case

In Canada, since at least 1989, people living with HIV have faced a range of criminal charges for allegedly exposing their sex partners to HIV, not disclosing their HIV status to them or transmitting HIV to them. In 1998, The Supreme Court of Canada established that people living with HIV must disclose their HIV status to their sex partners before engaging in sex that poses a "significant risk" of HIV transmission (*R. v. Cuerrier*, 1998). In 2012, the Supreme Court revised that decision such that people living with HIV are now required to disclose before sex that poses a "realistic possibility" of HIV transmission (*R. v. Mabior*, 2012). In this report, we use the term "HIV non-disclosure criminal case" to refer to all criminal cases involving sexual exposure to HIV, non-disclosure of HIV to sex partners, or HIV transmission to sex partners, regardless of when the case occurred.

HIV criminalization

HIV criminalization can have many meanings. In this report we use the term to refer to the use of the criminal law to charge and/or prosecute people living with HIV who, allegedly, have exposed their sex partners to HIV, have failed to disclose to them, or have transmitted HIV sexually.

failed criminal law efforts to govern complex sexual activities (Weait, 2007), while others have expressed concerns about the potential for criminal laws to be enforced in discriminatory ways (Lazzarini et al., 2013; Symington, 2013). A prominent trajectory of critique has focused on the negative impact of HIV criminalization on public health and community-based efforts

to prevent HIV transmission and to provide care, treatment and support to people living with HIV. Concerns have been raised that HIV criminalization deters HIV testing, erodes public health norms of mutual responsibility for HIV prevention, heightens HIV stigma, decreases access to support services, and increases the risk of partner violence faced by women living with HIV (Athena Network, 2009; Brown, Hanefeld and Welsh, 2009; Cameron, Burris and Clayton, 2008; HIV Justice Network, 2016; Open Society Institute, 2008; SERO, 2016; Symington, 2009; Wainberg, 2009; WHO, 2006). In Canada, a long-standing criticism of HIV criminalization draws on the science of HIV transmission. Critics have argued that courts continue to deliver guilty verdicts when virtually no risk of transmission has been posed and that such decisions are sorely out of date with the most recent scientific research on the role of antiretroviral therapy in reducing the risk of HIV transmission to negligible levels (Elliott, 2002; Kazatchkine, Bernard and Eba, 2015; Loutfy et al., 2014; Mykhalovskiy, 2016).

In recent years, social scientists, public health researchers and legal scholars have responded to these concerns by conducting original empirical research. The most common area of research explores the public health implications of HIV criminalization. Researchers from Canada and other jurisdictions have conducted qualitative, quantitative and mixed methods research with people living with HIV, people at risk of HIV infection, health providers, community workers and public health staff. Collectively their work demonstrates that criminalizing HIV transmission, exposure and non-disclosure can exacerbate HIV stigma (Dodds and Keogh, 2006; Dodds, Bourne and Wait, 2009; Galletly, DiFranceisco and Pinkerton, 2009; Hoppe, 2014), interfere with people's willingness to access to HIV testing (O'Byrne, 2011; O'Byrne, Bryan and Roy, 2013), damage HIV prevention counselling (French, 2015; Mykhalovskiy, 2011; Sanders, 2014, 2015), and introduce new tensions into the relationships that people living with HIV form with public health

nurses, physicians and other health care providers (Dodds, Wait, Bourne and Egede, 2015). At the same time, their research shows that HIV criminalization has no positive impact on reducing the transmission of HIV infection (Lazzarini, Bray, and Burris, 2002; Mykhalovskiy, 2015).

While the research literature on the public health implications of HIV criminalization serves as a backdrop to our study, our research takes a different approach. We do not explore how HIV criminalization affects the activities of people living with HIV, nor do we examine the public health impact of HIV criminalization on public health staff or health care providers. Instead, we direct attention to how mainstream newspapers represent HIV non-disclosure criminal cases.

HIV Criminalization, Racialization and Immigration

HIV criminalization is a complex phenomenon. Racialization and immigration are among a host of intersecting social relations, including also gender, class and sexual orientation, that shapes and is shaped by HIV criminalization. For example, in Canada, relations of gender have been fundamental to the forms of judicial reasoning that have formulated HIV non-disclosure as sexual assault under the Criminal Code. The interplay of immigration status, race, gender, and sexual orientation shapes people's experiences of HIV transmission risk, their views about HIV non-disclosure, whether they view themselves as victims, their levels of comfort with police and other factors that influence their decisions about whether or not to bring forward complaints. Whether and how police act on allegations related to HIV non-disclosure and the ways in which judicial proceedings are carried out are also influenced by the intersection of race, immigration, gender and other social relations. These relations affect judicial decision making, have an impact on sentencing and shape how people who are convicted serve time in prison.

We understand racialization to refer to historically specific modes of constructing racial categories that support systemic inequality and oppression (Omi and Winant, 1986). Racialization is a term that helps us to recognize that race is a “socially constructed phenomenon” (Henry and Tator, 2002). In the context within which we write, racialized people are non-White people who, through processes of racial categorization, are subject to discrimination, stigmatization and other forms of oppression. Our focus on racialization and immigration is not meant to single out “race” and immigration status from among the other relations of social difference relevant to HIV criminalization. Rather, it is meant to bring forward, in the ongoing critique and analysis of HIV criminalization, the fundamental role that racism and the construction of “foreignness” play in the organization and administration of criminal justice in Canada (Chan and Chunn, 2014; Murdocca, 2013; Tator and Henry, 2006; Wortley and Owusu-Bempah, 2012).

In recent years, the importance of racialization and immigration within the social, institutional and ideological processes that drive HIV criminalization has come to be recognized. In the United States, the racialized dimensions of HIV criminalization have been central to much of the political discourse on the issue. Noting the large number of high profile U.S. cases that feature Black men living with HIV as defendants, American scholars and activists have understood HIV criminalization as a phenomenon fully situated within a racist history of criminal justice regulation that targets African-American men for arrest and incarceration (Buchanan, 2015; Patterson, 2016; Shevory, 2004; Sykes, Hoppe, and Maziarka, 2016; Thrasher, 2015). In another context, advocates from the United Kingdom have used the conviction of African migrants with HIV in England and Wales to

support arguments about the need to develop prosecutorial guidelines to help ensure that future cases involving African migrants and other persons living with HIV are handled in a non-discriminatory manner (Azad, 2008; Weait, 2007). This report adds to these discussions through a focus on how racist and anti-immigrant discourses are central to the formation of popular knowledge about HIV non-disclosure in the Canadian context.

“Criminals and Victims”²

In Canada, African, Caribbean and Black communities have taken the lead in expressing concerns about how racialization and immigration status intersect with HIV criminalization. A report produced by the African and Caribbean Council on HIV / AIDS in Ontario (ACCHO, 2013) offers the single most important statement of those concerns. The report documents well-founded community mistrust of the police and the criminal justice system, as well as concerns about how HIV criminalization fuels racist discrimination and HIV stigma. It also expresses concerns about the potential overrepresentation of Black men among people facing HIV-related criminal charges and the impact of HIV criminalization on organizations providing services to ACB communities, including newcomers to Canada. The ACCHO report gives special attention to the role of the mainstream media in contributing to stigma and discrimination against people living with HIV and racialized and immigrant communities. It offers an analysis of selected media coverage of HIV non-disclosure cases for a three-month period in 2010 and notes community perceptions that, in general, media coverage overrepresents cases involving Black male defendants.

Criticisms of sensationalist media reporting of criminal cases involving HIV non-disclosure,

²We borrow this phrase from ACCHO (African and Caribbean Council on HIV / AIDS in Ontario) (2010). *Criminals and Victims? The Impact of the Criminalization of HIV Non-disclosure on African, Caribbean and Black Communities in Ontario*. Toronto: ACCHO.

including concerns about how such reporting fuels racist stereotypes connecting Black men with criminality and sexual violence, have been reported in other Canadian research on HIV criminalization (Adam et al., 2014; Miller, 2005; Mykhalovskiy, 2011). The nature and effects of media coverage have also been common themes in Canadian research that explores the experiences that people living with HIV have of HIV criminalization. Study participants living with HIV have reported feelings of heightened HIV stigma (Adam et al., 2015; Adam et al., 2016). People living with HIV and service providers have expressed concerns that media discourses exaggerate the risk of HIV transmission and contribute to public fears about racialized people living with HIV (ACCHO, 2013; Mykhalovskiy, Betteridge and McLay, 2010; Mykhalovskiy and Sanders, 2008). Questions about media coverage have also figured prominently in community discussions about and activist politics opposing HIV criminalization.

Despite the prominence given to concerns about the media in political and research discourse about HIV criminalization, until now there has been no comprehensive analysis of Canadian news coverage of criminal cases involving HIV non-disclosure. This report responds to that knowledge gap. The report offers an analysis of how mainstream Canadian newspapers represent HIV criminalization. We have studied the structure of discourse on HIV criminalization produced by Canadian newspapers, with a focus on the quantity and content of media coverage. We have not studied people's experiences of HIV criminalization or their reactions to media coverage. We recognize that HIV criminalization is morally complex and that the people involved in HIV non-disclosure criminal cases may have had challenging, fraught experiences. Our focus is on the numerical patterns of and strategies of representation used in news stories. As such, we have no interest in contributing to the moral condemnation or vindication of any individuals reported on by the media.

Theoretical Framework

A central premise of our research is that mainstream media, including newspapers, are an important source of public information about HIV criminalization. Multiple scholars have made the case that the media are critical to public understandings of crime in general (Ericson, Baranek and Chan, 1991; Henry and Tator, 2002; Surette, 2010; Van Dijk, 1991). As the argument goes, most members of the public do not have first-hand knowledge of crime. Thus, to understand crime and criminal justice they rely heavily on constructions of the reality or "social world" of crime offered by the news and entertainment media (Chan and Chunn, 2014).

We submit that the same holds true for the criminalization of HIV non-disclosure. HIV non-disclosure is a relatively remote phenomenon that is not part of most people's immediate experience. Counter-discourses that argue that HIV non-disclosure should not be considered a form of sexual assault circulate primarily among AIDS service organizations, networks of people living with HIV, the scholarly and alternative press and, increasingly, within the gender-based anti-violence movement. These counter-discourses have limited public reach. We posit that most people come into awareness of and understand HIV criminalization through popular representations of the issue offered by the mass media, including the news. Given the potential for mainstream news stories to communicate problematic conceptions linking crime, HIV, immigration, and racialized people, as well as to inform how people think about and respond to HIV non-disclosure, careful analysis of how the media represent the issue is warranted.

Our research is informed by social approaches to the analysis of discourse that emphasize that newspapers, like other texts that communicate information, do not simply represent the social world in a transparent or unfiltered way (Hall, 1997; Smith, 1999; Van Dijk, 2011). Rather, they

actively construct particular versions of reality. In the context of newspaper coverage of HIV criminalization, this happens through multiple decisions made about which criminal cases to cover, how often to cover them and with what level of detail. It also happens through the way the stories are written, which involves decisions about how to 'pitch' a headline, what words to use to describe the events that are focused upon, whom among the many people involved in such cases to quote and how, what overall narrative or story-line to use to frame the events, and so on (Erickson, Baranek and Chan, 1991; Surette, 2010). Our approach to the analysis of news discourse and representations of race draws heavily on the work of cultural studies scholar Stuart Hall. We discuss, in greater detail, how we use Hall's concepts of "othering" and "regime of representation" in our analysis of newspaper coverage on page 31 of this report.

Finally, we recognize that media reports about HIV non-disclosure and the criminal law are part of a long history of problematic media representation, not only of HIV, but of presumed connections between race, crime and immigration. A vast body of research has repeatedly emphasized how the news media sensationalize the risk of HIV transmission and fuel social anxieties by representing certain categories of people, for example, gay men, sex workers, people who use drugs, immigrants and racialized people, as dangerous others (Lupton, 1994; McKay et al., 2011; Miller, 2005; Oppenheimer, 1988; Patton, 1986; Persson and Newman, 2008; Watney, 1987). An equally impressive body of empirical evidence from Canada and other countries has demonstrated how the media produce stereotypical conceptions of racialized minorities by, for example, overemphasizing connections between race, drug use and violent crime, by constructing notions of immigrant criminality and by presenting racialized others almost exclusively as perpetrators rather than as victims of crime (Barlow, 1989; Collins, 2007; D'Arcy, 2007; Henry and Tator, 2002; Rome, 2004;

Van Dijk, 1991; Wortley, 2003). These two trends in media coverage are brought together in Canadian media stories about HIV, sexual activity and the criminal law.

The Research Literature on the Media Representation of HIV Criminalization

Research that explores media coverage of HIV criminalization has been conducted in the United States (Flavin, 2000; Patton, 2005), Australia (Lupton, 1999; McKay et al. 2011; Persson and Newman, 2008), the United Kingdom (Weait, 2007) and Canada (Mensah and Haig, 2011; Miller, 2005; Petty, 2005). Two recent studies from Australia deal specifically with the representation of race and immigration in newspaper stories about prosecutions for HIV-related sex offences.

In 2008, Persson and Newman published a study exploring how HIV-related criminal prosecutions are represented in a major Australian newspaper. They describe the articles they focus on as a new type of media story that reframes issues of guilt and innocence in the context of heterosexual HIV transmission. Drawing on the coverage of two cases involving immigrant men, they argue that print media construct an archetype of the African heterosexual male predator who spreads HIV to (White) women through deception. They suggest that a bifurcated representation of male heterosexuality results in which a "monstrous masculinity" associated with African men living with HIV is paired against its "other," a respectable, "civilised" Anglo men's heterosexuality that is framed both as "vulnerable to and safe from HIV" (Persson and Newman, 2008: 632-646).

More recent research conducted by McKay and colleagues focuses on Australian newspaper coverage of HIV-related sexual offences involving two male refugees from the Democratic Republic of Congo and Sudan, respectively (McKay et al., 2011). The authors note that criminal cases involving refugees from African countries receive

“the most individual media attention” (2011:21). They further argue that the coverage represents refugees living with HIV in a negative fashion. McKay and colleagues show how the refugee men featured in Australian newspaper articles are framed in terms of “their risk to women, their devious nature and their ‘refugeeness’” (2011:32). They further emphasize how the articles exaggerate the risks of HIV transmission and frame the men as a general threat to Australian society (McKay et al., 2011:32).

How Does This Report Contribute to the Research Literature?

Our research contributes to the emerging literature on media representations of HIV criminalization with novel insights from our quantitative and qualitative research. Most of the existing literature pays scant attention to questions about the numerical patterns and trends associated with newspaper coverage of HIV non-disclosure criminal cases. The literature either ignores or offers impressionistic accounts of the overfocus of newspaper coverage on HIV-positive racialized defendants. To our knowledge, our report offers the first rigorous quantitative analysis of whether newspaper coverage overrepresents HIV non-disclosure criminal cases involving Black defendants.

Our qualitative findings about the strategies of representation used in mainstream newspaper coverage echo many of the themes raised in the existing literature. The common representational strategies discussed in existing research—sharp criminal-victim dichotomies, the construction of Black men as hypersexual and predatory, the inflation of HIV risks, the representation of Black men as “foreign” others, and the virtual silencing of perspectives from defendants (Lupton, 1999; McKay et al., 2011; Persson and

Newman, 2008)—are also found in Canadian media coverage.

Our analysis is distinguished by our emphasis on how these representational strategies have rhetorical force as a consequence of being narratively situated in what we call “criminal justice time.” We use the latter term to refer to how importing the relevancies and routine procedures of the criminal justice system into how stories are written objectifies people living with HIV “as criminal subjects” and sets the stage for more explicitly racializing forms of “othering.” Our research also draws on a much larger corpus of newspaper articles than is typical of the existing literature. Therefore it provides a more empirically robust analysis of questions about the overrepresentation of Black men living with HIV in media coverage.

Creating a Corpus of English-Language Canadian Newspaper Articles

In this study we focus on newspaper coverage largely because newspaper articles are the form of data currently available from large-scale electronic data sets of news information. Our study begins with coverage of the earliest criminal charges for sexual activities related to the transmission or risk of transmission of HIV in Canada in 1989 and ends with charges reported on or before 31 December 2015. To develop our corpus we conducted an English-language search of the Factiva database³ for the names of all known defendants involved in relevant criminal trials.⁴ We were aided in this task by an existing database of information on criminal trials related to HIV non-disclosure and sexual exposure to HIV infection compiled by the Canadian HIV / AIDS Legal Network and others (Mykhalovskiy and Betteridge, 2012).⁵

³ Factiva is a news aggregator. The Factiva database provides full text coverage of news from a range of sources including local, regional and national newspapers, trade publications, news wires, press releases, journals, and television and radio transcripts.

⁴ At least 23 criminal cases involving HIV non-disclosure have occurred in Quebec. A limitation of our study is that our corpus does not include French-language newspaper coverage of these or other Canadian cases.

In some of instances, publication bans prohibit the publication of defendants' names. In order to locate reportage of these cases we searched Factiva using the terms "HIV and ("can't be named" or "cannot be named")"; "HIV and ("publication ban" and disclos*)" as well as "HIV and ("accused" or "defendant") and ("cannot be named" or "can't be named"). Finally, we also wanted to account for recent cases about which the Legal Network may not yet have been aware. We carried out a Factiva search using the terms "HIV and Crim*" and "HIV and disclos*" for the period 1 October to 31 December 2015.

Our corpus includes newspaper articles and editorials about people living with HIV who have faced criminal charges for sex-related HIV exposure, transmission or non-disclosure. The bulk of our corpus is made up of articles that report on criminal proceedings and appeals. Articles about public health orders that people living with HIV faced prior to their criminal charges being laid were also included. We also included articles related to various immigration hearings that also referred to a person's criminal charges or case. Finally, we included articles that referred to someone's criminal case that were published after the charges were disposed. Articles that addressed other matters related to legal responses to HIV prevention, such as issues related to blood donations, quarantine, spitting and biting cases, and the regulation of medical professionals who live with HIV were beyond the purview of our research and were excluded from our corpus.

We developed a list of defendants identified in our corpus and totalled the number of relevant articles. When news articles mentioned more than one defendant (for example, articles that mentioned other ongoing cases) we categorized the article based on our judgment of which defendant was most prominently featured in the article. After excluding irrelevant articles, our search strategy yielded a corpus of 1680 English-language items written from 1 January 1989 to 31 December 2015. To our knowledge, this corpus represents the largest collection of English-language newspaper articles that report on people who have faced criminal charges for sex-related HIV exposure, transmission or non-disclosure.

It has been widely noted that the digital age has brought about significant changes to how news content is produced, distributed and consumed (Anderson, 2013; Brock, 2013; Phillips, 2014). As fewer people subscribe to print publications, those who produce news content use and reuse stories to help offset the high cost of creating original news coverage (Doctor, 2012). Some of the more recent articles in our corpus were produced by larger media syndicates (such as the Canadian Press, Associated Press News and Post Media) and were reproduced by newspapers across the country. For the quantitative analysis reported below, we count the total number of articles published and duplicates produced in syndication. Including the duplicate articles in our analysis enables us to better capture the breadth of coverage and to illuminate the stories that media outlets decided were newsworthy and, thus, reproduced broadly across Canada.

⁵ The Canadian HIV / AIDS Legal Network is Canada's leading national organization promoting the human rights of people living with and vulnerable to HIV. The Legal Network relies on a variety of sources to track criminal cases related to HIV transmission, HIV transmission risk and HIV non-disclosure. These sources include media clipping services, Internet and hand searches of media reporting, electronic searches of legal databases and information from lawyers, HIV / AIDS organizations and community members.

QUANTITATIVE FINDINGS:

TRENDS OVER TIME AND
DEMOGRAPHIC PATTERNS IN MAINSTREAM
NEWSPAPER COVERAGE



This section of our report responds to community concerns about the potential overrepresentation of ACB and ACB immigrant people living with HIV in news coverage about HIV criminalization in Canada. Our approach to responding to those concerns involves making a series of comparisons, with a focus on the newspaper article as the unit of analysis. One way to get at the issue is to compare the proportion of news coverage given to racialized and non-racialized defendants. While this can be illuminating, resolving claims about potential disproportionate media coverage requires a more sensitive type of comparison. It requires that the proportion of news coverage given to racialized defendants be compared with the proportion of racialized persons who have faced criminal charges related to HIV non-disclosure. The media can be understood to overrepresent Black people living with HIV when the proportion of coverage about them exceeds the proportion of overall people charged that they account for. This form of comparison requires information about the race of the total number of people in Canada who have been defendants in HIV non-disclosure criminal cases.

Aggregate data on HIV criminalization in Canada was last published four years ago when Mykhalovskiy and Betteridge (2012) reported on the temporal trends, demographic patterns and outcomes of Canadian HIV-related criminal cases. Mykhalovskiy and Betteridge did not report on the race of people facing criminal charges for Canada as a whole. Our research updates and extends their data for the purposes of an analysis of media representation. To update the existing data on criminal cases and defendants we began with the existing database reported on by Mykhalovskiy and Betteridge (2012). We supplemented that data with our own search of media and legal databases. We focused on

updating demographic and other key information (e.g. date of criminal charge)⁶ about known defendants and identifying new defendants and cases. To obtain information relevant to identifying the race and immigration status of defendants we read legal documents related to criminal cases that we identified through the Lexis Nexis, Quicklaw and CanLii databases.

Our decision to work with race-based data was influenced primarily by the strong demand from ACB community members and advocates working against HIV criminalization for an empirical basis upon which to make claims about the patterns of racialized reporting in Canadian mainstream news media. We undertook the process of updating the data with an awareness of how race-based crime statistics can reify race and inadvertently contribute to the very processes and problems of racialization that are the focus of our inquiry and critique (Mopas, 2014; Owusu-Bempha and Millar, 2010; Roberts, 2002). In keeping with earlier research (Mykhalovskiy and Betteridge, 2012), we took a parsimonious approach and recorded the race of defendants only when it was clearly reported by the media, in court documents, or was otherwise known by service providers, lawyers or others in our networks.

HIV Non-Disclosure Criminal Cases in Canada: Key Trends and Patterns

Below we provide a summary of key descriptive information about Canadian HIV non-disclosure criminal cases and the defendants involved in those cases. We begin with data about temporal trends in cases. We then explore demographic information about defendants, with an emphasis on race and immigration status. Our aim is to provide a snapshot of what HIV criminalization has “looked like” in Canada over the period beginning 1 January 1989 and ending 31 December

⁶ When a case was resolved by a guilty plea and the date of charge was unknown we estimated the charge to have occurred one year prior to the guilty plea.

2015. These data provide us with a context for understanding our quantitative media analysis.

Trends Over Time

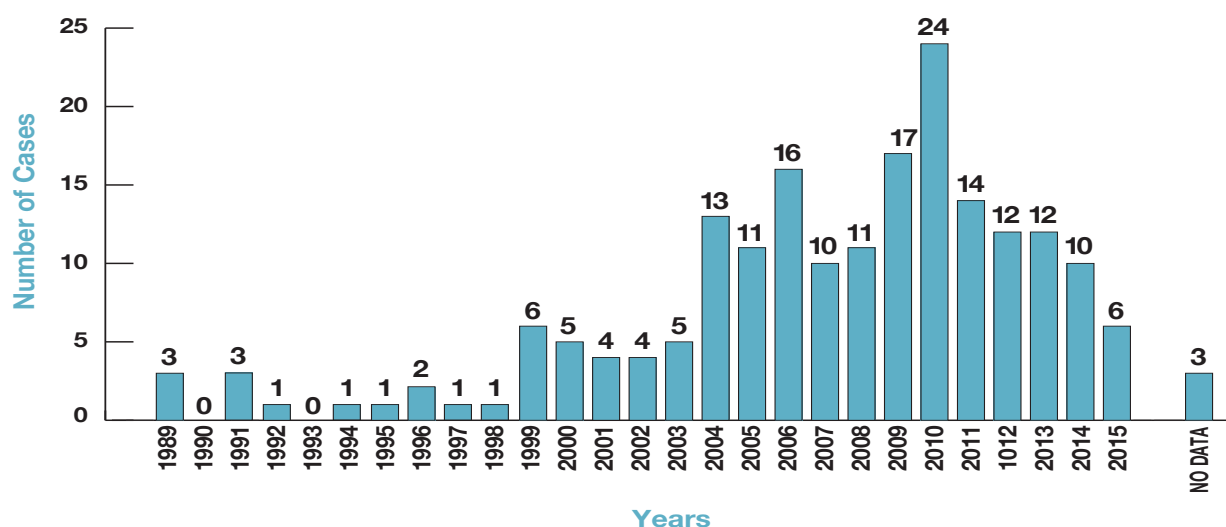
We identified a total of 181 people who have faced charges in 196 HIV non-disclosure criminal cases in Canada since 1989.⁷ Figure 1 provides updated information on the yearly number of HIV-related criminal cases in Canada up to the end of 2015. The year 2004 is a key turning point in the annual number of cases. Roughly 80% (156/196) of known cases have occurred since 2004. Within the period 2004 to 2014, another turning point occurred in 2010 with roughly 10 to 15 cases occurring per year since then until 2014. In 2015, 6 cases were recorded. The dynamics underpinning the considerable reduction in cases for 2015 will be of interest to advocates working against HIV criminalization. Future monitoring of cases will determine whether it is a temporary or more durable reduction. Qualitative research may help describe and explain the effect of policing,

prosecution, advocacy and media and legal case reporting practices on the number of cases related to HIV non-disclosure.

Demographic Patterns—Gender and Sexual Orientation

Our research updates what is known about how HIV non-disclosure criminal cases in Canada are patterned by social relations of gender, sexual orientation, race and immigration status. Gender is the most significant form of social differentiation shaping HIV non-disclosure criminal cases in Canada. Men account for 88% (160/181) of all people charged to the end of 2015. One defendant is a transgender (female-to-male) person. Women account for 9% (17/181) of defendants charged to the end of 2015. The gender of 4 (2%) defendants is unknown. The proportion of men and women who have been charged has remained relatively stable over time. From 1989 to 2010, women accounted for 10% (13/131) of people charged; men accounted

Figure 1: HIV non-disclosure cases, Canada 1989-2015 (n=196)



⁷ In reporting our data we distinguish between individual defendants and the criminal cases in which they are involved. A person may be involved in more than one criminal case. We borrow from Mykhalovskiy and Betteridge who define a criminal case as: “any circumstance in which one or more Criminal Code charges were laid by police against a person based on alleged HIV non-disclosure in the context of sexual activity” (2012: 36). We similarly “treated as separate cases, charges that were prosecuted in separate proceedings, either at the trial stage or on appeal” (2012: 36).

for 89% (117/131) of people charged and the gender of 1% (1/131) was unknown. From the beginning of 2011 to the end of 2015, 47 people faced criminal charges related to HIV non-disclosure for the first time. Women accounted for 9% (4/47) of those people, while men accounted for 87% (41/47) and the gender of 4% (2/47) was unknown.⁸

In Canada, the criminal law is used primarily to govern HIV non-disclosure in the context of heterosexual sex. All female defendants and 68% (108/160) of male defendants faced charges related to HIV non-disclosure with an opposite sex partner. From 1989 to 2015, 41 men have faced criminal charges for HIV non-disclosure in the context of sex with male sex partners. They represent 23% (41/181) of all people charged and 26% (41/160) of all men charged. The proportion of men charged who are gay, bisexual, or men who have sex with men (MSM) has increased over time. From 1989 to 2010, the period used to report previous data on this issue, 22% (26/117) of men charged were gay, bisexual or MSM. From 2011 to 2015, 34% (14/41) of men charged were gay, bisexual or MSM.

Demographic Patterns—Race

To our knowledge, Figure 2 provides the first publicly available, national-level data on the race of people who have faced criminal charges related to HIV non-disclosure in Canada. When the total number of people charged is used to generate proportional comparisons, the relevant distribution is as follows: 27% (49/181) are White; 21% (38/181) are Black; 6% (11/181) are Aboriginal, 2% (4/181) are Asian and 2% (3/181) are Latin American. The race of 76 people (42%) is unknown. Among the 49 White defendants, 44 are men and 5 are women. Almost all (36 of 38) Black people charged for not disclosing their HIV-positive status prior to sex are men. One Black woman has been charged and the gender of one Black defendant remains

The Problems of Racial Classification

We acknowledge that all forms of racial categorization are problematic and that projects in which researchers label people and place them into distinct racial categories risk re-inscribing the forms of objectification we seek to challenge in this report. In an effort to ensure that this report can speak to other large-scale studies of race, immigration and HIV, at the outset of our research we intended to adopt the categories used in Canadian Census data (Aboriginal, White, Chinese, Black, Filipino, Latin American, Southeast Asian, West Asian, Korean, Japanese, and Other) (Statistics Canada, 2016). However, these census categories proved problematic for our analysis. For example, they give a level of specificity to people from countries in Asia not given to people from countries in the Caribbean and Africa. In many cases, the sources we used to identify the race of defendants in HIV non-disclosure criminal cases did not include the country of origin. While we recognize that there are limitations to the categories we have used in this report, we believe the terms “Black”, “Latin American”, “Asian”, “Aboriginal”, and “White” best respond the nature of available data on defendants.

unknown. There is an even gender distribution among Aboriginal defendants. Six of 11 Aboriginal defendants are male and five are female. The gender distribution among Asian and Latin American defendants was less balanced: three of the four Asian defendants are men. All three Latin American defendants are men.

Making claims about how HIV criminalization is patterned on the basis of race is challenging given the partial nature of our data. Strict claims about the overrepresentation of certain racial

⁸ The date of charge for two men is unknown. The date of charge for, and gender of, one person are both unknown.

Racialization and the Media: Whose Criminal Cases get Covered in Mainstream Newspapers?

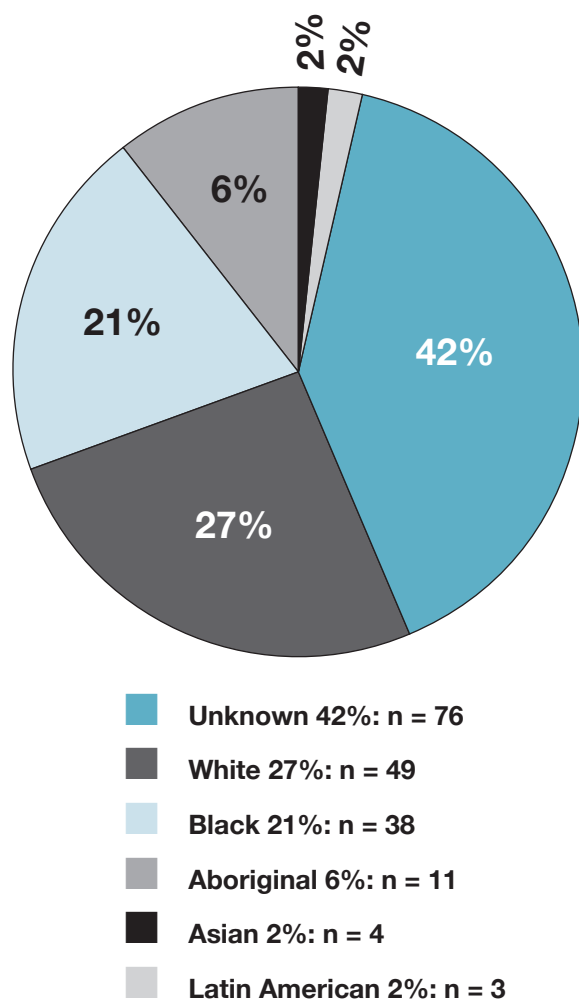
Roughly 60% (109/181) of the people we identified as having faced criminal charges in HIV non-disclosure cases appeared in our corpus of newspaper coverage. Cases involving racialized defendants were more likely to be reported than cases involving White defendants. Of the 56 racialized people criminally charged, 86% (48/56) were covered in Canadian newspapers. By contrast, 73% (36/49) of White defendants received coverage. Only 33% (25/76) of people whose race is unknown, and who we argue are likely White, were reported on.

Among racialized people, Black defendants (87%, 33/38) were the group mostly likely to be covered by mainstream newspapers. Over three quarters of the Black defendants (76%, 25/33) who received coverage were immigrant men. Some 82% (9/11) of Aboriginal defendants; all Asian defendants (4/4); and 66% (2/3) of Latin American defendants received coverage. These differences in coverage suggest that race is a significant determinant of whether one is included in newspaper coverage. White defendants would appear to enjoy a measure of protection from being reported on in the news media. As a group, they are the least likely of all defendants to have the details of their criminal charges and cases published and widely disseminated in Canadian mainstream newspapers.

groups among those facing HIV-related criminal charges are also difficult to substantiate given the absence of stable estimates about the racial distribution of all people living with HIV in Canada. Nevertheless, we would emphasize that almost half of the people who have faced criminal

charges for whom race is known are White (49/105). Since 1989, 20% (36/181) of people charged have been Black men. The proportion of White defendants is likely an underestimate. Critical race theorists and whiteness studies scholars have emphasized that within popular culture, whiteness is treated as a normative, neutral and assumed position and therefore is rarely explicitly named or identified (Crenshaw, 1997; Frankenberg, 1993; Nakayam and Krizek, 1995). Given that whiteness is a kind of default position or invisible norm, it stands to reason that many of the defendants whose race is not explicitly reported in newspaper coverage of HIV non-disclosure criminal cases are White.

Figure 2: HIV non-disclosure, race/ethnicity of individuals charged, Canada 1989-2015 (n=181)



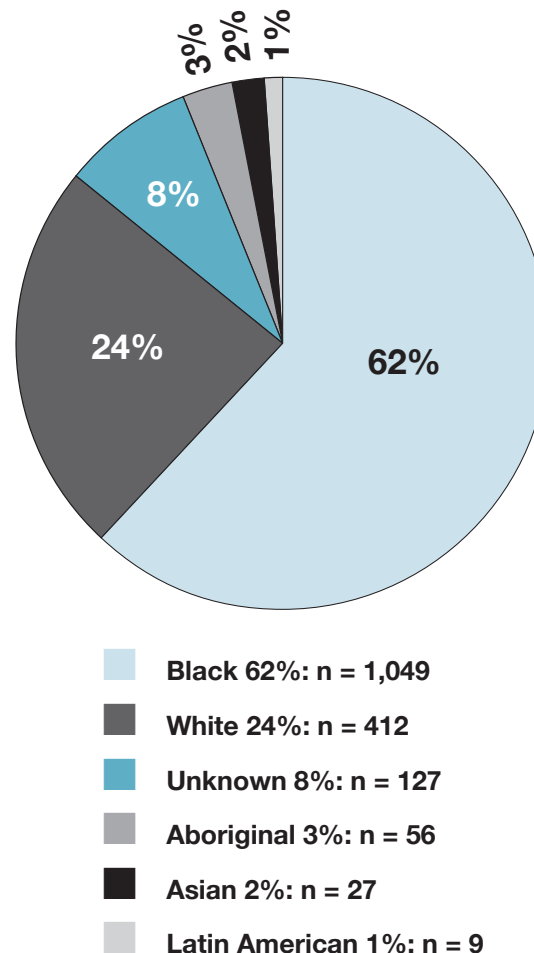
Demographic Patterns— Immigration Status

Our data provide the first empirical analysis of the immigration status of people who have faced criminal charges related to HIV non-disclosure in Canada. Almost one fifth (18%, 32/181) of all people who have faced criminal charges related to HIV non-disclosure came to Canada as immigrants or refugees. An important finding of our research, not previously reported, is that a large proportion—three quarters (75%, 27/36)—of Black men who have faced charges are immigrants. Eighteen of these men emigrated from countries in Africa, six are from Caribbean countries, two are from the United States and the country from which one man emigrated is not known. Black men further account for 84% (27/32) of immigrants known to have been charged with crimes related to HIV non-disclosure. A large proportion of all defendants from outside of Canada are Black men from African and Caribbean countries (75%, 24/32). As the data in the following section demonstrate, Canadian news coverage of HIV non-disclosure cases focuses largely on this subset of defendants.

Do Mainstream Newspapers Overrepresent Black and Black Immigrant/Refugee Men in Coverage about HIV Non-disclosure Criminal Cases?

With updated data on the race of people charged with crimes related to HIV non-disclosure in Canada, a next step in answering community concerns about the potential overrepresentation of racialized people living with HIV in mainstream news media is to examine the distribution of newspaper stories in our corpus by defendants' race. To that end, we selected the newspaper article as a unit of analysis and counted the number of articles that focused on each defendant. We then grouped together all the stories that featured defendants of the same race. The results are displayed in Figure 3, which gives the proportion of newspaper articles in our

Figure 3: HIV non-disclosure, news stories published on individuals by race, Canada 1989-2015 (n=1680)



corpus that focus on defendants who are White, Black, Aboriginal, Asian, or Latin American.

A quick glance at Figure 3 reveals that a large proportion of our corpus (68% [1141/1680]) focuses on racialized defendants. ACB men living with HIV, in particular, are highly represented among racialized defendants. The majority of coverage—62% (1049/1680)—focuses on ACB men living with HIV and 92% (1049/1141) of all newspaper stories of cases involving racialized defendants focuses on ACB men living with HIV.

While Figure 3 demonstrates that the majority of newspaper coverage focuses on Black people

living with HIV, it does not, in of itself, speak to the question of whether that coverage is disproportionate. To explore that issue one must compare the proportion of coverage of Black defendants with the proportion of defendants in HIV non-disclosure criminal cases who are Black. Comparing Figure 3 with Figure 2 one finds that, while ACB men account for 20% (36/181) of people who have faced criminal charges related to HIV non-disclosure in Canada, they are the focus of 62%

(1049/1680) of newspaper articles dealing with such cases. By contrast, while people known to be White represent 27% (49/181) of defendants, they account for only 25% (412/1680) of newspaper stories. The coverage for Latin American and Asian defendants is roughly proportionate. Both groups account for 2% of people charged. Asian defendants receive 2% (27/1680) of coverage while Latin American defendants receive 0.5% (9/1680).

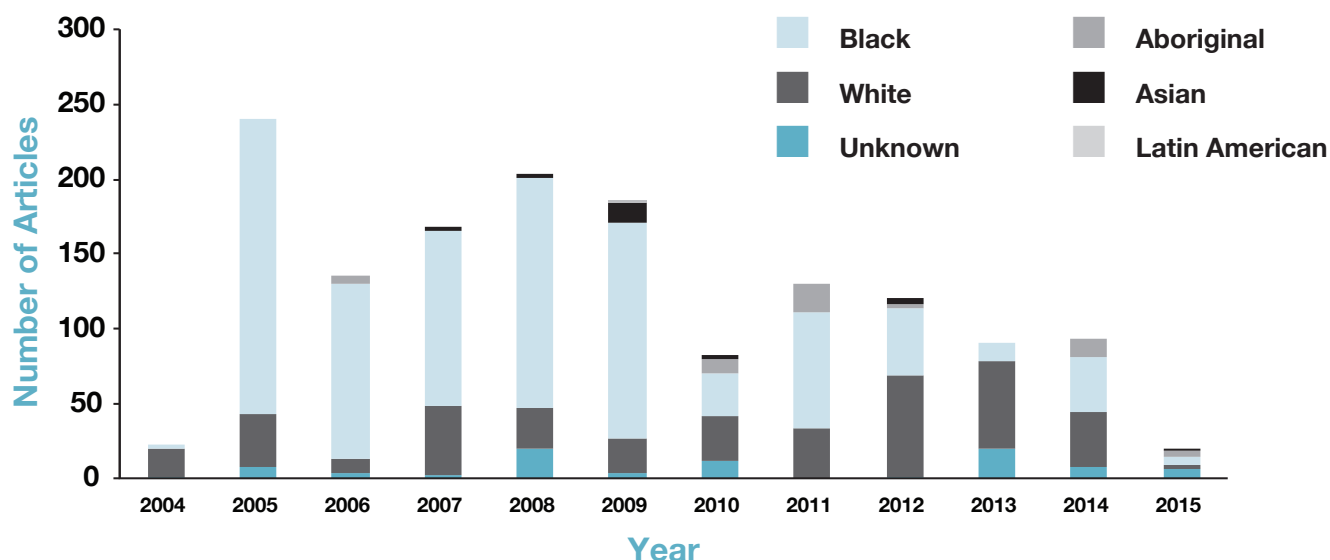
Aboriginal Identity, HIV Criminalization and Mainstream Newspapers

It has been widely noted that due to the legacy of colonialism, including the lingering effects of the residential school system, and other forms of structural inequality and violence, Aboriginal peoples in Canada are disproportionately affected by HIV and drastically overrepresented in the prison population in federal and provincial prisons in Canada (Adelson, 2005; Akwasi, 2013, et al.; Canadian Aboriginal AIDS Network, 2016; Czyzewski, 2011; Hylton, 2002; Larkin, et al., 2007; Pearce, et al., 2008; Varcoe and Dick, 2008).

In such a context one might expect that newspaper coverage of HIV criminalization would devote particular attention to cases in which Aboriginal peoples have faced criminal charges related to not disclosing their HIV status. However the reportage of the 11 cases involving Aboriginal defendants largely overlooks their Aboriginal identity. Of the 11 Aboriginal defendants, only three people were identified in news coverage as Aboriginal. Aboriginal identity is specified in only six of the 18 articles about the cases of these three people. This trend stands in stark contrast to the newspaper coverage of Black, immigrant defendants in which reportage typically focuses on the defendants' racial and immigrant status early in the coverage and then carries this racialized description forward as shorthand for their identity throughout the duration of coverage. For instance, Johnson Aziga comes to be referred to as a "Ugandan immigrant" (Blatchford, 2008), while Trevis Smith is described as "the Alabama native" (Hall, 2005).

Because defendants' Aboriginal identity is consistently overlooked in reportage of non-disclosure cases we typically became aware of defendants' Aboriginal status through other sources, such as the Canadian HIV/AIDS Legal Network database. Newspaper coverage essentially makes defendants' Aboriginal status invisible. One might view this in positive terms. HIV non-disclosure stories that do not identify defendants as Aboriginal do not contribute to problematic representations of Aboriginal people in Canada as criminals. However, writing HIV criminalization stories in ways that do not identify defendants' Aboriginal identity also has the potential to contribute to a public erasure of how the criminal justice system has been used to regulate Aboriginal people's lives. The peculiar omission of Aboriginal identity found in our corpus can contribute to forms of erasure of Aboriginal identity, history and oppression that make settler colonial states possible (Blomley, 2003; Keenan, 2014; Lawrence, 2004; Razack, 2002; Watson, 2002).

Figure 4: HIV non-disclosure, news stories published on individuals charged by race and year, Canada 1989-2015 (n=1492)



Immigrant and refugee defendants receive remarkably large amounts of coverage. Only 18% (32/181) of defendants are known to be immigrants or refugees, yet stories about immigrants and refugees account for 62% (1046/1680) of our corpus. Of the news coverage of immigrant and refugee defendants, ACB immigrant or refugee men receive the bulk of the attention. While ACB immigrant and refugee men living with HIV account for only 15% (27/181) of all people charged, they are the focus of 61% (1020/1680) of all newspaper stories in our corpus.

On the basis of these comparisons we can confirm community concerns about the overrepresentation of racialized people living with HIV and racialized HIV-positive newcomers to Canada in mainstream newspaper coverage of HIV non-disclosure criminal cases. There are more than 2.5 times the number of newspaper articles featuring Black (1049) than White (412) defendants. Black men, and specifically Black immigrant and refugee men, are exceptionally overrepresented in our corpus. Black immigrant

and refugee men are featured in newspaper articles four times more often than would be expected on the basis of the proportion of all defendants they account for.

Is the Overrepresentation of Black and Black Immigrant/Refugee Men in Mainstream Newspaper Coverage Consistent over Time?

Comparing the overall number of racialized and racialized immigrant and refugee defendants against the overall amount of coverage involving such defendants provides insight into mainstream newspapers' overrepresentation of racialized and, particularly, Black male newcomers living with HIV. But it can mask how that overrepresentation may be distributed among specific people who have faced charges, as well as differences in how the coverage occurs over time.

To respond to that limitation we examined the coverage of racialized and racialized immigrant and refugee defendants over time. As Figure 4 indicates, the trend of ACB male defendants

receiving the majority of newspaper coverage is consistent over time. In six of the years covered in our analysis (2005-2009 and 2011), more than half of the articles published on HIV non-disclosure criminal cases focused on ACB male defendants. This overrepresentation is especially pronounced in 2005, 2006, and 2009. In each of these years, more than 75% of newspaper articles about HIV nondisclosure criminal cases focused on Black men (82% [197/240] in 2005; 87% [117/135] in 2006; and 78% [145/185] in 2009). Comparing Figure 4, which tracks the number of news articles each year, to Figure 1, which tracks the number of cases each year, suggests that newspaper coverage of HIV non-disclosure criminal cases is largely driven by coverage of ACB men. There were more criminal cases in 2010 than in any other year. However, there were

more articles published in each of the years 2005, 2006, 2007, 2008, 2009, and 2011 than in 2010 and in each year the vast majority of news articles concentrated on ACB male defendants.

We also ranked all individuals who have faced criminal charges related to HIV non-disclosure by the amount of coverage they received, once again using the newspaper article as the unit of analysis. As Figure 5 demonstrates, newspaper coverage of HIV non-disclosure is highly concentrated on a small number of defendants. The fifteen people listed in Figure 5 make up 8% (15/181) of defendants, yet they account for 75% (1258/1680) of all newspaper coverage. It is especially noteworthy that newspaper coverage from 1989 to 2015 has been exceptionally overfocused on just four racialized people, all

Figure 5:

	Name of Defendant	Race	Immigration Status	Number of Articles
1	Trevis Smith	Black	U.S. Citizen - Deported	366 (22%)
2	Johnson Aziga	Black	Immigrant from Uganda	307 (18%)
3	Jennifer Murphy	White	Unknown	113 (7%)
4	Charles Ssenyonga	Black	Immigrant from Uganda	82 (5%)
5	Clato Mabior	Black	Immigrant from Sudan - Deported	65 (4%)
6	Steven Boone	White	Unknown	57 (3%)
7	Carl Leone	White	Unknown	55 (3%)
8	Apay Ogouk	Black	Immigrant from Sudan	41 (2%)
9	Adrian Nduwayo	Black	Immigrant from Rwanda	40 (2%)
10	Joshua Dowholis	Unknown	Unknown	26 (1%)
11	Charles Mzite	Black	Refugee from Zimbabwe	24 (1%)
12	Elliott Youden	White	Unknown	22 (1%)
13	Unknown, 17 year old girl (K.P)	Aboriginal	Aboriginal Canadian	21 (1%)
14	William Imona-Russel	Black	Immigrant from Nigeria	20 (1%)
15	Vincent Walkem	White	Unknown	19 (1%)

of whom are Black immigrant or refugee men. Trevis Smith, Johnson Aziga, Charles Ssenyonga, and Clato Mabior together are the focus of almost half of all of the articles in our corpus (49% [820/1680]).

Newspapers Treat HIV Non-disclosure as a Crime of Black Immigrant Men

Our findings speak to important dimensions of the racializing coverage of HIV criminalization in mainstream newspapers. As our data on criminal cases and people charged demonstrate, more White than Black people living with HIV have faced criminal charges related to HIV non-disclosure in Canada. From this perspective HIV non-disclosure might be considered a “White crime.” However, newspaper coverage focuses primarily on racialized defendants, particularly Black immigrant and refugee men. In some senses

this is not surprising, given the considerable body of research evidence that demonstrates the overfocus on racialized and immigrant people in Canadian crime coverage (Chan and Chunn, 2014; Henry and Tator, 2002; Wortley, 2003).

A large portion of our corpus of articles arises out of 4 cases involving ACB HIV-positive immigrant and refugee men.⁹ Skewed reportage of this nature represents HIV non-disclosure, in popular discourse, as a Black immigrant crime. It takes what in fact is a minority of cases and treats those cases archetypically, giving rise to a type of popular racial profiling of HIV non-disclosure. The numerical patterns of coverage and the consistent and repeated attention given to four cases in mainstream newspapers create the conditions for HIV non-disclosure to be covered as a crime of Black, heterosexual immigrant men.

⁹ In response to conference presentations of our research, audience members have often questioned why newspaper coverage is so overfocused on ACB men. They typically engage in a kind of speculative theorizing focused on a range of potential explanatory factors that they frame as standing outside of race. These include, for example, the number of complainants, whether transmission occurred and the type of charge. From this perspective the “real” reason for the overrepresentation of ACB men in newspaper coverage is some factor other than race. We did not conduct research to explain why the coverage is overfocused on ACB men. This question is better addressed by exploring how reporters and editors make decisions about what stories to cover and what informs their understandings of what is newsworthy, than by engaging in speculative theorizing about the relevance of factors related to a given criminal case. The purpose of our research is to determine whether newspapers overrepresent ACB defendants and to explore the strategies through which ACB defendants and their criminal cases are represented.

QUALITATIVE FINDINGS:

UNCOVERING A REGIME OF
REPRESENTATION ABOUT HIV, RACE,
IMMIGRATION STATUS
AND CRIME



Mainstream newspaper articles about HIV non-disclosure criminal cases are not only problematic because of how they are overly focused—in terms of numerical trends and patterns—on Black heterosexual immigrant and refugee men living with HIV. The ways in which these stories are written, the meanings they offer and the connections they make between HIV, crime, race, immigration, gender and sexual relationships are also a cause for concern.

This section of our report explores the nature of newspaper coverage of HIV criminalization through an analysis of the key strategies of representation deployed in our corpus. It is divided into three parts. First, we identify the empirical focus of our analysis and provide a brief description of the relevant news coverage. Second, we describe how our approach to the analysis of discourse has been influenced by the work of cultural studies scholar Stuart Hall. Third, we explore the regime of representation employed in the newspaper articles we have chosen as our empirical focus. Here our discussion focuses on how newspaper articles are written in criminal justice time and how they link racialization and “foreignness” with constructions of moral blameworthiness.

Our Empirical Focus: Newspaper Articles on Four Defendants

Our analysis explores the representation of race, immigration, gender and sexual orientation in newspaper stories about HIV non-disclosure criminal cases. In order to produce an appropriate level of detail for our analysis, we focus on newspaper articles involving four defendants—Charles Ssenyonga, Trevis Smith, Johnson Aziga and Clato Mabior—all Black heterosexual immigrant or refugee men living with HIV. Collectively, the newspaper articles dealing with their criminal cases represent 47% of our corpus. Our analysis thus speaks directly to almost half of the overall newspaper coverage of HIV

criminalization in Canada that we identified.

Newspaper stories about Charles Ssenyonga were first published in 1991 and detail public health authorities’ application for a court order to prevent him from having sex. His criminal case, which was among the first in the country to involve multiple complainants, was also the first to receive widespread coverage, the bulk of which ended by 1995. Overall, newspaper articles frame Ssenyonga as a sexual lothario and repeatedly emphasize his immigration to Canada from Uganda.

Trevis Smith, a US citizen living in Saskatchewan, was playing for the Canadian Football League’s Saskatchewan Roughriders when he was charged with aggravated sexual assault in 2005. Beginning with his arrest, newspaper coverage represents Smith as an oversexed, dangerous, and racially othered Black athlete (Berry and Smith, 2000: 179). Reports consistently create a contrast between portrayals of Smith as “reckless” (Walton and Maki, 2007) and “dangerous” (Cole, 2005a) and representations of wholesome Prairie culture. Many articles refer to Smith as “the native of Alabama” (Hall, 2005) as a way to underscore the notion that he intruded on a local swath of Canadiana and overstepped the boundaries of his status as a “guest.”

Newspaper articles about Johnson Aziga first appear in September 2003 with a handful of reports that a “Hamilton man” faced two charges each of aggravated assault and aggravated sexual assault from allegedly having unprotected sex with two women (“HIV-positive Man May Have Infected More Sex Partners,” 2003). Additional female complainants would come forward in the months immediately after. Beginning in February 2005, after the deaths of two of his previous sexual partners, the coverage focuses on Aziga being charged with first-degree murder (the first time such a charge had been laid in a case involving HIV non-disclosure in Canada).

Newspaper articles repeatedly frame Aziga as an “HIV killer” and his immigration status as a Ugandan refugee is a repeated feature of the coverage of his case.

Newspaper coverage of Clato Mabior begins in March 2006 with reports of public health authorities’ application for a court order to prevent him from having sex. Subsequent reporting describes details of his arrest and his unfolding criminal case. The newspaper coverage of Mabior’s case has two distinguishing features. First, much attention is given to government efforts to deport him. Second, the appeal of his case to the Supreme Court of Canada results in coverage about the role of the criminal law in dealing with HIV non-disclosure. Arguments about the importance of the science of HIV transmission risk made by his lawyers and advocates concerned about his case are also featured.

Our Analytic Approach to Media Representation—Learning from the Work of Stuart Hall

Born in Jamaica, Stuart Hall (1932-2014) pursued a wide-ranging academic career in the United Kingdom. He is regarded as one of the UK’s leading cultural theorists and sociologists. Our analysis of newspaper coverage has been influenced by two of his key ideas about media representation and race. The first is the concept of “regime of representation.” Hall develops the concept in a discussion of photography in a chapter of his edited collection *Representation: Cultural Representations and Signifying Practices* (1997). In his exploration of photographic images of Black athletes in the popular press, Hall argues that each image carries a specific preferred or privileged meaning. At the same time, he suggests that racial difference is produced in popular culture through representational strategies that, with some variation, are repeated across texts. For Hall, a regime of representation refers to the entire repertoire of imagery and visual effects through which racial and other forms of social difference

are represented “in a particular culture at any one moment” (1997: 232).

The second of Hall’s key ideas is the notion of “constructing otherness” which he treats as a critical element of the racialized regime of representation that he investigates. Hall argues that racialized discourses reduce people to a few essential, fixed characteristics that are universalized and represented as “fixed by Nature” (1997:257). He further suggests that essentialism and reduction are features of racialized forms of social difference discursively structured in popular media through stark forms of binary opposition. Such forms of opposition inscribe people who are racialized or are otherwise “significantly different from the majority” within the terms of sharply defined, hierarchically organized binary extremes such as good/bad, civilized/primitive, attractive/ugly, familiar/exotic, and White/Black (1997:229). Hall’s work on “the other” has been particularly significant for Canadian scholars who study news media representations of race and crime. They have drawn on the concept to demonstrate how Black and other racialized people are framed through normal/deviant oppositions and represented as “others” who exist outside of and as threats to the imagined community of Canada (Henry and Tator, 2002; Jiwani, 2006; Lawson, 2014).

Our analysis explores the regime of representation that structures newspaper coverage of HIV criminalization, with a particular emphasis placed on discursive strategies that produce HIV persons as racialized immigrant others. Hall was concerned primarily with visual forms of representation, particularly photography. Our data sources do not reproduce the visual images used in original newspaper articles and, so, we focus on written language.

We emphasize two sets of discursive strategies that are central to the repertoire of representation found in articles about Ssenyonga, Smith, Mabior

and Aziga. The first is *telling stories in criminal justice time*. We use this term to refer to how news articles focus on key developments in the standard sequence through which criminal cases are handled and draw on concepts, descriptors and other forms of language associated with the criminal justice system. This type of reporting constructs people living with HIV as criminal subjects and serves as a discursive foundation upon which more specifically racializing forms of representation are built.

The second set of discursive strategies involves a host of othering devices that construct people living with HIV as morally blameworthy and that link those constructions with representations of racialized difference. On the basis of our reading of our entire corpus of newspaper articles, we have established that a number of othering devices have a general character. For example, the strategic framing of expert testimonies and the creation of criminal-victim dichotomies are used in newspaper coverage of defendants regardless of their race. For the purposes of our analysis, we emphasize how these othering devices are deployed alongside forms of representation that code for race such as the repeated mention of a defendant's country of origin. This type of pairing merges representations of moral blameworthiness with representations of racialized difference. What results is a popular discourse that stigmatizes Black heterosexual men living with HIV as deceitful, hypersexual foreign threats to the health and safety of individuals (White women) and, more broadly, the imagined Canadian nation.

Telling Stories in Criminal Justice Time

We use the phrase "criminal justice time" to refer to how the institutional logic, relevancies and routine events of the criminal justice system are featured in the newspaper stories in our corpus. When HIV non-disclosure gets written about in criminal justice time it gets represented through the language of the criminal justice system. One

way this happens is by referring to HIV non-disclosure as a type of criminal offence such as criminal negligence causing bodily harm or common nuisance, in early newspaper stories, and aggravated sexual assault in later stories. Another way this happens is by populating stories with criminal justice system actors such as crown prosecutors and judges and quoting what they have to say (see "The Silence of Defendants in Newspaper Coverage" page 37 of this report).

We argue that writing stories in criminal justice time objectifies the people living with HIV who are featured in them. It situates people living with HIV within a standardized sequence of events through which criminal cases proceed and uses the language of the criminal justice system to write and talk about them. People living with HIV facing criminal charges are written about or referred to by others in ways that link them with a particular criminal offence and criminal proceeding, and are rarely quoted speaking on their own terms. This way of writing "others" people living with HIV who face HIV-related charges by treating them as nothing more than "criminal subjects." It also establishes a discursive ground upon which more specific racialized forms of othering and representation are built.

One of the defining features of newspaper coverage of HIV criminalization is how it strips the complexity of HIV criminalization from public discourse about HIV non-disclosure. HIV criminalization raises a host of questions about the relationship between the criminal law and HIV non-disclosure, the role of scientific research in determining criminal culpability, the history of the legal regulation of sexual practices and the relative merits of public health versus criminal law approaches to managing HIV transmission risks, among other issues. Our corpus includes articles and editorials that question what form of criminal law regulation is appropriate for HIV non-disclosure. Broader issues and critiques of HIV criminalization also make their way into articles that quote people who work in

HIV advocacy organizations and AIDS service organizations (see “HIV Advocacy Organizations, AIDS Service Organizations and Newspaper Coverage of HIV Criminalization” below). For the most part, however, Canadian newspaper coverage of HIV criminalization is framed within the genre of the “crime story.” HIV non-disclosure becomes a matter reported by newspapers when an HIV-positive individual has been arrested, is being investigated by police, is being tried for a criminal offence, or is sentenced upon conviction. The vast majority of articles in our corpus address a specific case of HIV non-disclosure that is before the courts. Generally, newspaper articles do not report on HIV non-disclosure as a complex problem, but as a type of crime.

Reporting in criminal justice time calls to mind how HIV non-disclosure stories are written in ways that export to readers the institutional logic of the criminal justice system and use key

moments within the characteristic sequence or progress of a criminal case as the formal occasion for reporting. Standard developments in the criminal justice system processing of a given case—for example, laying charges, decisions related to bail, motions made before a judge, verdicts, sentencing, appeals and so on—both trigger and form the immediate focus of newspaper coverage of HIV non-disclosure.

For example, the newspaper coverage of Johnson Aziga begins with stories about two events that situate him as a subject of the criminal law. We read about his arrest following accusations of having unprotected intercourse without disclosing his HIV-positive status and about his initial court appearance during which he enters a plea and bail is set. The reportage of these early events introduces Aziga to the public as part of an emerging crime story and focuses on institutional processes and events that signal an imminent

HIV Advocacy Organizations, AIDS Service Organizations and Newspaper Coverage of HIV Criminalization

In our overall corpus, newspaper stories treat HIV non-disclosure as a crime. They tell stories about people living with HIV who have been charged with criminal offences related to HIV non-disclosure, some of whom have also faced public health orders to control their sexual activities. As we have argued, these news stories are written in “criminal justice time.” They import the logic of the criminal justice system into narratives that focus on key developments in the progress of a given criminal case, all the while representing people living with HIV as morally reprehensible. People reading such stories are repeatedly exposed to a public discourse that takes for granted that HIV non-disclosure should be treated as a criminal offence.

People who work in AIDS service organizations (ASOs) or HIV advocacy organizations are one of the few sources of an alternative perspective on HIV non-disclosure found in our corpus. In fact, these organizations are the single most important and consistent source of a counter-discourse on HIV criminalization found in Canadian newspaper coverage. This counter-discourse gets expressed through editorials and letters to the editor written by people who work for or with advocacy organizations and ASOs. It also gets expressed when people from these organizations are quoted as part of the coverage of a given criminal case. Perspectives from people who work in ASOs and advocacy organizations are most commonly expressed in news reports of criminal cases that feature important legal developments, such as cases that have appeared before the Supreme Court of Canada.

In articles published in our corpus, representatives from ASOs and HIV advocates have raised a number of issues that disrupt the dominant representation of HIV criminalization. Some have directly criticized news media for releasing the names and photographs of people who have faced allegations related to HIV non-disclosure and for producing coverage that otherwise stigmatizes people living with HIV (Davidson, 2005). Others use news media as an opportunity to reinforce HIV prevention messaging and to promote safer sex (Ogilvie, 2005). Still others have sought to “recuperate” the public image of people living with HIV by emphasizing that most people living with HIV take careful steps to protect their sexual partners from HIV transmission (Helmsworth, 2005; Prokaska, 2009).

In the coverage of Ssenyonga, Aziga, Smith and Mabior, advocates draw on a combination of legal, human rights, public health and scientific discourses to make arguments against using the criminal law to address HIV non-disclosure. Arguments drawing on public health reasoning are a particularly common feature of counter-discourses and have been made most forcefully by the Canadian HIV/AIDS Legal Network. For example, in coverage of the Aziga case, Richard Elliott, from the Legal Network, emphasizes that using the criminal law to address HIV transmission risks produces a misconception of people living with HIV: “It risks becoming the dominant impression out there of people living with HIV as potential criminals, which is not an accurate or fair representation.” He further emphasizes how criminal prosecution contributes to “the stigma attached to the disease and influences people not to get tested for fear of being criminally responsible” (“HIV-positive Man Faces Murder Trial; Charged in Deaths of Two T.O. Women Activist Denounces Judge’s Decision,” 2005). Similar arguments appear in articles about the Trevis Smith case. For example, in a *Globe and Mail* article, Glenn Betteridge, from the Canadian HIV/AIDS Legal Network, argues that “public health laws are a better way to prevent people from knowingly putting others at risk” (Cook, 2006). In later coverage, Lydia Thompson, from AIDS Programs South Saskatchewan, counters the representation of Smith as an HIV-positive “other.” She suggests that “maybe [the case] will make people aware that HIV is here in the city, or here in Saskatchewan itself” (“CFLer Faces HIV-sex Assault Charges This Week in Regina Court,” 2007).

Advocates quoted in our corpus also commonly make arguments about the importance of scientific research on HIV transmission risks. These arguments feature most prominently in coverage of the Mabior case, in which scientific evidence about HIV transmission was central to interventions in the case heard by the Supreme Court of Canada. Once again, the Canadian HIV/AIDS Legal Network is the most prominent voice featured in newspaper coverage. Throughout the reporting, representatives from the Legal Network argue that judicial decision making in HIV non-disclosure criminal cases needs to be principally informed by current scientific research on the risk of HIV transmission. For example, a newspaper article published in *The Hamilton Spectator* quotes Richard Elliott, who argues that “people are being prosecuted when they pose no significant risk of harm” and that “the law needs to evolve itself with science” (Clairmont, 2011). Repeated Legal Network messaging about prosecutions in the face of minimal risks anchors articles in which people living with HIV and medical scientists are quoted in support of restricting HIV criminalization. Such messaging also appears in newspaper editorials written on the issue. The importance of this intervention in media coverage should not be underestimated. ASO and advocacy organizations’ perspectives on the science of HIV represent the single most important corrective to media reporting that exaggerates the risk of sexually transmitting HIV.

criminal trial. Subsequent reportage reinforces a crime story framing by selecting key developments in his criminal case as the focus of what is written about. These developments include delays in the investigation of his case, the firing of his lawyers, the difficulties of securing witnesses for his trial and his defense counsel's efforts to have his case thrown out on legal grounds. Later news stories focus on the trial itself, where coverage addresses the testimony of witnesses, arguments made by Crown counsel and his defense lawyers, as well as the verdict and sentence.

Of course, telling stories in criminal justice time is not just about describing the various legal developments in an ongoing criminal case. It engages narratives and forms of writing that present people living with HIV as criminal subjects. By the term criminal subject we have in mind a way of knowing a person not as a unique individual, but as a kind of person. People "become" a kind of person when they are written about or described through a specialized language or through writing that locates them within a set of institutional relations such as those of the criminal justice system. The following sequence of quotes taken from newspaper coverage focused on Charles Ssenyonga suggests what this representational strategy involves.

An Ontario court has ordered a man with AIDS to abstain from having sex, the second celibacy order he has received. Charles Ssenyonga could be charged with contempt of court if he engages in any sexual activity, under an order issued yesterday by Mr. Justice Robert Montgomery (Armstrong, 1991a). (Toronto Star, 17 April 1991)

A justice of the peace was to rule today whether a London man banned from having sex because he is infected with the AIDS-causing virus will be released on bail. A day-long hearing for Charles Ssenyonga, 34, was held yesterday under a publication ban on evidence and legal arguments. The former art store owner is charged with three counts each of aggravated sexual assault, criminal negligence causing bodily

harm, administering a noxious thing and being a common nuisance ("AIDS-sex Man Free on Bail", 1991). (Toronto Star, 26 June 1991)

An Ontario court justice was to rule today on whether a London man accused of infecting three women with an AID-related virus should go back to jail. Charles Ssenyonga's preliminary hearing is to begin Nov. 12 in London. A bail review was held here yesterday. Ssenyonga, 34, was released on \$5,000 bail by a London justice of the peace in June. As a condition of his release, he was banned from having sex with anyone. He is charged with three counts each of aggravated sexual assault, criminal negligence causing bodily harm, common nuisance and administering a noxious substance ("AIDS Case Ruling Could End Bail for Accused Man", 1991). (Toronto Star, 9 August 1991)

Ssenyonga, 34, is charged with three counts each of aggravated sexual assault, criminal negligence causing bodily harm, administering a noxious thing with intent to endanger life, and common nuisance (Adamick, 1991). (Toronto Star, 30 November 1991)

Ssenyonga, 36, is charged with three counts of criminal negligence causing bodily harm for knowingly infecting three unnamed Ontario women with the AIDS-causing virus between 1989 and 1991 while he was already under a public health order banning him from having sex. (Adamick, 1993d). (Toronto Star, 8 July 1993)

The first three quotations above offer examples of how criminal justice time is produced in written language. From among the myriad possible ways that Charles Ssenyonga might be written about one finds, in each quotation, an organization of discourse that situates him as a subject of routine institutional proceedings within the criminal justice system. In sequence, these include a celibacy order issued by an Ontario court, a justice of the peace ruling on bail, and a review of that bail by an Ontario court justice. These proceedings form the substantive focus of each quotation; they are what is written about, typically in the form of some type of

chronological sequence or narrative of events. In each passage of text, events are further written about in ways that sharply delineate or circumscribe Ssenyonga's actions within the institutional relations of the criminal justice system. Ssenyonga is presented in the quotations as a subject who is active only as someone involved in or having his activities restricted by the criminal justice system. All of what he does, may do, or, indeed, what may be done to him is represented through an institutional order of discourse such that he "could be charged", "will be released on bail" or may "go back to jail."

These quotes are interesting for how they illustrate the way that telling stories in criminal justice time relies on a set of common descriptors used to represent people facing HIV-related sex charges. Generally, these descriptors are elements of common forms of social classification such as age and gender. Taken together, they produce a kind of shorthand "précis" of the individual that is reminiscent of the textual genre of the "case summary." In the quote above, the root elements are the individual's name and some type of description linking him with HIV, such as "a man with AIDS" or "infected with the AIDS-causing virus." The remaining key elements include the individual's gender and place of residence, (e.g. "a London man"); his age, (e.g. "Ssenyonga, 34" and "Ssenyonga, 36"); and his occupation, (e.g. "the former art store owner").

A final representational strategy associated with writing in criminal justice time is the listing of charges. This involves pairing an individual's name and, often, other elements of the basic descriptors just noted, with an account of the number and types of charges faced. The second and third quotations above locate this device in context, while the final two quotations isolate particular examples from different moments in the coverage of Ssenyonga's case.

The combination of "name of person" + "basic descriptor(s)" + "charges" reduces people living

with HIV to bearers of a criminal charge and produces a connection between them and the criminal justice system in its most compact, irreducible, and taken-for-granted form. Overall, linking an individual's name with descriptors and the charges he or she faces is the most elemental way of representing people living with HIV as criminal subjects found in our corpus. It is a rhetorical strategy repeatedly used in the representation of Ssenyonga and the three other individuals who are our immediate focus. At the same time, it provides an opportunity for information that impugns the moral character of the individual to be inserted within a standardized rhetorical sequence. The addition of phrases about "knowingly infecting three unnamed Ontario women" and "already [being] under a public health order banning him from having sex" offer an example from the coverage of the Ssenyonga case.

Writing in criminal justice time is not a representational strategy specific to coverage of racialized immigrant defendants. It appears in all the news stories in our corpus. It is perhaps best understood as a device that produces a first order level of objectification in news stories about HIV criminalization. Writing in criminal justice time others people living with HIV in a particular way. Rather than treating them as unique individuals with complex lives, it negatively and stereotypically frames them as an undesirable kind of person—a criminal or potential criminal. This type of writing situates people living with HIV within the institutional processes of the criminal justice system and restricts description of their activities to those relevant to that sphere of institutional relations. The variety of their particular embodied, local experiences are written over by a standardized discourse that represents them as criminal subjects. We know next to nothing about them other than their name, age, residence, occupation, the charges they face and what recent development in the processing of their criminal case they may be engaged in.

The Silence of Defendants in Newspaper Coverage

Attending to how speakers' voices are included, made absent, and mobilized in particular ways offers insight into how criminal justice time reporting is produced. One way that the othering and objectification typical of writing in criminal justice time occurs is by silencing people living with HIV and heavily quoting other criminal justice actors, especially complainants, judges and lawyers. Being silenced or spoken about by others is typical of the representation of racialized people in popular news media. Researchers have identified that a property of racism in the press is that minorities are largely silent and hardly quoted (Teo, 2000: 18; van Dijk, 2000). This pattern holds true in newspaper coverage of ACB men who are defendants in HIV non-disclosure cases. We recognize that the silence of defendants is largely an outcome of defense counsel discouraging clients from speaking with the media. Still, it is important to acknowledge that, as a consequence, defendants are not active speaking subjects in coverage of HIV non-disclosure cases. Being present in newspaper articles without an active voice or primarily as someone being spoken about or referred to by others—complainants, judges, lawyers, and medical and public health experts—is a powerful rhetorical strategy for objectifying Black men facing HIV-related criminal charges.

To show the disparity in who speaks in our corpus we counted the number of times speakers are directly quoted in coverage of two cases – Charles Ssenyonga and Clato Mabior.

SSENYONGA Case-- Speakers	Number of Quotes	MABIOR Case- Speakers	Number of Quotes
Ssenyonga	1	Mabior	8
Complainants	54	Judges	23
Judges	15	Canadian HIV/AIDS Legal Network	17
Expert Witnesses	14	Complainants	10
Defense Attorneys	12	Crown Prosecutors	9
Crown Prosecutors	9	Immigration Officials	4
ASOs	8	People living with HIV	3
People living with HIV	5	Public Health	2
Physicians	5		
Public Health	2		

News reports on Ssenyonga provide an early example of how the silencing of ACB defendants takes form. Ssenyonga is quoted only once. Others involved in his criminal case are quoted more frequently. Clato Mabior has a slightly greater presence as a speaking subject. He is directly quoted eight times. However, other people continue to be directly quoted more often than he is.

It is important to highlight that when Ssenyonga and Mabior speak in newspaper coverage, they do so as criminal subjects. Ssenyonga is directly quoted as part of testimony in which he responds to the Crown attorney's inquiry into why he put a complainant at risk of HIV: "I was not in my right mind" ("Ssenyonga Faces Accusers for First Time in Courtroom," 1993). Mabior is quoted as

criticizing the criminal justice and immigration processes. He describes his detention as “illegal and unlawful” (“Kicked Out of Canada, HIV Sex Attacker Sent Back to South Sudan”, 2012) and states that the federal immigration department has been “holding its hand on my throat...I am sick and tired of this game” (Turner, 2012).

Other people quoted in the coverage often speak about the defendants or give their accounts of what the defendants have said in the past. The sources selected by reporters to speak about defendants regularly confirm general attitudes about them (Van Dijk, 2000). For example, reportage of Ssenyonga’s case privileges the voices of complainants. It works to produce a stark criminal-victim polarity that supports his representation as a morally culpable “other.” One report describes the scene in a courtroom: “‘Damn you!’ the distraught witness shrieked at Ssenyonga... ‘are you happy? Do you feel proud?’ the young woman yelled from the witness box. ‘I’ll be right alongside—dead’” (Adamick, 1993e).

Similarly, the voices of experts are evoked in the coverage of Mabior to reinforce the idea that he acted recklessly and is morally blameworthy because he put others at risk of HIV despite public health warnings and counselling. For example, during Mabior’s trial, a public health nurse is quoted explaining that, “he was having unprotected sex despite our conversations about always using condoms,... he has an obligation to inform his partners and must use a condom...I told him every time, in some fashion” (Sanders, 2008).

Racialization, Immigration and Representing Moral Blameworthiness

Writing news stories in criminal justice time creates a discursive context within which a second set of representational strategies are used to specifically frame ACB men living with HIV and the criminal cases in which they are involved. This second set of representational strategies includes a range of othering devices that construct people living with HIV as morally blameworthy and that link those constructions with representations of immigration status and racialized difference. Some of these devices have a generalized presence in our corpus. For example, newspaper stories routinely represent all people living with HIV who face criminal charges related to HIV non-disclosure as deceitful, sexual predators. Framing coverage in terms of a simplistic criminal-victim polarity, using metaphors that exaggerate the risk of HIV transmission, word choices that represent people living with HIV as morally reprehensible and the strategic assembly and quoting of expert

testimony to emphasize wrong-doing are all forms of representation that are commonly used throughout our corpus, regardless of the defendant’s race.

However, what is distinct about the coverage of Black male defendants is how these strategies are linked with racializing forms of representation in ways that amplify connections between HIV, criminality, race and “foreignness.” At the most basic level, racial otherness is produced in our corpus through representational strategies that racially identify male defendants as Black and as “foreigners.” This occurs through the inclusion of photographs of defendants, through reference to their so-called “rare” strains of HIV that originate in African countries, and by identifying them by their country of origin. When these forms of representation are linked with more general devices for representing moral blameworthiness, moral reprehensibility and race converge in the figure of dangerous, sexually predacious and “non-Canadian” Black man living with HIV. The overall effect is a popular discourse that stigmatizes Black

heterosexual immigrant men living with HIV, characterizing them as deceitful, hypersexual threats to the health and safety of (White) women and the imagined Canadian nation.

To explore how these forms of representation operate we examine key aspects of newspaper coverage of the criminal cases of Charles Ssenyonga, Johnson Aziga, Trevis Smith and Clato Mabior. We begin our discussion with Ssenyonga, the first person living with HIV and first Black man living with HIV whose sex-related criminal case received national attention in Canada. Newspaper stories about Ssenyonga establish key features of a regime of representation reproduced in coverage of later cases. Our analysis of Ssenyonga emphasizes how links between hypersexuality, moral blameworthiness and racialized otherness are produced. We pay particular attention to his representation as an “African other” and the use of criminal-victim polarities in framing the coverage of his case. We then turn to reportage of Johnson Aziga’s case. Here, we focus on a specific news article to show how quoting and writing about medical testimony constructs a story about a racialized defendant’s moral blameworthiness. Trevis Smith has received more Canadian newspaper coverage than any other defendant in our corpus. We explore how the criminal-victim polarity is mobilized in coverage of his case, such that Smith is represented as a racialized, foreign other who has violated wholesome, rural Canadian values. We conclude our analysis of media representation by exploring newspaper coverage of Clato Mabior’s case. We note how his representation as a ‘deserving deportee’ extends the institutional relevancies expressed in the coverage of his case beyond those of criminal justice time into the workings of the Canadian immigration apparatus.

Charles Ssenyonga: Constructing the Racialized Other in Relation to HIV and Immigration Status

The newspaper coverage of the Charles Ssenyonga case provides an early and important example of the use of strategies of representation that link the framing of moral culpability with racialization and immigration status. As the first Black man facing sex-related criminal charges related to his HIV-positive status to receive national coverage in Canada, Ssenyonga is framed through a repertoire of representation that is subsequently borrowed, modified and elaborated in news coverage of other ACB men. In the coverage of his case, Ssenyonga is represented as a threat to normative forms of heterosexual romance and intimacy. We explore how his representation as a dangerous, HIV-positive African man is linked with age old tropes of dangerous Black masculinity. Those tropes are mobilized within criminal-victim narratives that emphasize his moral contemptibility.

The duration of coverage of Ssenyonga and his criminal case is unique. The earliest newspaper reports begin in April 1991 with what is described as an “extreme” measure by the Ontario government to secure a court order banning Ssenyonga from having sex (Toughill, 1991). Early on, Ssenyonga is represented as a public health threat. This representation is supported by statements about the number of women who claim to have become HIV-infected through sex with him and metaphoric characterizations such as Dr. Alex Klein’s assertion that Ssenyonga “has clear knowledge he’s infecting others” which is “no different than some guy who mows down six women in a crowd” (Todd, 1991).

Subsequent coverage focuses on the criminal charges faced by Ssenyonga and key developments in his unfolding criminal case. Ssenyonga’s death on 20 July 1993 in the midst of his trial and the presiding judge’s decision not to render a verdict do not result in an end

to the coverage. Descriptions of Ssenyonga and his criminal case continue in newspaper stories about his complainants' efforts to secure financial compensation from the Ontario Criminal Injuries Compensation Board and in coverage of the release of *Trial Without End*, a book about Ssenyonga's criminal trial written by June Callwood (1995). Ssenyonga once again appears in newspapers in 2013 in coverage of the retirement of the presiding judge in his case, who declined to answer questions from the press about what his verdict would have been had Ssenyonga lived.

Ssenyonga as a Racialized 'Other'

Ssenyonga's race features prominently in newspaper coverage of his case. One way that Ssenyonga is represented as a racialized "other" is by pairing visual imagery with printed text describing key developments in his case. While limitations in our data sources prevent us from undertaking a comprehensive analysis of the visual imagery found in our corpus, we note that photographs of Ssenyonga routinely accompany newspaper articles written about him. The first photograph of Ssenyonga appears in the fourth newspaper article about his case. The article represents Ssenyonga as a danger to the public by referring to court documents claiming that he repeatedly had sex without a condom after testing HIV positive (Armstrong, 1991a). The photo is centred in the article and is roughly the same size of a single column of the two-column article. It features a profile headshot of Ssenyonga captioned with his surname and is accompanied by the headline "Court orders man with AIDS to abstain from having sex." Subsequent coverage regularly features similar head-shots framed by eye-catching headlines such as "Witness rages at trial of man who has HIV" (Adamick, 1993e)

and "Man 'buried' truth about HIV London trial told" (Adamick, 1993c). These photographs operate intertextually¹⁰ with the written stories that they accompany. They encourage readers to associate the various descriptions of Ssenyonga and his case, including the criminal charges he faces, his multiple sex partners, his dangerous sexual behaviour and so on, with a stereotypical photographic representation of the Black male criminal.

A second way that Ssenyonga is represented as a racialized "other" is through description, identification and other forms of language use that connect him with Uganda and Africa. The most common way this happens is by including references to Uganda within the common set of descriptors used to represent Ssenyonga. The newspaper coverage of Ssenyonga and, for that matter, of Smith, Mabior, Aziga and other Black immigrant HIV-positive men is unique for continually referring to the country of origin of the defendant. On the basis of newspaper coverage, one would never know whether a White person facing criminal charges related to HIV non-disclosure was an immigrant. The ethnic background and immigrant status of White defendants is virtually never reported on. When, however, a defendant is a Black man from a Caribbean, African or other country, reporters repeatedly make mention of the fact. Thus one reads about "Mr. Ssenyonga, 35, who came to Canada from Uganda in 1983" ("'Damn You!' Woman Cries 'Trusting' Man Accused of Infecting 3," 1993), about "Ssenyonga's native Uganda" ("Ssenyonga Faces Accusers for First Time in Courtroom," 1993), about Ssenyonga, "who came to Canada from Uganda 10 years ago" (Adamick, 1993b), and about Ssenyonga "the Ugandan immigrant" (Tyler, 1993a) "the

¹⁰ Intertextuality is a concept that is used in different ways by scholars who conduct social research on language, knowledge and representation. Common to all uses is a concern for how texts (e.g. written documents, photographs, illustrations) are related one to another. Here we are using the term to suggest how the meaning of a text relies upon or is shaped by other texts. In our example, the news article and the photograph have an intertextual relationship to the extent that the meaning of each is shaped by the other. For more on intertextuality see Fairclough (2003).

native Ugandan" ("Pair Outraged by Ruling on HIV Compensation," 1994) and the "Ugandan refugee" (Boase, 1995). In some coverage, Ssenyonga's connection to Canada is completely effaced and he is referred to simply as a "Ugandan" (Landsberg, 1994).

The continual reference to Ssenyonga's Ugandan heritage is not simply a neutral form of identification. It is a strategic deployment of language that repeatedly represents him as other than Canadian. Moreover, representations of Ssenyonga as a Ugandan immigrant are amplified by coverage that represents Uganda and other African countries as dangerous places that stand in contrast to or threaten the stability of an imagined Canada. One way this happens is through descriptions of "war-torn" Uganda made by competing experts during testimony in Ssenyonga's trial. As part of coverage about whether Ssenyonga's HIV non-disclosure can be attributed to post-traumatic stress disorder, reporters reproduce expert accounts of the "horrors Mr. Ssenyonga witnessed while growing up in war-torn Uganda" (Death in HIV-case puts judge on the spot, 1993). These reports underscore Ssenyonga's "otherness" by representing Uganda as a site of trauma, violence and chaos in contrast to the relative safety of Canada, to which Ssenyonga is said to have fled (Tyler, 1993b).

A second way Ssenyonga's representation as a Ugandan immigrant is amplified is by ascribing a foreign, national identity to the HIV in his body. Reporting on testimony meant to establish that Ssenyonga and the complainants in his case share a common form of HIV, newspaper coverage refers to a "rare Rwandan strain of the virus" (Adamick, 1993d) as well as a "rare strain [of HIV] traced back to his native Uganda" (Slopen, 1995). In reporting of this type, the HIV in his body becomes "Ugandan" or "Rwandan" and Ssenyonga himself is represented as the source of a frightening virus that has newly entered Canada. Ssenyonga's body is thus constituted as a foreign infectious disease threat. The particular

dangers of the HIV in his body are emphasized: "He was seducing and infecting a whole series of women with a rare and virulent strain of AIDS" (Landsberg, 1994). The externality of "Ssenyonga's HIV" is also emphasized in accounts of its source beyond Canada and the novel threat it is taken to represent: "The strain was previously unknown in Canada" (Tyler, 1993c).

In our corpus, Ssenyonga's representation as a dangerous, HIV-positive African man is supported by narratives of his moral contemptibility. These narratives focus on his sexual behaviour and the nature of the relationships he formed with his sex partners. Throughout the coverage of his case, Ssenyonga is presented as someone who disdained public health approaches to control HIV transmission. Reporters reproduce a characteristic narrative sequence about how he was fully aware of his HIV-positive status, received public health counselling, was ordered to abstain from sex, and yet repeatedly had sexual intercourse with multiple women without using condoms.

Two rhetorical devices common to these narratives represent Ssenyonga as a callous lothario, given to promiscuity. First, in describing Ssenyonga or the legal charges he faces, reporters rely on adverbs that attribute, to his actions, a particularly dishonourable form of consciousness and mental state. Prior to the start of his criminal case and during the trial, Ssenyonga is described as having "knowingly infected" (Adamick 1991) or "deliberately spread" ("'Damn You!' Woman Cries 'Trusting' Man Accused of Infecting 3," 1993) HIV to the complainants in his case. These word choices describe Ssenyonga's sexual activities not as a matter of withholding his HIV-positive status from women while having unprotected sex or refusing to wear condoms with them, but of doing so with the knowledge that they would become infected or with the deliberate intention to transmit HIV to them. Second, in a manner harkening back to well-worn tropes of Black men's hypersexuality, repeated

mention is made of the estimated number of women with whom Ssenyonga had sex. These accounts align Ssenyonga's representation with a long history of racist stereotypes about Black men's sexual conquests and avarice (Fanon, 2008; Hall, 1997; hooks, 2004; Miller, 2005) and support his characterization as an "insatiable sexual predator" (Mate, 1995). Early reports refer to "at least six women who say they slept with Ssenyonga [who] are now infected with the AIDS virus [sic]" (Armstrong, 1991b). Towards the end of the coverage, that count rises to "at least 20 women" and possibly "as many as 100 women" (Page, 1995).

The Criminal-Victim Dichotomy

A critical feature of the discursive strategies that link moral blameworthiness with racialized otherness in newspaper coverage of Ssenyonga is the inclusion of comments and statements from the women who brought forward allegations that he transmitted HIV infection to them. Such statements appear as early as the second newspaper article about Ssenyonga. Subsequent coverage features regular quotations from the complainants in his case, drawn from their testimony at trial and from interviews about their experiences of the trial and their reactions to the decisions of the Ontario Criminal Injuries Compensation Board.¹¹ These statements are the single most potent source of condemnation of Ssenyonga's character found in our corpus. They tell a story of being deceived by an unscrupulous lover and gain rhetorical force for how they underwrite a sharp criminal-victim dichotomy. The othering produced by criminal-victim polarities is reinforced by accounts of the women's suffering. Readers are routinely informed about the shortened life expectancy of the complainants—"One of the women Charles Ssenyonga is accused of knowingly infecting with

HIV now has full-blown AIDS and less than a year to live" (Adamick, 1993a); about how their "dreams have been devastated by... Ssenyonga" (Tyler, 1993a); and about how the criminal justice system has failed them. Their experiences, voices and perspectives, including their emotional reactions to the trial: "Damn you! The distraught witness shrieked at Ssenyonga in a courtroom here yesterday" (Adamick, 1993e), populate news stories about Ssenyonga. In this way Ssenyonga is rendered an object—someone spoken about and who has scarcely an active presence as a speaking subject in the reporting of his case (see "The Silence of Defendants in Newspaper Coverage" page 37 of this report).

Characterizations of Ssenyonga made by his complainants or attributed to them tell stories about the betrayal of normative forms of heterosexual romance that position Ssenyonga as a kind of African Don Juan (Miller, 2005) in contrast to the women with whom he had sex, who are positioned as innocent victims. The women describe Ssenyonga as an "intelligent" and "charming" (Mate, 1995) man whose "worldliness" "swept [them] off their feet" (Tyler, 1993c). Reports quote testimony that "they were charmed and seduced by Ssenyonga" (Adamick, 1993b). In an interview, one complainant states "I was beginning to fall in love. He seemed so charming, so sensitive" (Landsberg, 1994). Ssenyonga emerges through these representations as a Svengali figure whom the women were in awe of and who responded to their trust in him by assuring them "he was disease-free" (Tyler, 1995) only to tear off the condom "at the moment of penetration" ("State-supervised Sex," 1994). The frequency of such accounts in the Ssenyonga coverage suggests just how much transgressions of heterosexual intimacy and romance, extreme

¹¹ Following Ssenyonga's death, the three complainants in his case sought financial compensation in the amount of \$25,000 each from the Ontario Criminal Injuries Compensation Board for the "expenses, pain and suffering" they endured (Tyler, 1993a). The Board is empowered to award complainants compensation in the absence of a guilty verdict. Initially the Board ruled that the complainants should receive \$15,000 plus \$3,000 for funeral expenses (Boase, 1995). That decision was later overturned and each complainant received the full \$25,000.

Headline Analysis: Race, Moral Condemnation, and the Aziga Case

In his important work on racist discourse in newspapers, Van Dijk (1991) argues that headlines serve textual and cognitive functions. Separated from the main text and often written in large font sizes, headlines generally summarize the key information provided in a given news article. They are often read first, and so are used strategically by readers to construct the “overall meaning...of the rest of the text” (1991:50). As one might expect, in our corpus, headlines situate articles within criminal justice time. They do so by announcing some development in a given case that is the article’s explicit topical focus. For example, consider how the following headlines lay out a partial sequence of events in the Aziga case: “Jury Selection Begins in HIV Murder Trial” (2008), “Hamilton Man Pleads not Guilty in HIV Case” (2008), “Another Change of Counsel in HIV Murder Case” (2008) and “‘He Lied to me’: Woman Testifies Aziga ‘Took me, Looked Into my Face and Told me he Wasn’t HIV Infected. I Trusted Him’” (Brown, 2008a).

Interestingly, explicit racializing tropes or references to the race, country of origin or immigration status of defendants are uncommon in the headlines of the coverage we have analyzed. In fact, headlines that refer to Aziga’s claim that the jury in his case was racist are the only instance when matters of race appear explicitly in headlines of his case. While headlines may not structure subsequent engagement with a text in ways that explicitly highlight race, they do set readers up to read for the moral failings of the defendants who are written about.

In headlines about the Aziga case, this happens in a number of ways. One representational device involves treating Aziga an ungovernable, mentally unstable individual: “Charges for Spreading HIV Fuels Debate: Protect Society ‘From its Maniacs’” (Helmsworth, 2005). In other headlines, he is represented as a selfish, immoral, or otherwise irresponsible subject: “Johnson Aziga is Still Looking out for No. 1: Convicted Double Murderer Just Can’t Bring Himself to Simply do the Right Thing” (Clairmont, 2011).

Another common representational device introduces elements of a discourse, elaborated in the full text of articles, that connect with longstanding representations of Black men as sexual threats. Thus, one headline announces: “Aziga’s Sex Drive Dangerous,” while another refers to him as an “AIDS-spreading Lothario” (Editorial, 2011). Finally, we note the preponderance of the term “HIV killer” and its variant “HIV murderer” in headlines about the Aziga case. The term translates a legal finding of guilt into a popular expression of moral condemnation that pairs HIV with the act of murdering or killing another human being. “HIV killer” is perhaps the most economical way of expressing a relationship between HIV and extreme violence through the figure of a particular kind of subject—the HIV killer. “HIV killer” is first introduced in headlines of articles that report on Aziga’s guilty verdict. Thereafter, it becomes a standard way of naming him in headlines.

As the following two headlines suggest, HIV killer adds a new moralizing dimension to established tropes of hypersexuality found within headlines that express a given moment within criminal justice time: “HIV killer Has High Libido, Could Reoffend if Freed, Crown Argues” (Loriggio, 2011); “Unprotected Sex Okay if Partner is ‘Risk Taker’: HIV Killer; Convicted Man’s Testimony Continues at Hearing to Decide Whether to Declare Him a Dangerous Offender” (Jones, 2011).

as they are, figure in how Black immigrant men living with HIV are represented as amoral subjects in our corpus.

Johnson Aziga: Recontextualizing Expert Accounts to Reinforce Moral Blameworthiness

Newspaper articles about Johnson Aziga use many of the same discursive strategies found in the coverage of the Ssenyonga case. Articles about Aziga are organized in a manner that follows the logic and key events typical of writing in criminal justice time. Like Ssenyonga, Aziga's racial and foreign "otherness" are constructed through the use of photographs and frequent reference to him as "Ugandan-born" and as a "refugee" (Brown, 2008a, 2008b). Further, throughout the coverage discursive strategies frame Aziga as morally blameworthy for "deceiving" (Brown, 2009), "betraying" (DiManno, 2008), and "recklessly endangering" (Dunphy, 2005) his sexual partners by exposing them to HIV.

The coverage of the Johnson Aziga case also provides an example of how writing about expert testimony given at criminal trials frames people living with HIV who face criminal charges related to HIV non-disclosure as morally blameworthy people. In these stories, reporters piece together selected parts of expert testimony. They typically combine quoted testimony with their own narrative accounts of what was said at trial. They also intersperse the quotations and accounts of testimony with descriptions of the defendant and other rhetorical devices to produce articles that read as stories about a morally reprehensible person told in criminal justice time.

In their writing, reporters often focus on the testimony given at trial by public health authorities, physicians and medical experts that Crown prosecutors introduce to try to establish that a defendant is guilty of a crime. Testimony of this sort typically involves accounts of how a defendant was aware of being HIV-

positive, was repeatedly counselled about HIV transmission risks and, despite possessing that information, failed to disclose his HIV-positive status to an individual with whom, it is alleged, the defendant had unprotected sex. Examples from the coverage of the Aziga case include the following:

A public health nurse who counselled Johnson Aziga on his moral and legal responsibilities as a sexually active, HIV-positive man told his murder trial yesterday she believes he fully understood people's lives were being put at risk. (Brown, 2008b)

Ms. Nauta, as the public health nurse stationed at the clinic Mr. Aziga regularly attended, was to do some of that counselling. She knew, she said, the importance of not lecturing clients, and her practice was to get the client to tell her what he or she knew about HIV, its transmission and the legal responsibility to disclose. That way, she said, she could be sure the client really understood what the rules were, and that "while they may not be changing their behaviour yet," at least she would know "they have the knowledge." (Blatchford, 2008c)

Dr. Haider counselled Mr. Aziga about the disease when he took over his case after another doctor left the clinic. ... "Our focus is him and his health," Dr. Haider said. "But I did have a safer-sex discussion," including the need to disclose and to use condoms, as part of a larger discussion about treatment, how one acquired HIV and "its effect on others." (Blatchford, 2008b)

[Dr. Richardson, the Hamilton Medical Officer of Health] replied, calmly but very firmly, that public health nurses were aware of the issue of "competence," but that didn't seem to be a question with Mr. Aziga. "Sometimes," Dr. Richardson said, "people just aren't willing [to comply with safer-sex rules or orders]." Referring to Mr. Aziga's enormous medical file before her in the witness box, she said, "I don't see where our nurses raised any concerns about competence." (Blatchford, 2008a)

Including such testimony in news articles is a particular form of recontextualization,¹² whereby counselling notes taken and advice given for the initial purpose of preventing HIV transmission is worked up as evidence as part of a prosecutorial strategy and then selectively reported and commented on in a popular news story. Given how the statements of medical personnel carry status and authority associated with the health professions, their testimony can be a powerful rhetorical tool in news articles for representing the blameworthiness of people living with HIV who face criminal charges. As is suggested by the final quotation above, that authority is reinforced by word choices that represent the actions of expert witnesses in positive terms—Dr. Richardson speaks “calmly but very firmly.” Repeatedly quoting and positively referring to expert testimony juxtaposes the objective trustworthy demeanor of experts against defendants’ moral blameworthiness: they knew they were HIV-positive, were counselled and yet had unprotected sex and / or did not disclose their HIV-positive status.

An article written about the Johnson Aziga trial by Christie Blatchford (2008b) provides a specific example of how articles in our corpus use medical testimony as a discursive context for producing stories about a morally abject person. The title of the article, “HIV-positive man was ‘actively involved’ patient concerned with his well-being, specialist testifies” (Blatchford, 2008b) represents a particular event in Aziga’s trial—the testimony of a “specialist.” It bears a number of the standard features of a story told in criminal justice time. Readers are introduced to key actors involved in Aziga’s case including prosecutors, his “alleged victims” and “the 52-year old Ugandan immigrant and former Ontario civil servant” (Blatchford, 2008b) himself, who is represented in terms of the set of common descriptors we discussed earlier.

Readers are also informed about the number and type of charges Aziga faced.

The bulk of the story consists of direct quotes and description of the testimony of Dr. Haider, Aziga’s physician and the “specialist” named in the article’s title. Mention is made of the number of times Aziga visited Haider’s clinic and of Aziga’s reluctance to begin taking antiretroviral medication. Excerpts from Haider’s clinical notes are provided and Haider is quoted describing how “Aziga was actively involved and very concerned about his health” (Blatchford, 2008b). Of course, the article is not meant to represent Aziga as a model patient who was “very proactive” about his HIV infection. Nor is the intention to recount the testimony that occurred at trial in a straightforward fashion. Rather, the article uses the testimony to tell a story about a bad person living with HIV. This occurs through specific word choices, explicit negative representations of Aziga and a closing narrative that morally contrasts Aziga with his ex-wife.

The opening sentence of the article reads as follows: “The HIV-positive man accused of murder and aggravated sexual assault in a slew of cases involving infected women in Southern Ontario was ‘very concerned about his health’ and ‘very educated about the disease’” (Blatchford, 2008b). The choice to describe the number of cases in which Aziga is involved as a “slew” is a subtle rhetorical strategy that gestures toward sexual recklessness on the part of Aziga. The opening sentence also sets up a moral contrast between a group of infected women and an accused HIV-positive murderer who was concerned about his own health.

Following the description of Aziga and his criminal charges, the article proceeds with a quote from the Crown prosecutor’s opening

¹² Linnell (1998:144) defines recontextualization as the “transfer-and-transformation of something from one discourse/text-in-context to another.” Since the meaning of texts is dependent on context, recontextualization implies a change of discursive meaning as the original content is subject to change through simplification, embellishment and being refocused (145).

argument from the start of the trial:

In his opening statement earlier this week, prosecutor Tim Power quietly and in careful language painted Mr. Aziga's conduct as callous, cold and deliberately duplicitous. He said Mr. Aziga not only failed to disclose his HIV status, but also directly lied about it to several of the women, telling one who asked about it that he was fine (reassured, she trusted him and they stopped using condoms) and letting another, who was then dying, believe that she had infected him. (Blatchford, 2008b)

This quote immediately precedes and frames coverage of Haider's testimony. It relies on the familiar rhetorical device of contrasting a positive representation of an authoritative speaker, in this case the prosecutor, who speaks quietly and carefully, with a representation of a person living with HIV as deceitful and morally reprehensible. The parenthetical statement in the excerpt, presumably added by Blatchford, reinforces the prosecutor's negative characterization of Aziga by emphasizing his untrustworthy behaviour. The strategic placement of the quote prior to the reportage of Haider's statements enables readers to interpret his testimony as an elaboration of who Aziga "is"—a "callous, cold and deliberately duplicitous" person. The quote helps to make Blatchford's story not simply about testimony given at trial, but a story about a morally reprehensible person living with HIV.

Blatchford's article ends with what she describes as a "poignant touch" that occurred at "the end of the day" of the trial. The poignant touch refers to Aziga's ex-wife Juliet, who had been with Aziga when he was first diagnosed HIV-positive. Readers learn that following Haider's testimony, Juliet was called to the witness stand to testify that she had been present on one of the occasions when Aziga was counselled by health providers to disclose his HIV-status to future sex partners and to use condoms. Juliet is thanked for her testimony and openly described as a "good citizen" for performing her civic duty by

testifying in court. The article thus concludes with a particular kind of moral juxtaposition, one in which Aziga's loathsome character is reinforced through a contrast with his morally upstanding former wife.

Paying close attention to a particular news article, as we have done here, provides insight into more general representational strategies that use statements made by experts and prosecutors to represent people living with HIV in HIV non-disclosure criminal cases as morally reprehensible. Newspaper accounts do not simply report on expert testimony in a neutral way. The speech of experts and prosecutors is represented positively, as calm, careful and fair-minded, in contrast with deceitful, lying untrustworthy defendants. Expert testimony is assembled, described, elaborated upon and interspersed with negative statements and quotes about defendants' character to produce criminal justice stories about morally blameworthy defendants.

Trevis Smith: The Disruption of a Canadian Prairie Fantasy and the Construction of Racial Otherness

Many of the discursive strategies that frame Charles Ssenyonga as a racialized "other" are also repeated in the newspaper coverage of Trevis Smith. In particular, reportage of Trevis Smith begins with descriptions of the "extraordinary" nature of his case (Brunt, 2005); the flow of newspaper coverage is organized by the standard sequence of events through which criminal cases move; and criminal-victim polarities are mobilized throughout the coverage of his case. Like Ssenyonga, Smith is also represented as "other" through repeated phrases such as the "import from Montgomery Ala" (Maki, 2005) and the "Alabama native" (Cook, 2005a) that define him as non-Canadian.

Hall's concept of "regime of representation" directs our attention to ways that representational

strategies that produce racial difference are repeated across texts. However, Hall also acknowledges that there is variation in how racialized people are framed as “others” (1997: 232). News media representation of Smith is unlike reportage of other racialized defendants in our corpus because, as the longest serving American-born player on the Canadian Football League’s (CFL) Saskatchewan Roughriders, Smith’s case is covered in sports pages across the country. In newspaper articles about Smith, the narrative forms associated with criminal justice time reporting are fused with the conventions of sports reporting. In addition to and combined with reporting focused on key developments in Smith’s criminal case, one finds reports of how Smith’s HIV-positive status was dealt with by Roughriders management, frequent quotes from team managers and fellow players, and commentary about the impact of his case on the professional football community. The coverage of Smith’s case blends the genre of the crime story and the sports story with two significant rhetorical effects: 1) it frames Smith as a morally culpable, foreign “other” who disrupts the foundational role that the Roughriders play in supporting an idealized conception of Canadian Prairie life; and 2) it reformulates the criminal-victim dichotomy such that the victim is generalized to the entire province of Saskatchewan.

To conceptualize the symbolic weight that sports reporters ascribe to Smith as a non-Canadian “other” in Saskatchewan, it is important to note that the Saskatchewan Roughriders football team occupies a distinct space within the popular Canadian sport imagination. The community-owned Roughriders are a sentimental part of Saskatchewan’s identity, and sports coverage of Trevis Smith’s case reminds readers that the Riders are more than just a football team, they are “part of the fabric of the province. Everyone who is born in Saskatchewan identifies with the team” (Hall, 2007). Because the Roughriders are held in such esteem, players on the team’s roster

achieve celebrity status in Regina. As one reporter describes, “There’s no greater status symbol in Regina than a locker stall in the Roughriders dressing room. This is a Prairie city of 180,000. There’s no National Hockey League team, no professional baseball team. The Riders are the modern-day princes of the Queen City” (Hall, 2005).

Newspaper articles in our corpus produce Smith’s moral culpability by representing him as a racialized and foreign other who intrudes upon Saskatchewan and sullies the public image of the community-owned Roughriders. He disrupts the fantasy of the Roughriders as local heroes and guardians of wholesome Prairie pride by bringing into public view behaviour that is linked with professional sports but, typically, remains unspoken and unseen. In light of Smith’s charges, readers are warned that “athletes share women. Not all athletes, and not all women... but it happens.” The same report suggests that Smith, a “public health hazard,” poses a “danger” to “cheerleaders,” “young girls who hang around the CFL’s version of the stage door,” “groupies” and “the regular football fan” (Cole, 2005a).

Reporting in which Smith becomes a hypersexual and dangerous figure is supported by coverage that warns readers that he not only poses a public health threat, but also threatens to unsettle the Riders’ wholesome image. The first days of sports coverage concentrate on the damage “the import from Montgomery” has done to the image of the team, and by extension to the values of the province (Cook, 2007; Griffin, 2005; Maki, 2005). This rhetorical device represents him as “other” than Canadian and especially “other” than individuals seen to uphold the sentimental image of the CFL in Saskatchewan. For example, one longtime CFL player and coach at the time of Smith’s arrest is described in an article as a “devout Christian” who explains that “a lot of the import players don’t understand that you’re a guest in the country” (Cole, 2005b). These types of editorial choices are powerful

decisions that shape how readers view HIV as a crime and understand defendants to be morally blameworthy. Reports that produce Smith as a morally reprehensible outsider, who intrudes upon this local swath of Canadiana and oversteps the boundaries of his status as a “guest,” provide readers with a way to understand his criminal charge as a personal affront instead of a complex and controversial legal and medical issue.

The second rhetorical effect of mixed crime-sports reporting about Trevis Smith is that it produces a unique framing of the criminal-victim duality that is unlike that produced for other defendants in our corpus. Discursive strategies that link moral blameworthiness with racialized otherness by contrasting defendants with innocent complainants are common throughout our corpus. However, sports reporting on Trevis

Inverting the Gender Dynamic: Constructing the Licentious Female Predator

Although this report focuses on newspaper coverage of HIV non-disclosure criminal cases involving African, Caribbean and Black men, concerns have also been voiced about the mainstream media treatment of women living with HIV in relation to criminalization (Duke, 2012). We know that fewer women than men have been charged with criminal offences related to HIV non-disclosure (see page 21 of this report). Further, we find that cases where women have been charged generally have received minimal media coverage. One exception is the coverage of Jennifer Murphy, a White woman who has faced criminal charges related to HIV non-disclosure on three separate occasions in 2005, 2007 and 2011. Our search identified 113 articles about Murphy, which makes her one of the most widely reported defendants in our corpus. The earliest coverage of Murphy occurred in 2005, when several Canadian Forces servicemen made complaints against her.

The coverage of criminal charges faced by Murphy shares many characteristics with the coverage of the cases of other defendants in our corpus. For instance, stories are told through criminal justice time and focus on key developments in her cases. Within that temporal sequence a familiar repertoire of discursive strategies is used to represent Murphy as morally abject. These include: the criminal-victim dichotomy, the representation of her behavior as hypersexual, and the exacerbation of the risk of HIV transmission that she poses. Unlike the coverage of other defendants, however, stories about Murphy invert the dynamic of the male perpetrator and female victim. They draw on well-established media tropes of the “Madonna-whore” dichotomy (Gamson, 2001) to frame Murphy as a deceitful “promiscuous AIDS carrier” (Verma, 2005a) who wrought havoc on a military base, but who “was also known to neighbours as a polite and well-mannered woman, friendly and average” (Teotonio, 2005).

A distinct feature of the coverage of Murphy’s first criminal case is how her representation by media itself becomes a topic of coverage. Reporters refer to concerns of friends and people who work in ASOs about the media’s “sluttish” (DiManno, 2005) portrayal of Murphy and quote counter-portrayals about how she is a “wonderful mother, a wonderful human being” (Teotonio, 2005). While Murphy may thus emerge as a somewhat more complex and multidimensional person than other defendants in our corpus, we emphasize that, for the most part, the media represent her as a dangerous, promiscuous temptress.

Headlines such as, “‘Party-goer’ Accused in HIV Assault of CVB Borden Soldier” (Verma, 2005b), gesture to coverage that frames her as a wild and libidinous party girl. Murphy is portrayed as

a sexually indiscriminating woman, likened to a carnal “predator” who preyed on unsuspecting servicemen (Verma and Teotonio, 2005). Several articles reproduce witness statements claiming that Murphy once propositioned several servicemen at a barracks “wearing only a pink G-string and knee-high boots” (Teotonio, 2005; Verma and Teotonio, 2005). This type of reportage characterizes Murphy as a seductive, promiscuous libertine.

Characterizations of Murphy as “predatory” are accompanied by accounts about how military personnel fear a widespread HIV outbreak. Consider the following: “HIV Case Worries Forces Personnel; ‘A Lot of the Guys are Thinking, Oh My God’” (Teotonio and Verma, 2005) and “Military Warns All Bases of HIV Case; Soldiers Advised to Consult Doctor” (Teotonio, 2005). The stories accompanying these headlines tell morality tales about anxiety and contagion and inflate the risks of HIV transmission posed by Murphy. They tell readers about soldiers who are living in fear of becoming HIV-infected and about a military decision to issue a worldwide memo to all Canadian Armed Forces personnel warning them about Murphy (Argell, 2005). Narratives of this sort construct Murphy not only as a threat to individual men, but as a danger to the entire military.

Smith frames him as a morally reprehensible, racialized outsider by placing him in opposition to the wholesome, rural Canadian values of Saskatchewan that the Roughriders represent.

is knowingly spreading what causes the deadly AIDS, then police and employers must be given the authority to sound some kind of alarm bell without fear of reprisals from the suspected culprit (Adami, 2005).

This style of reporting instructs readers to view Smith in such a way that all of Saskatchewan is understood to be a victim of his transgressions. One former Roughriders player, reflecting on Smith’s aggravated sexual assault charges, is quoted as saying “I imagine this is one of the worst things ever (for Regina). It’s not a big town, and football is all there is” (Sekeres, 2005). Representations that produce the province as collective victim are amplified by the use of metaphors that set readers up to view Smith as a violent criminal who is undeserving of legal protection or privacy. In the days that immediately followed Smith’s aggravated sexual assault charges, reports often criticize the Saskatchewan Roughriders football team and the Canadian Football League for “keeping Smith’s infection a secret” for a year until he was charged (“Rider on Sex-assault Charge Freed on Bail,” 2005). One article refers to Smith as a “problem” who was

Other reports question if “society’s right to know [Smith’s HIV status] increases because the HIV victim is a Black American football player” and liken living in Regina with Smith to “having a child molester move into your neighbourhood... Wouldn’t some of those women in bars, and hanging around team buses and hotels, like to be armed with at least that much information?” (Cole, 2005a). This representational strategy configures Smith’s moral culpability by pairing his foreign, outsider status with well-known tropes of the “highly sexed,” “highly dangerous,” and racially othered Black athlete (Berry and Smith, 2000: 179; Carrington, 2010: 4). That notions of danger and moral culpability are tied so tightly to popular conceptions of Black masculinity offers insight into how racialized defendants in our corpus are repeatedly and widely produced as “other.”

playing Russian roulette with his teammates. Why should he be protected by employee privacy laws? If there is any evidence that someone infected with HIV

Clato Mabior: What Happens when Criminal Justice Time is Aligned with Deportation Time?

The newspaper coverage of the Clato Mabior case provides a final example of the use of strategies of representation that link the framing of otherness and moral culpability with racialization and immigration status. Many of the discursive strategies that represent Charles Ssenyonga, Johnson Aziga and Trevis Smith as racialized “others” are repeated in the newspaper coverage about Clato Mabior. Reportage of Mabior begins in 2006 with mention of a “28-year old Sudanese refugee” with HIV who was charged after an “unprecedented” health order was issued against him “in what is believed to be the country’s largest case of its kind” (“Immigrant With HIV Sentenced to 14 Years for Putting Women’s Lives at Risk,” 2008). Reportage produces a marked criminal-victim dichotomy whereby Mabior is known through the voices of others and in relation to the legal events in the case against him. As with the three other men, Mabior is represented as a foreigner through rhetorical strategies that mention and repeat that he is not Canadian-born. He is described as a “man from Sudan” (McIntyre, 2007), a “Sudanese immigrant” (“Immigrant With HIV Sentenced to 14 Years for Putting Women’s Lives at Risk,” 2008), and a “native” of Africa (McIntyre, 2008a). What is particularly distinctive and apparent within the Mabior corpus, however, is how the reportage is organized by and within the bureaucratic relevancies and events bringing together the Canadian criminal justice and immigration systems.

A key feature of the newspaper coverage of Mabior is the attention paid to the government’s efforts to keep him in custody until he can be permanently removed from Canada. This extends the institutional relevancies expressed in the coverage of his case beyond those of “criminal justice time” and into the workings of the Canadian immigration apparatus. A spike

in coverage occurred when Mabior was ordered deported from Canada in 2008. At this point, reporting describes him as a “dirtbag” (Turner, 2012), “HIV-positive ‘predator’” (McIntyre, 2008b), “HIV deceiver” (McIntyre, 2010) and “HIV assailant” who will be “kicked out” of Canada (“Kicked Out of Canada/ HIV Sex Attacker Sent Back to South Sudan,” 2012). The concentration of coverage and pejorative descriptors of Mabior that occur at the point of his deportation align his framing as morally abject with his expulsion from Canada. Mabior thus becomes the African outsider who needs to be jettisoned; a man who deserves to be sent “back to his native Africa” (McIntyre, 2008a) because he threatens Canada’s morality, health and security.

Newspaper articles in our corpus produce Mabior’s moral culpability by representing him as a racialized foreigner who assaults public morality and health. “Mabior is not a man who had sex with a couple of women...he is a public menace” because he allegedly had “more than forty-five partners and was knowingly spreading HIV infection” (Reynolds, 2006). “Mabior’s conduct was ‘deplorable and despicable...and must be condemned in the strongest possible terms’” (McIntyre, 2008b). These descriptions of Mabior and his actions frame him as the quintessential “promiscuous”, “hypersexed” and racially othered Black man who poses a “menace” to the public by willfully spreading disease.

In an article entitled “Deportation for Dirtbag: Didn’t tell sex Partners of HIV Status” (2012), a “timeline of the Clato Mabior case” in the latter half of the piece reads like a criminal rap sheet. It reports, in chronological order, events in the criminal justice and immigration systems as Mabior’s case advances. A carousel of six photographs features: a characteristic mug shot of him; Mabior seated in a bedroom looking forlornly out a window; Mabior standing in a doorway smoking; and two photos of him flanked by a pair of police officers being taken

into custody. A last photo features an exterior view of a dilapidated duplex where we are told he lived. Criminal justice time and deportation time come to be fused in this story and its images. This type of reporting is visually gripping. It asks the reader to interpret HIV as a crime. Reports that produce Mabior as a deportable person who is also not a Canadian open up the possibility for readers to understand his criminal charge as an offence against the country, for which the solution is deportation, which, we are told, is deserved. Rather than being presented as part of a complex and contentious medico-legal issue, Mabior's "serious convictions" are shown to stand as evidence of his "lack of regard for the criminal laws of this country" (Turner, 2012).

As well as having very real consequences in the lives of Mabior and other people who are deported from Canada, immigration detention, removal orders and the act of deportation itself are institutional processes that are imbued with symbolic value and messages. Non-citizens can be ordered deported from Canada if they are convicted of a crime that Canadian immigration law defines as "serious." While Mabior was deported on the basis of his criminal convictions, the reportage of his case has the reader understand him as a threat to both national security and the public health of Canadians.

By establishing the need to expunge him, the reportage opens up the opportunity for ideological representations of the Canadian state as protective, strong and efficient. Thus, one article reports that "on the strength of his deportation order" Mabior was ordered deported in December 2010, after completing five years in pre-trial custody (Turner, 2012). Accounts of this sort encourage readers to have confidence that the Canadian federal immigration system and the Canadian Border Services Agency, as the state's enforcement branch, will ultimately protect them from the likes of Mabior. Coverage of Mabior's deportation proceedings and descriptions of the sort that emphasize his "time on Canadian soil

appears to be quickly winding down" (Turner, 2012) frame him as an unwelcome foreign other and heighten the magnitude of danger with which he is represented. The reportage of Mabior's criminal and deportation cases has a complex dual message. It warns readers that HIV is always a risk to individuals, but also reassures them that the Canadian state will protect them from foreign threats to public health and safety.

Newspaper articles that link narratives about the workings of the criminal justice and immigration systems in reporting about Mabior add novel dimensions to the regime of representation that discursively structures our corpus. Mabior is represented as a morally abject person through many of the devices common to newspaper articles on other Black immigrant men living with HIV that we have analyzed. However, in the coverage of Mabior, the standard sequence of events and activities associated with criminal justice time is conjoined with accounts of the workings of the Immigration and Refugee Board, Canadian Border Services Agency and various sites of immigration detention and surveillance. Mabior is positioned within these accounts as a deserving deportee—a Black African, foreign, refugee immigrant "man from Sudan," who has so transgressed Canadian values and so threatened public health security that he unquestionably warrants removal from the country. Like Ssenyonga, Aziga and Smith, Mabior is framed by Canadian newspapers as a morally reprehensible, racialized other. However, he also emerges from the coverage as the lynchpin of an ideological story about how the criminal justice and immigration systems cooperate with one another to protect Canadian morality, health and security.

CONCLUSION:

STRENGTHENING ALTERNATIVE
PERSPECTIVES ON RACE, IMMIGRATION
AND HIV CRIMINALIZATION



The mainstream media have long been criticized for producing stigmatizing representations of HIV and people living with HIV (Lupton, 1994; Mensah and Haig, 2011; Persson and Newman, 2008; Watney, 1987). In Canada, in recent years, people living with HIV and those who work with and support them have expressed concerns about sensationalized media coverage of criminal cases involving allegations of HIV non-disclosure (Adam et al., 2016). African, Caribbean and Black people living with HIV and the organizations that represent and work with them have been particularly concerned about how Black people living with HIV have been represented in media stories about such cases. Their concerns centre on how the news media reproduce racist stereotypes about ACB people, treat ACB people as “outsiders” and reinforce false assumptions about Black people and criminality. They have also expressed concerns about how the mainstream media overrepresent Black men living with HIV and how news stories about HIV criminalization create a discursive context that can generate “fear and hostility toward ACB people” (ACCHO, 2010; 2013: 14).

We wrote this report to respond to community concerns about the mainstream news media and HIV criminalization in Canada and to fill a gap in knowledge about the representation of race and immigration status in news coverage of HIV non-disclosure criminal cases. To our knowledge, the report provides the first comprehensive, systematic analysis of Canadian newspaper coverage of HIV criminalization. We identified a corpus of 1680 English-language Canadian newspaper articles about HIV non-disclosure criminal cases in Canada from 1989 to 2015. To address questions about the potential overrepresentation of ACB people living with HIV in newspaper coverage, we updated existing data on HIV non-disclosure criminal cases in Canada and conducted a comparative quantitative analysis of our corpus of news articles. To explore the content of news coverage,

we conducted a qualitative analysis of the key discursive strategies used to represent HIV non-disclosure cases involving defendants who are Black immigrant men living with HIV.

Our findings overwhelmingly support community concerns about racialization and anti-immigrant discourses in newspaper coverage of HIV criminalization. Black and Black immigrant men living with HIV are dramatically overrepresented in newspaper coverage of HIV non-disclosure criminal cases. ACB immigrant men living with HIV are featured in newspaper articles four times more often than would be expected on the basis of the proportion of all defendants involved in criminal cases that they account for. Over 60% (1020/1680) of all newspaper articles focus on cases involving ACB immigrant men, who collectively account for only 15% (27/181) of known defendants in criminal cases. Shockingly, four Black immigrant men living with HIV account for almost half of the articles in our corpus.

Mainstream newspapers rarely report on HIV criminalization as a complex legal, social and health issue, which is how it is understood by people living with HIV, people who work in ASOs and human rights organizations, community members, health care providers, and many social scientists and public health researchers. Instead, mainstream media import the institutional relevancies and typical sequences for processing criminal cases to produce stories about HIV non-disclosure that are written in “criminal justice time.” This type of news coverage erases the complexity and variety of embodied experiences of people living with HIV. It represents people living with HIV as little more than “criminal subjects” and produces a primary level of objectification upon which more racializing forms of representation are built.

We have argued that newspaper coverage of ACB defendants is discursively structured by a regime of representation that frames Black people living

with HIV as racialized, foreign “others.” A host of discursive strategies are repeatedly used in the coverage. Well-worn tropes of dangerous Black masculinity are mobilized to represent Black immigrant men living with HIV as hypersexual lotharios. Strict “criminal-victim” dichotomies are produced through widespread coverage of complainants’ experiences and a virtual silencing of Black male defendants as speaking subjects. Metaphoric representations of the risk of HIV transmission are deployed to represent ACB men living with HIV as public health threats. Defendants’ countries of origin and so-called “African” strains of HIV are repeatedly used to frame Black immigrant men as “foreign others” who threaten not only individual “victims” but “Canadian” values more broadly.

We recognize that readers of newspaper articles have critical capacities. They can resist the dominant framing of HIV, race criminality and immigration status produced and reproduced by mainstream media. Having not studied actual readers’ responses to specific coverage of HIV criminalization, we cannot make claims about how the coverage experienced as stigmatizing by ACB community members is interpreted, made sense of or resisted by the public. We also have not carried out a broader study of media coverage of HIV to determine whether other newspaper stories, not focused on HIV non-disclosure criminal cases, provide the public with more positive representations of racialized immigrant people living with HIV. Answers to these and related issues must await further research.

What we can claim, with confidence, is that Canadian mainstream newspapers are a source of profoundly stigmatizing representations of ACB men living with HIV. Most Canadians do not have close, first-hand knowledge of HIV, people living with HIV, or of crime. They thus rely heavily on constructions provided by popular media for their understandings of the links between criminality and HIV non-disclosure. This study offers a rigorous analysis of the deep

problems associated with those constructions. ACB men and ACB immigrant men are by no means the only people living with HIV facing HIV-related criminal charges who are reported on in mainstream Canadian newspapers. However, the profoundly skewed nature of newspaper coverage of HIV criminalization represents HIV non-disclosure, in popular discourse, as a crime of Black immigrant men. Mainstream newspapers transfer a long history of exaggerated connections between criminality, race and otherness to the site of HIV, in ways that frame ACB men living with HIV as dangerous foreigners. They take what is in fact a minority of cases and treat those cases archetypically, resulting in a type of popular racial profiling of HIV criminalization. Whether or not this media-fueled popular racial profiling contributes to racial profiling by police and criminal justice system actors engaged in HIV non-disclosure cases is an important question for further research.

Changing the nature of media coverage is no easy feat. Newspaper editors pride themselves on the presumed autonomy of news coverage and can resist efforts to influence how newspapers represent controversial public issues (Cook, 2005). Still, the empirical findings contained in this report may prove useful to advocacy efforts to challenge how mainstream newspapers cover stories about the criminal law and HIV non-disclosure. The report makes visible the success that ASOs and HIV advocacy organizations have had in intervening in the coverage of HIV non-disclosure criminal cases. These organizations are the single most important source of an alternative perspective to the dominant media framing of HIV criminalization. ASOs, advocacy organizations and The Canadian HIV / AIDS Legal Network, in particular, have successfully brought forward, in mainstream newspapers, a counter-discourse on HIV criminalization. That counter-discourse frames HIV non-disclosure as a public health, rather than a criminal justice, issue and emphasizes that the criminal justice system’s approach to HIV non-disclosure should

be fundamentally informed by current scientific research on HIV transmission risk.

Our report suggests possibilities for deepening and extending the counter-discourse on HIV criminalization. It may be possible to disrupt newspaper representations with the grounded, experiential accounts of how race, immigration status and other forms of social difference are implicated in HIV criminalization. Given the ongoing overrepresentation of heterosexual Black men living with HIV in mainstream newspapers, the organizations representing them have a unique role to play in developing appropriate

forms of counter-discourse. The profound silencing, othering and objectification of ACB defendants in newspaper coverage of HIV non-disclosure criminal cases calls for strategies that create an affirmative presence in mainstream media for ACB men living with HIV. Developing and sustaining efforts to introduce alternative perspectives on Black men living with HIV and the criminal justice system is complex, resource-intensive work. Efforts to work toward that end on the part of ASOs and other organizations that are a part of African, Caribbean and Black communities and that work with ACB people living with HIV deserve widespread support.

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