

# The HIV Legal Network in the Caribbean



The HIV Legal Network promotes the human rights of people living with HIV or AIDS and other populations disproportionately affected by HIV, punitive laws and policies, and criminalization, in Canada and internationally. Since 1992, we have been doing this critical work through research and analysis, litigation and other advocacy, public education, and community mobilization.

As an internationally renowned advocacy organization, it is our fervent hope that the world we envision — wherein human rights are enjoyed by all — does not take another 30 years to realize. But we will continue to advocate, support, and mobilize for however long it takes, until our clear vision becomes a reality.

## Why the Caribbean? And why LGBTQ+ rights?

As a region, the Caribbean has the second-highest HIV prevalence rate in the world, after sub-Saharan Africa. UNAIDS and regional and national agencies have long identified homophobia as a factor contributing to this startling statistic. The legal and social environment varies significantly across the region, as does community organizing to defend and advance the human rights of LGBTQ+ people. But in many countries, and particularly the Commonwealth Caribbean, the criminalization of consensual same-sex relationships and gender non-conforming people — fueled by stigma and discrimination, which is often intensified by fundamentalist religious leaders and groups — has had a damaging effect on health and human rights.

Among other harms, gay men and other men who have sex with men (MSM), as well as trans people, are driven away from effective HIV prevention, treatment, care, and support. The results can be devastating. Jamaica has the highest HIV prevalence rate among MSM (29.8%) in the Western Hemisphere, if not worldwide; in Barbados and Dominica, it is 11.8% and 5%, respectively. It is no coincidence that, in those countries, consensual sex between men is a crime punishable by years in prison. These countries also offer little or no legal protection against discrimination, and homophobic violence and harassment against gay men, lesbians, and trans people are reported regularly.

But the moral arc is quickly bending towards change in this region. Recent positive decisions in courts in the Caribbean, including in Barbados, Antigua and Barbuda, St. Kitts and Nevis, and most recently Dominica in April 2024 (as supported by MiRiDom and the HIV Legal Network) have found laws that criminalize same-sex intimacy to be unconstitutional. We continue to work with activists in the region to build the case for human rights for all, including LGBTQ+ communities whose rights have long been denied. The time to act is now.

## Jamaica: Where Your Support is Needed Now

The HIV Legal Network, alongside Jamaican-Canadian lawyer and LGBTQ+ activist Maurice Tomlinson, first launched a constitutional challenge to Jamaica's anti-sodomy laws in 2015. We are challenging this country's colonial-era laws criminalizing "buggery" and "gross indecency" between men — a proceeding in which we face the opposition of not only the Jamaican government but also of 10 fundamentalist religious groups who have been granted "interested party" status. Nonetheless, we continue working with in-country experts, including supportive religious leaders, to change "hearts and minds" as our case slowly works its way through the legal system. We have watched in earnest as other Caribbean nations have come to favourable legal decisions supporting the rights of LGBTQ+ people — and we fully expect that, ultimately, justice will prevail here, too. As a result of a petition we filed with the Inter-American Commission on Human Rights (IACHR) and their subsequent scathing report in 2021, the international community has already recognized that Jamaica's *Offences Against the Person Act* violates several of the individual rights protected by the *American Convention on Human Rights*, which Jamaica ratified in 1978.

However, this constitutional challenge has proven to be long and winding, with the Court ruling unhelpfully on a procedural issue and throwing hurdle after hurdle and delay after delay in our way. But Maurice, now the claimant in this litigation, will not be deterred:



*“As a proud Jamaican-Canadian man and member of the LGBTQ+ community, I have been on an emotional rollercoaster since October 27, 2023 when the Supreme Court shielded the anti-sodomy law from judicial scrutiny in my homeland. This law is used to criminalize, imprison, and inflict violence upon LGBTQ+ Jamaicans. It is also a law that drives LGBTQ+ people away from HIV testing, care, and treatment — and acts as a driver of new HIV infections in the country. It is a terrible, misguided law that denies my humanity. I had no choice but to appeal this ruling.”*

**-Maurice Tomlinson (Human Rights Lawyer and LGBTQ+ Advocate, and Claimant)**

**With the support of the HIV Legal Network and in-country actors, and buoyed by the success we're seeing throughout the Caribbean in ending the criminalization of LGBTQ+ people, Maurice intends to see this challenge through the end.**

### The Ask

We are working to raise \$40,000.00 CAD in 2024 to support the constitutional challenge. This type of work is incredibly difficult to fund, and (even with lots of pro bono help!) we rely on supporters to help to cover the fees of local counsel and other disbursements.

*The HIV Legal Network is a registered charity and all donations over \$20.00 CAD will receive tax receipts.*

**Charitable organization registration number 141110155 RR0001**