

NZ court rules on HIV disclosure

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In a landmark decision, a New Zealand court has dismissed charges of criminal nuisance brought against a man who failed to disclose his HIV status. The accused, a 36-year-old HIV-positive man from Lower Hutt, successfully argued that by using a condom he had taken adequate precautions to protect his partner, and that he did not have to disclose his status.

Judge Susan Thomas of the Wellington District Court found that the man's legal duty was to take reasonable precautions to avoid transmitting the [virus](#) [1]A small infective organism which is incapable of reproducing outside a host cell., which he had done by using a condom during intercourse and not ejaculating during oral sex.

"The evidence on vaginal intercourse was that the risk of transmission of the virus without using a condom where the male is HIV-positive is relatively low," the Judge said.

The decision, which the defendant's lawyer says is a world first, was welcomed by AIDS activists. The executive director of the New Zealand AIDS Foundation, Rachel Le Mesurier, said the decision highlighted the truth that it was safe sex, not mandatory disclosure, that provides the best protection against HIV transmission.

"Today's decision reinforces what the New Zealand Aids Foundation has been saying for 20 years, that the best strategy for avoiding HIV during anal or vaginal intercourse is the consistent and proper use of condoms," she said.

"Relying on HIV-positive people to tell you, and assuming that unprotected intercourse is safe if HIV is not mentioned, is a much riskier strategy, especially as approximately one third of people with HIV in New Zealand don't know they have it, and so can't tell."

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[1] <http://www.napwa.org.au/glossary/term/125>