

HALCO

HIV & AIDS Legal Clinic Ontario

65 Wellesley Street East, Suite 400, Toronto, Ontario M4Y 1G7

February 2, 2012

Honourable John Gerretsen
Attorney General
Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, ON M7A 2S9

Dear Minister Gerretsen:

Re: HIV & the criminal law

On behalf of the Ontario Working Group on Criminal Law and HIV Exposure (CLHE), please accept this request for a meeting to discuss the development of prosecutorial guidelines for Crown prosecutors handling allegations of HIV non-disclosure.

First, we once again commend your decision to withdraw Ontario's interventions in the *R. v. Mabior* and *R. v. D.C.* matters at the Supreme Court of Canada. We very much look forward to participating in the development of guidelines to further realize a principled and evidence-based approach to this very important issue.

As indicated in our meeting of December 7, 2011, your predecessor, the Honourable Chris Bentley, agreed to develop guidance materials for Crown prosecutors in relation to HIV non-disclosure allegations. The attached letter of December 16, 2010, confirms that the Ministry of the Attorney General (MAG) "is engaged in a process to develop a Practice Memorandum for Crown prosecutors in the area of HIV prosecutions." The letter further states that the consultation process undertaken by CLHE "will inform the process MAG will be engaged in regarding the development of Ministry guidelines," and that MAG will share a draft of the Practice Memorandum prior to its issuance.

As also indicated in our meeting, CLHE conducted a robust community consultation regarding the development of guidelines, and in June 2011, provided MAG with a *Community Report and Recommendations* document. In August 2011, representatives from CLHE, including myself, met with Ms. Erin Winocur, Assistant Crown Attorney, about said document. Ms. Winocur indicated that she could not inform CLHE, on behalf of MAG, when guidance materials would be developed. She did, however, raise the possibility of further discussions with CLHE related to other measures that could be adopted pending the creation of guidelines.

.../2

CLHE representatives made clear that the development of guidelines, as promised by the then Attorney General, was essential, but that CLHE would be interested in further discussions regarding interim measures.

CLHE has yet to receive an official response from MAG regarding the development of guidelines.

We are now respectfully requesting a meeting with senior MAG staff to discuss the immediate development of guidelines. As indicated at the meeting of December 7, 2011, CLHE strongly submits that the development of guidance materials cannot wait until the Supreme Court of Canada renders its decision in the upcoming *Mabior* and *DC* matters. Simply put, matters have reached crisis proportions. Prosecutions continue to take place, and are not occurring in a uniform manner whatsoever. People continue to be charged with various offences, and continue to be charged in relation to behaviours that do not pose a significant risk of HIV transmission.

We are confident that your principled and evidence-based approach will continue, and that you will engage with CLHE in the development of guidelines.

I would also like to take this opportunity to encourage you or a senior MAG decision-maker to attend the upcoming Joint United Nations Programme on HIV/AIDS (UNAIDS) *High Level Policy Consultation on the Criminalisation of HIV Non-Disclosure, Exposure and Transmission*, taking place in Oslo, Norway on February 14-15, 2012. It is my understanding that a number of parliamentarians and senior government officials from around the world will be attending this event, and that you have been invited to participate. Participation in this event would surely benefit the development of prosecutorial guidelines in Ontario. Attached is a draft agenda for the event.

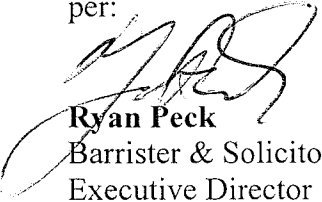
Thank you very much for your attention to these matters.

We look forward to hearing from you shortly.

Sincerely,

HIV & AIDS Legal Clinic Ontario

per:



Ryan Peck
Barrister & Solicitor
Executive Director

Enclosures