

January 13, 2010

The Honourable Chris Bentley
Attorney General
Ministry of the Attorney General
720 Bay St., 11th floor
Toronto, ON M5G 2K1



Dear Minister Bentley:

Re: Policies relevant to prosecution of HIV non-disclosure

Please accept my thanks for your letter of December 21, 2009 in response to our inquiry regarding any policies applicable in Ontario to govern the conduct of prosecutions against people living with HIV for not disclosing their serostatus. We appreciate the time and care you took addressing the questions we raised and the information you provided. (With respect to protocols governing police practice, we will, as you suggest, follow up directly with your colleague, the Minister of Community Safety and Correctional Services.)

I note your comment that there is a need for policies of the Attorney General to change or evolve in keeping with current societal views – indeed, in the context of prosecutions for HIV non-disclosure, this observation is particularly pertinent, as not only the law but also the science continue to evolve. As you have noted, the issue of the consistent use and interpretation of scientific and medical evidence in cases involving HIV non-disclosure is part of a larger question of ensuring the consistent and appropriate use of expert scientific evidence in the criminal justice system more generally. Thank you for inviting us to provide you with any material that we feel may assist Crowns in their use of expert evidence.

In that regard, I note that the Legal Network is an active contributor to a few research projects underway that will generate additional evidence that will be useful in informing prosecutorial policy and practice in this complex area. In particular, we are participating in a larger study, funded the Ontario HIV Treatment Network examining trends and patterns in such prosecutions, as well as preparing a thorough review of the available scientific evidence regarding the risks of HIV transmission in various circumstances. The material that will emanate from that project will, in my view, be of considerable use to Crowns and the Ministry in determining when criminal prosecution may, or may not, be warranted. It is my understanding that colleagues of ours leading that initiative have been in contact with your Ministry's Criminal Law Policy Branch with a view to arranging an initial meeting regarding the initiative in the near future. We thank you for your and your Ministry's openness to receiving additional information and look forward to further discussion.

Sincerely,

Richard Elliott
Executive Director