



# ONTARIO WORKING GROUP ON CRIMINAL LAW + HIV EXPOSURE



January 7, 2014

## VIA ELECTRONIC & LETTER MAIL

Honourable Kathleen Wynne  
Premier of Ontario  
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- and -

Honourable John Gerretsen  
Attorney General  
Ministry of the Attorney General  
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Dear Premier Wynne and Minister Gerretsen:

### **Re: Criminal law and HIV**

On behalf of the Canadian HIV/AIDS Legal Network, the HIV & AIDS Legal Clinic Ontario and the Ontario Working Group on Criminal Law and HIV Exposure, we would like to express our deep concern regarding the recent charge of *assault causing bodily harm* that was laid against a person living with HIV in Toronto for spitting at a paramedic.

While spitting on someone can attract a charge of *assault simpliciter*, the fact that the alleged offender is living with HIV should not elevate the charge to that of *assault causing bodily harm*. We have known for many years that HIV cannot be transmitted through spitting. As described by the Center for Disease Control in the United-States, “HIV cannot be spread through saliva, and there is no documented case of transmission from an HIV-infected person spitting on another person.”<sup>1</sup> In fact, it is our understanding that Crown counsel handling the prosecution acknowledges that there is *no* risk of HIV

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<sup>1</sup> <http://www.cdc.gov/hiv/basics/transmission.html> (Consulted in November 2013).

transmission involved in the matter. Crown counsel, in our understanding, is basing the charge of *assault causing bodily harm* on the alleged prejudice suffered by the complainant who chose to take post-exposure prophylaxis (PEP) treatment to prevent the transmission of HIV, despite the fact that PEP is not recommended in instances of spitting because of the lack of transmission risk.<sup>2</sup>

Even more egregiously, the accused in this matter was initially charged by police with *aggravated assault*, which carries a maximum sentence of 14 years in prison. That such a charge was laid in the first place is deep cause for concern. It seems it can only be based on misinformation about HIV and the risks of transmission; it reflects and perpetuates prejudice against people living with HIV, and is indicative of the need for education of police about HIV in order to avoid the ongoing misuse of criminal charges.

While we welcome the decision of Crown counsel not to pursue the *aggravated assault* charge, it is highly problematic that the charge has not been dropped or altered to *assault simpliciter* at most. Pursuing the charge of *assault causing bodily harm* is still contrary to sound science and is prejudicial, stigmatizing over-reach on the part of the Crown. People living with HIV represent an already marginalized community. As pointed out by Justice Campbell in a recent decision of the Provincial Court of Nova Scotia, “[i]f the risk of transmission of the virus (...) is effectively zero, a person with the HIV virus is no different from anyone else in the population.”<sup>3</sup> With respect, engaging criminal prosecutions on the basis of a person’s HIV-positive status, in the absence of any risk of transmission, is discrimination, plain and simple. It also perpetuates misinformation surrounding HIV transmission, thereby exacerbating stigma surrounding the illness while also contributing to unfounded fears and unnecessary anxiety that paramedics or law enforcement officers may experience in the context of their workplace duties.

We respectfully request that the Ministry of the Attorney General do its utmost to ensure that discriminatory charges, such as the one highlighted in this letter, do not take place in Ontario.

We wish you all the best in 2014, and look forward to hearing from you shortly.

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<sup>2</sup> As outlined in clinical protocols by St. Michael’s Hospital in Toronto (2013), “PEP is not needed for exposure to stool, urine, tears, saliva, nasal secretions, vomitus unless bloody,” and furthermore, PEP is never needed in the case of fluids coming into contact with intact skin only. See: *Clinical management of non-occupational and occupational exposure to blood borne pathogens*, Pocket reference (at p. 7), online: <http://www.stmichaelshospital.com/pdf/programs/pocket-pep.pdf>. It is our understanding that, in this case, there is no allegation that there was any blood in the saliva of the person now facing this unjustifiably serious criminal charge.

<sup>3</sup> *R. v. J.T.C.*, 2013 NSPC 105, at paragraph 88.

Sincerely,



Ryan Peck  
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Co-Chair, Ontario Working Group on Criminal Law and HIV Exposure



Richard Elliott  
Executive Director, Canadian HIV/AIDS Legal Network