

ONTARIO WORKING GROUP ON
**CRIMINAL LAW +
HIV EXPOSURE**



November 17, 2016

Honourable Eric Hoskins
Ministry of Health and Long-Term Care
10th Floor, Hepburn Block
80 Grosvenor Street
Toronto, Ontario M7A 2C4

Dear Minister Hoskins,

Re: Criminal law and HIV

Please accept this letter on behalf of the Ontario Working Group on Criminal Law and HIV Exposure (CLHE).

We write to express our disappointment with your lack of engagement on the vital issues surrounding the criminalization of HIV non-disclosure.

CLHE wrote to you on October 2, 2015, expressing deep concern with the manner in which HIV-related prosecutions are being handled in Ontario. We outlined our good faith attempts at meaningful discussion with the province which have not been reciprocated. We highlighted the injustices taking place as people with HIV face aggravated sexual assault charges – designed to respond to the most horrific of forced sex acts – even in circumstances where the sexual act in question is consensual, the risk of HIV transmission is extremely low, if not zero, and no transmission occurs. We conveyed the unacceptable reality that such prosecutions are having a disproportionate impact on the most marginalized and vulnerable of persons living with HIV, such as racialized newcomers and vulnerable women with HIV who are in abusive relationships or who cannot safely impose condom use or disclose their HIV status to sexual partners. We spoke to the fact that the current use of the criminal law is not only bad for care, treatment and support of people with HIV, but hinders HIV testing and prevention efforts.

Our letter was never acknowledged.

In the meantime, the Canadian HIV/AIDS Legal Network, a member of CLHE, received an immediate response to its letter to the Honourable Minister Jane Philpott, federal Minister of Health, who has agreed to meet and discuss this important issue.

Because Ontario is leading HIV prosecutions in Canada, the Honourable Minister Glen Murray will be convening a Ministers' Roundtable on the criminalization of HIV non-disclosure on December 5, 2016. In addition to Minister Murray, Honourable Ministers Naqvi, McCharles and Orziatti will be attending, as will members of CLHE and Dr.

Mona Loutfy, co-chair of the scientific expert team who developed the *Canadian Consensus Statement on HIV and its Transmission in the Context of Criminal Law* (Consensus Statement), which details the science surrounding HIV transmission and raises serious concerns with the manner in which criminal prosecutions are taking place.¹

We are extremely disappointed to learn that you will not be attending the roundtable. HIV non-disclosure, exposure or transmission is a public health issue, not a criminal law issue, and your Ministry ought to be working with the community as well as other Ministries to bring science to justice and remove barriers to public health efforts to respond to HIV.

You demonstrated a clear understanding of the issues when you met with CLHE members in December 2011. We respectfully request that you act on this understanding by attending the roundtable and thereafter engaging with CLHE.

Thank you for your attention to this matter.

Sincerely,



Ryan Peck

Barrister & Solicitor, Executive Director, HIV & AIDS Legal Clinic Ontario
Co-Chair, Ontario Working Group on Criminal Law and HIV Exposure



Valérie Pierre-Pierre, Director, African and Caribbean Council on HIV/AIDS in Ontario
Co-Chair, Ontario Working Group on Criminal Law and HIV Exposure

Enclosure

- Canadian consensus statement on HIV and its transmission in the context of criminal law (M Loutfy, M Tyndall, J-G Baril, JSG Montaner, R Kaul, C Hankins)

¹ M Loutfy, M Tyndall, J-G Baril, JSG Montaner, R Kaul, C Hankins. Canadian consensus statement on HIV and its transmission in the context of criminal law. *Can J Infect Dis Med Microbiol* 2014;25(3):135-140, at <http://tinyurl.com/ovo42c8>.