

# ONTARIO WORKING GROUP ON CRIMINAL LAW + HIV EXPOSURE



January 26, 2017

VIA ELECTRONIC MAIL: [mflalonde.mpp.co@liberal.ola.org](mailto:mflalonde.mpp.co@liberal.ola.org)

The Hon. Marie-France Lalonde  
Minister of Community Safety and Correctional Services  
18<sup>th</sup> Floor, George Drew Building  
25 Grosvenor Street  
Toronto, ON M7A 1Y6

Dear Minister Lalonde:

**Re: Police action and HIV/AIDS**

Please accept this letter on behalf of the Ontario Working Group on Criminal Law and HIV Exposure (CLHE). We write to make clear the urgency of the Ministry of Community Safety and Correctional Services (the “Ministry”) working with CLHE and the scientific community to ensure that police forces and correctional authorities behave in a manner that is consistent with current science and with human rights principles.

Just yesterday, a police officer in Toronto informed a man who was filming, at a distance, the arrest of an apparently motionless man subdued by seemingly excessive force by a number of officers, that the man being arrested is “going to spit in your face, you’re going to get AIDS (*sic*).”<sup>1</sup> We are deeply concerned with the apparent unwarranted violence during the arrest, and with the officer’s AIDS-related remark.

In our view, this highly inflammatory statement bespeaks an ignorance and prejudice against people living with HIV. HIV cannot be transmitted through spitting. There was no risk of transmission. Moreover, if the man who was arrested happens to be living with HIV, the police officer’s remark is also an unacceptable breach of privacy regarding personal health information.

It is notable that the backdrop to these human rights violations is that people living with HIV continue to be charged with *aggravated sexual assault* – one of the most serious offenses in our Criminal Code – even where there is no intent to cause harm, no transmission occurs and the risks of transmission are negligible or even zero. The multiple adverse effects of this overly broad approach to criminalization have been noted by CLHE, scientists, international bodies, and our own federal government.

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<sup>1</sup> Gillis, W. “Toronto police threaten to seize phone of man lawfully filming arrest,” *Toronto Star*, January 24, 2017. Available at <https://www.thestar.com/news/gta/2017/01/24/toronto-police-threaten-to-seize-phone-of-man-lawfully-filming-arrest.html>.

It is also notable that African/Caribbean/Black men are disproportionately affected by both the excessive use of force by police and the overly broad criminalization of HIV non-disclosure.

As indicated in previous communication, the HIV community has brought a number of policing and correctional concerns to the attention of your Ministry as well as the Ontario Association of Chiefs of Police (OACP) Diversity Committee.<sup>2</sup> An adapted version of the submission was included in the OACP's *Best Practices in Policing and LGBTQ Communities in Ontario* (November 2013).<sup>3</sup>

We reiterate our request that the Ministry immediately work with CLHE and the scientific community to protect the rights of people living with HIV by:

- Developing resources and training for police forces on handling matters of alleged non-disclosure, including the issuing of police press releases, HIV non-disclosure prosecutions, HIV transmission, occupational exposure to HIV, post-exposure prophylaxis, HIV testing and HIV medical care.
- Developing resources and training on the realities of living with HIV, as well as HIV and human rights, privacy and confidentiality.
- Developing resources and training for police to provide support to potential complainants in cases of HIV non-disclosure and appropriate referrals.
- Developing resources and training for police on sexual violence, abuse and harassment against people living with HIV, especially women.
- Developing resources and training for corrections staff on HIV transmission, occupational exposure to HIV, post-exposure prophylaxis, HIV testing, and HIV medical care.
- Developing resources and training for corrections staff on the realities of living with HIV, as well as HIV and human rights, privacy and confidentiality.
- Taking measures to prevent any interruption of treatment in detention and correctional facilities and guarantee access to care.
- Taking measures to reduce the use of segregation against people living with HIV and protect prisoners against discrimination and violence.

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<sup>2</sup> Canadian HIV/AIDS Legal Network and the HIV & AIDS Legal Clinic Ontario, "The criminalization of HIV non-disclosure: recommendations for police: Submissions to the Ontario Association of Chiefs of Police Diversity Committee", February 2013. Available at <http://tinyurl.com/zf2ddd>.

<sup>3</sup> Available at <http://tinyurl.com/kb273px>.

Unfortunately, we have received no response to our previous letters to the Ministry. We respectfully request a response to this letter as well as a meeting as soon as possible to discuss these vital issues.

Thank you for your attention to this matter, and we look forward to hearing from you shortly.

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

cc

- Honourable Eric Hoskins, Minister of Health and Long-Term Care
- Honourable Glen Murray, Minister of the Environment and Climate Change
- Honourable Indira Naidoo-Harris, Minister of Women's Issues
- Honourable Yasir Naqvi, Attorney General