

ONTARIO WORKING GROUP ON CRIMINAL LAW + HIV EXPOSURE



November 23, 2016

VIA ELECTRONIC MAIL (Meaghan.Cunningham@ontario.ca)

Crown Attorney HIV Expert Group
c/o Meaghan Cunningham, Assistant Crown Attorney
Ministry of the Attorney General
Directors of Crown Operations
East Region, Ottawa
161 Elgin Street, Courthouse Suite 3225,
Ottawa, ON K2P 2K1

Dear Members of the HIV Expert Group,

Re: Criminal Law and HIV

On behalf of the Ontario Working Group on Criminal Law and HIV Exposure (CLHE), I respectfully request a meeting to discuss the current use of the criminal law in relation to people with HIV.

CLHE has been working for almost a decade to confront unjust and discriminatory criminal prosecutions of people living with HIV in Ontario. Since 2010, CLHE has been in discussions with the Ministry of the Attorney General (MAG) with the goal of ensuring that any prosecutions for HIV non-disclosure are informed by a complete and accurate understanding of current medical and scientific research about HIV, and are compatible with broader scientific, medical, public health, and community efforts to prevent the spread of HIV and to provide care, treatment and support to people living with HIV.

Unfortunately, despite our efforts to engage with MAG over the years, Ontario continues to be the leader in Canada (and one of the leaders globally) in prosecuting people living with HIV, relying on offences such as aggravated sexual assault even in circumstances where the risk of HIV transmission is extremely low if not non-existent and no transmission occurs.

The science related to HIV has dramatically evolved since *R. v. Cuerrier*, [1998] 2 SCR 371, and has also developed since *R. v. Mabior*, [2012] 2 SCR 584, to the point that we currently have scientific confirmation that sex with an undetectable viral load as the result of antiretroviral therapy poses negligible to no risk of transmission.¹

CLHE is extremely concerned that prosecutions are having a disproportionate impact on the most marginalized and vulnerable of persons living with HIV, including those who may not have access to medications or sustained health care, such as racialized newcomers and Indigenous persons. Similarly, there is great concern that prosecutions are having a disproportionate impact

¹ A.J. Rodger et al., "Sexual activity without condoms and risk of HIV transmission in serodifferent couples when the HIV-positive partner is using suppressive antiretroviral therapy," *JAMA: The Journal of the American Medical Association* 316, 2 (July 12, 2016): pp. 171–181 (PARTNER study).

on vulnerable women living with HIV who are in abusive relationships or who cannot safely impose condom use or disclose their HIV status to sexual partners.

Concern with the current use of the criminal law is further being expressed by leading Canadian scientists working in the field of HIV,² as well as Canadian women's rights advocates. There is concern amongst the latter that the current use of criminal law against people living with HIV may have a detrimental impact on sexual assault law as a tool to advance gender equality and renounce gender-based violence.³

As members of the Crown Attorney HIV Expert Group, we understand that your role is to oversee prosecutions related to HIV non-disclosure. CLHE, along with Dr. Mona Loutfy, co-chair of the scientific expert team who developed the below mentioned and attached *Consensus Statement*, request a meeting to discuss with you these vital issues.

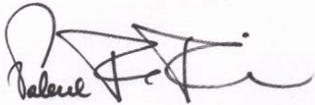
We very much look forward to hearing from you, and thank you for your attention to this matter.

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) (2014)

² 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://www.hindawi.com/journals/cjidmm/2014/498459/abs/>.

³ Canadian HIV/AIDS Legal Network, *What does consent really mean? Rethinking HIV non-disclosure and sexual assault law meeting report*, 2014. Available at www.consentfilm.org/resources-and-publications. See also the perspectives articulated by women's rights advocates in the documentary film *Consent: HIV non-disclosure and sexual assault law* (Goldelox Productions & Canadian HIV/AIDS Legal Network, 2015). Available online at www.consentfilm.org.