

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



January 8, 2018

VIA ELECTRONIC MAIL: y-naqvi.mpp@liberal.ola.org,
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Honourable Yasir Naqvi
Attorney General of Ontario
Ministry of the Attorney General
720 Bay Street, 11th Floor
Toronto, ON M5G 2K1

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

Dear Attorney General Naqvi and 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).

First, we wish you both a happy and healthy 2018. To start the year, we urge that the Ministry of the Attorney General and Ministry of Health and Long-Term Care immediately convene a roundtable, as promised in your 2017 joint World AIDS Day statement, to ensure that HIV is considered with a public health lens rather than a criminal justice one.

It is vital that work continue immediately to bring the use of the criminal law in line with science and human rights in a manner that is supportive of HIV-related care, treatment and prevention. While we welcome the decision to cease prosecutions in situations where a person living with HIV is on antiretroviral therapy and has maintained a suppressed viral load for six months, we unequivocally take the position that this reflects but one of the minimum points called for by CLHE and others to reform the criminal law.

As indicated for many years, and as reflected in the recently released Community Consensus Statement¹ endorsed by more than 150 organizations across the country, criminal prosecutions should be removed from the reach of sexual assault laws and be limited to cases of actual, intentional transmission of HIV. In particular, HIV-related criminal charges are not appropriate where a person living with HIV engaged in activities that, according to the best available scientific evidence, posed no significant risk of transmission, which activities include:

- oral sex;
- anal or vaginal sex with a condom; and
- anal or vaginal sex without a condom while having a low viral load.

The federal government itself, in Justice Canada's *Criminal Justice System's Response to Non-Disclosure of HIV*² report, recognizes that HIV is first and foremost a public health matter, that use of the criminal law should be a matter of last resort, and that it is problematic in at least some circumstances to use the law of sexual assault to deal with allegations of HIV non-disclosure. Importantly, the report states the following in relation to oral sex as well as anal or vaginal sex with a condom:

*The criminal law should generally not apply to persons living with HIV who: are on treatment; are not on treatment but use condoms; or, engage only in oral sex (unless other risk factors are present and the person living with HIV is aware of those risks), because the realistic possibility of transmission test is likely not met in these circumstances.*³

We are deeply concerned that the province will continue its overzealous approach by continuing to prosecute those who do not have a suppressed viral load, even in circumstances relating to oral sex or sex with a condom. Not only would this perpetuate stigma and discrimination against people living with HIV, it would continue unjust criminalization, continue to ignore scientific evidence, and run counter to the provincial HIV/AIDS strategy.⁴

It is particularly worrisome that people without access to medications and/or appropriate health care continue to be at heightened risk of criminalization. More generally, those who are most negatively affected by the continued prosecutorial approach are the most marginalized of people living with HIV, including Indigenous persons, low-income individuals, racialized individuals, women, those with precarious immigration status, and people with mental health conditions.

¹ Canadian Coalition to Reform HIV Criminalization. End Unjust HIV Criminalization: Community Consensus Statement, 2017, at <http://www.hivcriminalization.ca/community-consensus-statement/>.

² Department of Justice, Canada. Criminal Justice System's Response to Non-Disclosure of HIV, 2017, at <http://www.justice.gc.ca/eng/rp-pr/other-autre/hivnd-vihnd/hivnd-vihnd.pdf>.

³ Ibid, at 30.

⁴ Ontario Advisory Committee on HIV/AIDS. HIV/AIDS Strategy to 2016: Focusing our Efforts – Changing the Course of the HIV Prevention, Engagement and Care Cascade in Ontario, 2017, at http://www.health.gov.on.ca/en/pro/programs/hiv aids/docs/oach_strategy_2026.pdf.

While we continue to advocate for legislative reform, it is essential that the Ontario roundtable be scheduled as soon as possible to discuss, among other items, ceasing prosecutions in relation to oral sex and sex with a condom as well as the removal from the Ontario sex offender registry certain individuals who have been convicted. In addition to people living with HIV and members of CLHE and the Ontario Advisory Committee on HIV/AIDS, we urge that public health authorities and HIV researchers/physicians participate. It is also crucial that the Ministry of Community Safety and Corrections be involved in order to ensure that police officers across Ontario handle HIV-related investigations appropriately.

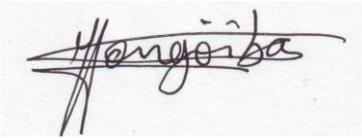
Thank you for your attention to this matter, and we very much look forward to working with you to end the unjust criminalization of people living with HIV.

Sincerely,



Ryan Peck

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



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Director, Africans in Partnership Against HIV/AIDS
Co-Chair, Ontario Working Group on Criminal Law and HIV Exposure