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Dear Mr. Peck and Ms. Ongoiba:

Thank you for your letter, also addressed to the Honourable Christine Elliot, Minister of Health and Long-Term Care, concerning the prosecution of cases regarding allegations of HIV non-disclosure. I appreciate your sharing your views with me.

Prosecutions involving exposure to HIV are complex and engage in a number of legal and scientific issues. As you are aware, since the federal government released its Report on the Criminal Justice System's Response to Non-Disclosure of HIV in December of 2017, my ministry has taken steps which reflect the current state of the science as well as developments in case law.

First, we revised our Directive on Sexual Offences against Adults, which indicates that where there is no realistic possibility of transmission, a failure to disclose does not result in criminal liability for exposure to HIV, and charges will not proceed. As a result, Ontario's Prosecutors are not proceeding with criminal prosecutions for failing to disclose one's HIV status prior to sexual contact where an individual has maintained a suppressed viral load for six months.

In addition, the Directive requires all prosecutors assigned to a case involving HIV exposure to consult with the Sexually Transmitted Infections Advisory Group within the Criminal Law Division at the earliest stage possible. Crown Counsel who are experienced in this area can then provide advice to prosecutors on a case by case basis, with consideration given to the most current state of the science, including the risk of transmission. These changes, as reflected in the Ontario Directive, have been in place for over one year.

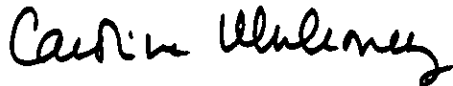
It is important to note that both the analysis conducted by the Public Health Agency of Canada (PHAC) and the Supreme Court of Canada in *R. v. Mabior* have found that even with condom use, while there is a significant reduction of risk, there remains a realistic possibility of transmission. Similarly, the PHAC has found that while the risk of transmission is low in cases of oral sex, the possibility of transmission still remains.

In any criminal prosecution, a charge may only proceed if there is a reasonable prospect of conviction and if it is in the public interest to do so. In cases involving HIV non-disclosure, this would include information not only from public health authorities but also any other factors that may be relevant to consider in making this determination. Factors such as access to health services and treatment would certainly be relevant and would be taken into account in making any such assessment.

My ministry will continue to be guided by developments in the science and the law in this area and will closely examine those cases that are to be considered for prosecution on their own merit. We will also continue to listen to members from the HIV/AIDS community, health officials, and other important stakeholders to hear their views on this important topic. Finally, should the federal government choose to examine potential legislative reform in this area, we would welcome the opportunity to work with them in doing so.

Once again, Mr. Peck and Ms. Ongoiba, thank you for writing. I appreciate hearing your views on this important matter.

Sincerely,



Caroline Mulrone
Attorney General

c: The Honourable Christine Elliot, Minister of Health and Long-Term Care