



Canadian HIV/AIDS Legal Network | Réseau juridique canadien VIH/sida

September 25, 2009

The Hon. Chris Bentley  
Attorney General of Ontario  
11-720 Bay Street  
Toronto, ON M5G 2K1

Dear Attorney General:

**Re: Prosecution of HIV non-disclosure**

The Canadian HIV/AIDS Legal Network is one of the world's leading organizations addressing the legal and human rights issues raised by HIV/AIDS, including the matter of criminal prosecutions for HIV transmission or exposure. We write to ask for copies of any current prosecutorial policies or guidelines in your jurisdiction that govern the prosecution of cases of alleged non-disclosure of HIV-positive status.

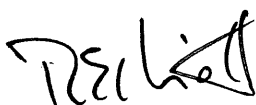
Under current Canadian criminal law, a person living with HIV can be charged with a criminal offence (e.g., criminal negligence causing bodily harm, aggravated assault, aggravated sexual assault, or potentially attempted murder or murder) for failing to disclose his or her HIV-positive status to a person who is then exposed to a "significant risk" of HIV transmission. Based on reported judicial decisions, media coverage and communications with lawyers, we understand that more than 90 people within Canada have now faced such charges and over 50 have been convicted to date.

Given the variation in the number of prosecutions in different regions of the country, the different criminal provisions that are being applied in similar factual situations, and lack of legal clarity regarding the appropriate application of the criminal law to exposures with different levels of HIV transmission risk, we are concerned that there may be discrepancies in the application of this law in different provinces and territories, or that police and prosecutors may be lacking in guidance with respect to this admittedly challenging issue. Furthermore, we are concerned about the disclosure of private information, including an accused's HIV status and sexual behaviours, in media releases at the time of an arrest. Finally, we have questions regarding the consistent use and interpretation of scientific and medical evidence in these trials and the potential for inappropriate convictions.

We therefore kindly request that you please provide us with copies of any relevant policies or guidelines that inform police and/or prosecutors in your jurisdiction with respect to their duties and the appropriate prosecution of cases of alleged HIV non-disclosure. We are particularly interested in policies that provide guidance as to when prosecutions are (or are not) appropriate, what charges to lay, evidentiary requirements including the use of medical records and scientific experts addressing different aspects of the science of HIV and its transmission, and the issuing of media releases or public warnings in cases of alleged HIV exposure without disclosure.

We thank you for your attention to this matter and look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Elliott". The signature is stylized and somewhat cursive, with the first name "Richard" written in a larger, more prominent font than the last name "Elliott".

Richard Elliott  
Executive Director

Cc: The Hon. Murray Segal