



HIV & AIDS Legal Clinic Ontario

65 Wellesley Street East, Suite 400, Toronto, Ontario M4Y 1G7

November 14, 2011

Honourable John Gerretson
Attorney General
Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, ON M7A 2S9

Dear Minister Gerretson:

Re: Meeting request - criminalization of HIV non-disclosure

Further to my letter of October 28, 2011, attached, on behalf of the Ontario Working Group on Criminal Law and HIV Exposure (CLHE), I respectfully request a meeting to discuss the criminalization of HIV non-disclosure.

As indicated in said letter, although the Ministry of the Attorney General (MAG) promised, in December 2010, to develop prosecutorial guidelines for Crown prosecutors handling allegations of HIV non-disclosure, and although CLHE provided MAG with a *Report and Recommendations* regarding the development of guidelines, MAG has not responded to the *Report*, and has not informed CLHE when it will be honouring its commitment to develop guidelines.

As further indicated in said letter, former Attorney General, Minister Chris Bentley, has made it clear that although MAG's intervention materials in the upcoming Supreme Court of Canada *R. v. Mabior* and *R. v. D.C.* matters advocate for the elimination of the current significant risk test and that there be a duty to disclose HIV status regardless of the risk of HIV transmission, that the Attorney General of Ontario has no intention of taking such a position at the Supreme Court of Canada. Minister Bentley further made clear that the Attorney General is seeking the maintenance of the significant risk test, and requesting that the Supreme Court provide clarification as to the interpretation of the test.

Both of these issues are of the utmost urgency.

Guidelines are urgently required to ensure that prosecutions take into account 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.

.../2

MAG's factum in *R. v. Mabior* and *R. v. D.C.* is due on December 20, 2011, and we still have not received confirmation that MAG has, as the Attorney General promised, amended its argument so that it is clear that they are seeking the maintenance and clarification of the significant risk test. Such clarification must be consistent with current medical and scientific research, as well as support rather than damage medical, public health and community efforts to prevent HIV transmission. This would include, for example, the position that sexual acts that pose the same or lower risk as protected sex with a condom do not require disclosure of HIV status.

We continue to be confident that you, as Attorney General, are devoted to evidence-based and just policies. CLHE requests a meeting to discuss the development of prosecutorial guidelines, as well as MAG's intervention at the Supreme Court of Canada. We request a meeting as soon as possible, before the intervention materials are filed at the Supreme Court.

Thank you for your attention to this matter.

We look forward to hearing from you shortly.

Sincerely,

HIV & AIDS Legal Clinic (Ontario)

per:



Ryan Peck

Barrister & Solicitor
Executive Director

Enclosures

cc: The Honourable Glen Murray, Minister of Research and Innovation