

HALCO

HIV & AIDS Legal Clinic Ontario

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

June 1, 2012

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

Dear Minister Gerretsen:

Re: HIV & the criminal law

On behalf of the Ontario Working Group on Criminal Law and HIV Exposure (CLHE), please accept this request for a meeting to discuss both the development of prosecutorial guidelines for Crown prosecutors handling allegations of HIV non-disclosure, as well as the implementation of interim measures pending the development of said guidelines.

As you know, in December 2010, your predecessor, the Honourable Chris Bentley, agreed to develop guidance materials for Crown prosecutors. We welcomed that commitment and, as discussed, embarked in good faith on a province-wide process of consultations to seek input that could inform such guidelines. In June 2011, CLHE provided the Ministry of the Attorney General with a *Community Report and Recommendations* document from those consultations. That report addressed both the possible content of guidelines and a variety of other measures related to criminal prosecutions for alleged HIV non-disclosure.

In August 2011, I and other representatives from CLHE met with Ms. Erin Winocur, Assistant Crown Attorney, about that report. Ms. Winocur indicated that she could not inform CLHE, on behalf of the Ministry, when guidance materials would be developed. She did, however, raise the possibility of further discussions with CLHE related to other measures that could be adopted pending the creation of guidelines. CLHE representatives made clear that the development of guidelines, as promised by the then-Attorney General, is essential, but that CLHE would be interested in further discussions regarding interim measures.

As we communicated previously, we were very pleased and appreciative last year that your office ultimately decided not to advance, before the Supreme Court of Canada, a position that is at odds with both the approach previously articulated by that court in *R. v.*

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Cuerrier and the best available science regarding HIV risk. However, since those discussions, we are deeply concerned that Crown prosecutors continue to advance that position before the Ontario courts, including in three matters currently pending before the Ontario Court of Appeal.

CLHE therefore continues to take the position that guidelines are urgently required. We are writing to request a meeting to discuss how to move forward on that commitment, as well as the implementation of other interim measures recommended in our report (e.g. the creation of an expert witness panel) pending the development of guidelines.

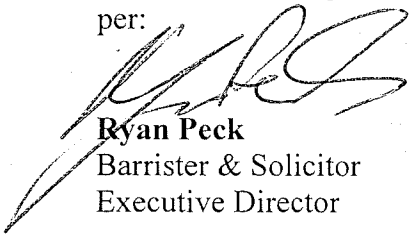
We look forward to further engagement with the Ministry on this issue and to hearing from you soon.

Thank you very much for your attention to these matters.

Sincerely,

HIV & AIDS Legal Clinic Ontario

per:

A handwritten signature in black ink, appearing to read 'Ryan Peck', written over a horizontal line.

Ryan Peck
Barrister & Solicitor
Executive Director