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Ontario

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Mr. Richard Elliott  
Executive Director  
Canadian HIV/AIDS Legal Network  
1240 Bay Street  
Suite 600  
Toronto, ON  
M5R 2A7

Dear Mr. Elliott:

Thank you for your letter regarding the prosecution of people who do not disclose their HIV positive status to their sexual partners. I will endeavour to address each of your concerns.

You note that there may be discrepancies regarding the application of the law between provinces and territories across Canada. The Constitution of Canada divides responsibility for the criminal law between the federal and provincial governments. The *Criminal Code of Canada* is a federal statute applicable across Canada. However, the provinces administer it locally. Thus, each province employs its own prosecutors and develops its own prosecutorial policies. This local administration of criminal law, on occasion, does result in some variations in prosecutorial policy from province to province. I am only in a position to speak to the policy direction given to Ontario's prosecutors.

You also raise concerns regarding the directions given to police, and the information released by the police at the time a person is arrested. In Ontario, the police fall within the jurisdiction of my colleague, The Honourable Rick Bartolucci, Minister of Community Safety and Correctional Services. As such, I have taken the liberty of forwarding a copy of your correspondence to that ministry. You may wish to follow up directly, at:

The Honourable Rick Bartolucci  
Minister of Community Safety and Correctional Services  
18th Floor, 25 Grosvenor Street  
Toronto, ON  
M7A 1Y6

e-mail: [jus.g.sgcs.webmaster@ontario.ca](mailto:jus.g.sgcs.webmaster@ontario.ca)  
Website: [www.ontario.ca/mcscs](http://www.ontario.ca/mcscs)

I have taken the liberty of enclosing a disk containing current Crown Policies and Practice Memoranda in the Crown Policy Manual. These assist and guide individual prosecutors in exercising their prosecutorial discretion. They set out appropriate considerations for prosecutorial decision-making while supporting flexibility. There are many discretionary decisions made daily by Crown counsel that are not specifically described in these policies. In general, Crown counsel should exercise their discretion in keeping with the spirit of these policies and practice memoranda. Of particular interest to you may be the Policies and Practice Memoranda related to Charge Screening, Sexual Offences, Victims of Crime: Privacy, Publication Bans and Exclusion of the Public from the Courtroom, and Physical Scientific Evidence.

From time to time, the policies of the Attorney General change or evolve in keeping with current views in our society. For example, you have raised the issue of the consistent use and interpretation of scientific and medical evidence in cases involving non-disclosure of HIV status to sexual partners. A broad policy review in the area of expert evidence is part of the ministry's response to the report released by Commissioner Goudge, following the Public Inquiry into Pediatric Forensic Pathology. While there are many differences between the issues raised in pediatric forensic pathology and those engaged by cases of non-disclosure of HIV status, the principle of ensuring that Crowns are provided with guidance in assessing expert evidence is shared. I invite you to provide us with any material you feel may assist Crowns in their use of expert evidence.

I appreciate your interest in ensuring the consistent and appropriate use of scientific and expert evidence in the administration of criminal law, and look forward to any material you may be able to provide.

Sincerely,



Hon. Chris Bentley  
Attorney General

c: The Honourable Rick Bartolucci, Minister of Community Safety and Correctional Services

Enclosure