

ONTARIO WORKING GROUP ON CRIMINAL LAW + HIV EXPOSURE



December 19, 2016

VIA ELECTRONIC MAIL: ynaqvi.mpp@liberal.ola.org

Honourable Yasir Naqvi
Attorney General
Ministry of the Attorney General
720 Bay Street, 11th Floor
Toronto, ON M5G 2K1

Dear Minister Naqvi,

Re: Criminal Law and HIV

Please accept this letter on behalf of the Ontario Working Group on Criminal Law and HIV Exposure (CLHE).

We thank you for participating in the December 5, 2016 Ministerial Roundtable on issues related to criminal law and HIV. We welcome your statement that you are looking forward to learning more about the federal government's efforts to address the overly broad use of the criminal law in relation to HIV¹ and are open to engaging in a meaningful dialogue with CLHE. We further welcome that the Honourable Tracy MacCharles, Minister Responsible for Women's Issues, expressed her openness to working with the federal government and CLHE on this issue, and assured us that she will add the issue to the agenda at the Premier's Roundtable on Violence Against Women.

In light of your assurances, we reiterate our request that the Ministry of the Attorney General (MAG) work with CLHE to:

- Develop policy directives for HIV-related prosecutions to limit the use of the criminal law in cases of HIV non-disclosure and safeguard the rights of people living with HIV at all stages of criminal proceedings, including at bail and sentencing.
- Explore and implement alternatives to criminal charges and prosecutions to limit the use of the criminal law against people living with HIV especially where there is no alleged transmission and/or malicious intent to transmit HIV.

¹ See December 1, 2016 statement by Canadian Minister of Justice Jody Wilson-Raybould recognizing the ongoing problem of overly-broad, unjust criminalization of people living with HIV, at <http://news.gc.ca/web/article-en.do?nid=1163979>.

- Develop and deliver evidence-based resources and trainings for Crown prosecutors on HIV, its transmission and the reality of living with HIV, in collaboration with CLHE as well as scientific experts.
- Track HIV-related prosecutions in a transparent manner.

As a good faith first step in this process, we respectfully request that MAG issue a statement, as the federal government did, acknowledging the over-criminalization of people with HIV and that the criminal justice system must adapt to better reflect current scientific evidence regarding HIV. In addition, we request a meeting as soon as possible to bring about change that is drastically required to ensure that the criminal law in relation to HIV non-disclosure is reflective of up-to-date science and human rights principles.

Thank you very much for your attention to this matter, and we look forward to hearing from you shortly.

Sincerely,



Ryan Peck

Barrister & Solicitor, Executive Director, HIV & AIDS Legal Clinic Ontario
Co-Chair, Ontario Working Group on Criminal Law and HIV Exposure



Valérie Pierre-Pierre, Director, African and Caribbean Council on HIV/AIDS in Ontario
Co-Chair, Ontario Working Group on Criminal Law and HIV Exposure

cc

- Honourable Kevin Flynn, Minister of Community Safety and Correctional Services
- Honourable Eric Hoskins, Minister of Health and Long-Term Care
- Honourable Tracy MacCharles, Minister Responsible for Women's Issues
- Honourable Glen Murray, Minister of the Environment and Climate Change

ONTARIO WORKING GROUP ON CRIMINAL LAW + HIV EXPOSURE



December 19, 2016

VIA ELECTRONIC MAIL: gmurray.mpp@liberal.ola.org

Honourable Glen Murray
Minister of the Environment and Climate Change
11th Floor, Ferguson Block
77 Wellesley Street West
Toronto, Ontario M7A 2T5

Dear Minister Murray,

Re: Ministerial Roundtable on Criminal Law and HIV

On behalf of the Ontario Working Group on Criminal Law and HIV Exposure (CLHE), we thank you for organizing and participating in the Ministerial Roundtable on Criminal and HIV on December 5th, 2016.

While we were disappointed that the Minister of Health and Long-Term Care and the Minister of Community Safety and Correctional Services were absent, we welcome the fact that the Honourable Yasir Naqvi, as Attorney General, made it clear that he is looking forward to learning more about the federal government's efforts¹ to address the issue of the overly-broad use of the criminal law in relation to HIV and is open to engaging in a meaningful dialogue with CLHE. We further welcome that the Honourable Tracy MacCharles, Minister Responsible for Women's Issues, expressed her openness to working with the federal government and CLHE on this issue, and assured us that the issue will be added to the agenda at the Premier's Roundtable on Violence Against Women.

As you know, although CLHE has been attempting to engage the Ministry of the Attorney General on this issue for many years, appropriate guidance has not been developed for Crown attorneys and the scope of the problem continues to escalate. People living with HIV continue to be charged with *aggravated sexual assault* – one of the most serious offences in our Criminal Code – even in circumstances where the sexual activity in question is consensual, there is no intent to cause harm, no transmission occurs and the risks of transmission are negligible if not zero.

¹ See December 1, 2016 statement by Canadian Minister of Justice Jody Wilson-Raybould recognizing the ongoing problem of overly-broad, unjust criminalization of people living with HIV, at <http://news.gc.ca/web/article-en.do?nid=1163979>.

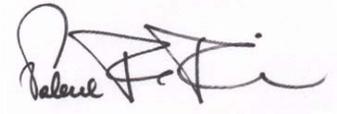
We are hopeful that the Roundtable as well as the federal government's engagement with provincial authorities will spark a renewed interest in the Ontario government to take effective measure to address this issue of great importance to people living with HIV and the LGBTQI community. We look forward to continuing to work with you to ensure that the law is brought in line with science and human rights principles.

Sincerely,



Ryan Peck

Barrister & Solicitor, Executive Director, HIV & AIDS Legal Clinic Ontario
Co-Chair, Ontario Working Group on Criminal Law and HIV Exposure



Valérie Pierre-Pierre, Director, African and Caribbean Council on HIV/AIDS in Ontario
Co-Chair, Ontario Working Group on Criminal Law and HIV Exposure

ONTARIO WORKING GROUP ON CRIMINAL LAW + HIV EXPOSURE



December 19, 2016

VIA ELECTRONIC MAIL: dorazietti.mpp@liberal.ola.org

Honourable Kevin Flynn
Ministry of Community Safety and Correctional Services
18th Floor, George Drew Building
25 Grosvenor Street
Toronto, ON M7A 1Y6

Dear Minister Flynn,

Re: Criminal Law and HIV

On behalf of the Ontario Working Group on Criminal Law and HIV Exposure (CLHE), we wish you the best as Minister of Community Safety and Correctional Services. We write in relation to the December 5, 2016 Ministerial Roundtable on HIV and Criminal Law convened by the Honourable Glenn Murray, Minister of the Environment and Climate Change.

We are disappointed that your predecessor, the Honourable Minister Oraziotti, was not in attendance at the Roundtable, as we had understood he would be joining us for the discussion. At the Roundtable, the Honourable Yasir Naqvi made it clear that, as Attorney General of Ontario, he is looking forward to learning more about the federal government's efforts¹ to address the issue of the overly-broad use of the criminal law in relation to HIV and is open to engaging in a meaningful dialogue with CLHE. The Honourable Tracy MacCharles, Minister Responsible for Women's Issues, expressed her openness to working with the federal government and CLHE on this issue, and assured us that she will add the issue to the agenda of the Premier's Roundtable on Violence Against Women.

From the laying of charges and issuance of police press releases, to the treatment of people with HIV in correctional institutions, the Ministry of Community Safety and Correctional Services has a central role to ensure that the use of the criminal law is based on up-to-date science and human rights principles. To this end, we reiterate our request of November 30, 2016, that the Ministry of Community Safety and Correctional Services work with CLHE to:

¹ See December 1, 2016 statement by Canadian Minister of Justice Jody Wilson-Raybould recognizing the ongoing problem of overly-broad, unjust criminalization of people living with HIV, at <http://news.gc.ca/web/article-en.do?nid=1163979>.

- Develop resources and training for police forces on handling matters of alleged non-disclosure, including the issuance of police press releases, HIV non-disclosure prosecutions, HIV transmission, occupational exposure to HIV, post-exposure prophylaxis, HIV testing, and HIV medical care.
- Develop resources and training on the realities of living with HIV, as well as HIV and human rights, privacy and confidentiality.
- Develop resources and training for police to provide support to potential complainants in cases of HIV non-disclosure and appropriate referrals.
- Develop resources and training for police on sexual violence, abuse and harassment against people living with HIV, especially women.
- Develop resources and training for corrections staff on HIV transmission, occupational exposure to HIV, post-exposure prophylaxis, HIV testing, and HIV medical care.
- Develop resources and training for corrections staff on the realities of living with HIV, as well as HIV and human rights, privacy and confidentiality.
- Take measures to prevent any interruption of treatment in detention and correctional facilities and guarantee access to care.
- Take measures to reduce the use of segregation against people living with HIV and protect prisoners against discrimination and violence.

We urge you to work with CLHE to ensure that law, policy and practices are reflective of current science and human rights principles. We respectfully request a meeting as soon as possible to discuss this vital issue.

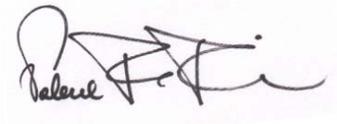
Thank you for your attention to this matter, and we look forward to hearing from you shortly.

Sincerely,



Ryan Peck

Barrister & Solicitor, Executive Director, HIV & AIDS Legal Clinic Ontario
Co-Chair, Ontario Working Group on Criminal Law and HIV Exposure

A handwritten signature in black ink, appearing to read 'Valérie Pierre-Pierre', is enclosed in a light pink rectangular box.

Valérie Pierre-Pierre, Director, African and Caribbean Council on HIV/AIDS in Ontario
Co-Chair, Ontario Working Group on Criminal Law and HIV Exposure

cc

- Honourable Eric Hoskins, Minister of Health and Long-Term Care
- Honourable Tracy MacCharles, Minister Responsible for Women's Issues
- Honourable Glen Murray, Minister of the Environment and Climate Change
- Honourable Yasir Naqvi, Attorney General

ONTARIO WORKING GROUP ON CRIMINAL LAW + HIV EXPOSURE



December 19, 2016

VIA ELECTRONIC MAIL: tmaccharles.mpp.co@liberal.ola.org

Honourable Tracy MacCharles
Ontario Women's Directorate
10th Floor, Hepburn Block
80 Grosvenor Street
Toronto, Ontario M7A 1E9

Dear Minister MacCharles,

Re: Criminal Law and HIV

Please accept this letter on behalf of the Ontario Working Group on Criminal Law and HIV Exposure (CLHE).

We thank you for participating in the December 5, 2016 Ministerial Roundtable on issues related to criminal law and HIV. We welcome your openness to working with the federal government¹ and CLHE on this issue, and your assurance that you will add the issue to the agenda of the Premier's Roundtable on Violence Against Women.

In light of your welcome assurances, we reiterate our request that the Ontario Women's Directorate work with CLHE to:

- Call for a limiting use of the criminal law and for a limiting use of the law of sexual assault in the context of HIV non-disclosure.
- Contribute to the development and delivery of evidence-based resources and trainings for Crown prosecutors, police forces and prison guards on HIV and on violence against women.
- Contribute to the development and implementation of alternatives to criminal charges and prosecutions to limit the use of the criminal law against people living with HIV especially where there is no alleged transmission and/or malicious intent to transmit HIV.
- Help ensure potential complainants receive appropriate support and referrals in cases of HIV non-disclosure.

¹ See December 1, 2016 statement by Canadian Minister of Justice Jody Wilson-Raybould recognizing the ongoing problem of overly-broad, unjust criminalization of people living with HIV, at <http://news.gc.ca/web/article-en.do?nid=1163979>.

- Take measures to protect women living with HIV from violence, harassment and domestic abuse including through the threat of HIV non-disclosure charges.

We respectfully request a meeting with you to further discuss this vital issue.

Thank you for your attention to this matter, and we look forward to hearing from you shortly.

Sincerely,



Ryan Peck

Barrister & Solicitor, Executive Director, HIV & AIDS Legal Clinic Ontario
Co-Chair, Ontario Working Group on Criminal Law and HIV Exposure



Valérie Pierre-Pierre, Director, African and Caribbean Council on HIV/AIDS in Ontario
Co-Chair, Ontario Working Group on Criminal Law and HIV Exposure

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- Honourable Kevin Flynn, Minister of Community Safety and Correctional Services
- Honourable Eric Hoskins, Minister of Health and Long-Term Care
- Honourable Glen Murray, Minister of the Environment and Climate Change
- Honourable Yasir Naqvi, Attorney General

ONTARIO WORKING GROUP ON CRIMINAL LAW + HIV EXPOSURE



December 19, 2016

VIA ELECTRONIC MAIL: ehoskins.mpp@liberal.ola.org

Honourable Eric Hoskins
Ministry of Health and Long-Term Care
10th Floor, Hepburn Block
80 Grosvenor Street
Toronto, Ontario M7A 2C4

Dear Minister Hoskins,

Re: Criminal Law and HIV

Please accept this letter on behalf of the Ontario Working Group on Criminal Law and HIV Exposure (CLHE).

Although you were not in attendance at the December 5, 2016 Ministerial Roundtable on issues related criminal law and HIV, we appreciate the presence of Alyson Rowe, Director of Policy in your office. At the Roundtable, the Honourable Yasir Naqvi, as Attorney General, made it clear that he is looking forward to learning more about the federal government's efforts¹ to address the issue of the overly-broad use of the criminal law in relation to HIV and is open to engaging in a meaningful dialogue with CLHE. The Honourable Tracy MacCharles, Minister Responsible for Women's Issues, expressed her openness to working with the federal government and CLHE on this issue, and assured us that she will add the issue to the agenda at the Premier's Roundtable on Violence Against Women.

Unfortunately, nothing is known about the position of the Ministry of Health and Long-Term Care. We have not received acknowledgement of our letters of October 2, 2105, November 17, 2016, or November 30, 2016.

Given the negative public health impacts of an overly broad use of the criminal law against people living with HIV, the Ministry of Health and Long-Term Care has a central role to play in supporting and implementing measures to protect human rights and public health by limiting the use of the criminal law in cases of HIV non-disclosure. To this end, we reiterate our request that the Ministry of Health and Long-Term Care work with CLHE to:

¹ See December 1, 2016 statement by Canadian Minister of Justice Jody Wilson-Raybould recognizing the ongoing problem of overly-broad, unjust criminalization of people living with HIV, at <http://news.gc.ca/web/article-en.do?nid=1163979>.

- Call for a limiting use of the criminal law against people living with HIV
- Contribute to the development and delivery of evidence-based resources and trainings for Crown prosecutors, police forces and prison guards on HIV.
- Contribute to the development and implementation of alternatives to criminal charges and prosecutions to limit the use of the criminal law against people living with HIV especially where there is no alleged transmission and/or malicious intent to transmit HIV.

You demonstrated a clear understanding of the issues when you met with CLHE members in December 2011. The Honourable Dr Jane Philpott, as federal Minister of Health, recognized that HIV criminalization is both an issue and a priority for the government. Given that most of HIV prosecutions in Canada are taking place in Ontario, it would be particularly appropriate and important that your Ministry also publicly call for a limited use of the criminal law in the context of HIV, informed by the best medical and scientific evidence related to HIV as well as human rights principles and good public health policy. We request a meeting as soon as possible discuss this vital issue affecting people living with HIV and public health in Ontario.

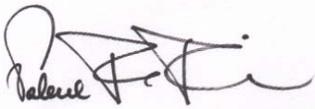
Thank you for your attention to this matter, and we look forward to hearing from you shortly.

Sincerely,



Ryan Peck

Barrister & Solicitor, Executive Director, HIV & AIDS Legal Clinic Ontario
Co-Chair, Ontario Working Group on Criminal Law and HIV Exposure



Valérie Pierre-Pierre, Director, African and Caribbean Council on HIV/AIDS in Ontario

Co-Chair, Ontario Working Group on Criminal Law and HIV Exposure

- Honourable Kevin Flynn, Minister of Community Safety and Correctional Services
- Honourable Tracy MacCharles, Minister Responsible for Women's Issues
- Honourable Glen Murray, Minister of the Environment and Climate Change
- Honourable Yasir Naqvi, Attorney General