

# ONTARIO WORKING GROUP ON CRIMINAL LAW + HIV EXPOSURE



January 19, 2017

VIA ELECTRONIC MAIL: [ynaqvi.mpp@liberal.ola.org](mailto: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).

As indicated in previous correspondence, we welcome your willingness, as expressed at the Ministerial Roundtable of December 5, 2016, to engage meaningfully with CLHE, including people with HIV and scientists, to ensure that the use of the criminal law is brought in line with current science and human rights principles.

We reiterate our request for an immediate moratorium on all prosecutions in cases of alleged HIV non-disclosure, unless there is alleged intentional transmission of HIV, while exploring law reform options and working with you to establish sound prosecutorial guidelines to limit the current misuse and overextension of the criminal law. In addition, your public statement, raised in previous correspondence, should make clear your intention to ending the overly broad application of the criminal law in cases of alleged HIV non-disclosure. We are concerned that you have not responded to our letters following the roundtable despite your willingness to engage with CHLE and request that you clarify your position on this vital issue for people living with HIV.

The way HIV non-disclosure cases are handled in Ontario is highly problematic and this has received considerable press over the past number of days.<sup>1</sup> We take particular note of

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<sup>1</sup> Peck, R. & Kazatchkine C. (2017, January 12). HIV disclosure double jeopardy: Ontario Working Group on Criminal Law and HIV Exposure calls for an immediate moratorium on all prosecutions in cases of HIV non-disclosure, *Now Magazine*, at <https://nowtoronto.com/news/hiv-disclosure-double-jeopardy/>; Robinson A. (2017, January 13). Document on HIV non-disclosure prosecutions disclosed, *Legal Feeds: The blog of Canadian Lawyer and Law Times*, at <http://www.canadianlawyermag.com/legalfeeds/3633/document-on-hiv-non-disclosure-prosecutions-disclosed.html>; Gallant J. (2017, January 15). Guide to prosecuting HIV cases ‘undermining’ public health, critics say, *Toronto Star*, at <https://www.thestar.com/news/gta/2017/01/15/guide-to-prosecuting-hiv-cases-undermining-public-health-critics-say.html>; Smith J. (2017, January 15) Criminalization of HIV non-disclosure a bigger burden on

the statement by your spokeswoman, Clare Graham, that Crown prosecutor Karen Shea's guide took a "prosecution at all costs" approach and "doesn't take into consideration the kinds of situations in which a more lenient approach might be justified."<sup>2</sup> We take the position that the guide produced by Ms. Shea is stark evidence of the prosecutorial zeal that has and is being employed in Ontario.

We are heartened that Ms. Clare's statement seems to implicitly acknowledge and distance the Ministry of the Attorney General from such a prosecutorial approach. However, it is clear that this approach is alive and well today and that Ms. Shea continues to play a central role in HIV non-disclosure prosecutions across the province. People living with HIV continue to be charged with *aggravated sexual assault* – one of the most serious offenses in our Criminal Code – even where there is no intent to cause harm, no transmission occurs and the risks of transmission are negligible if not zero. Such injustices must stop.

Now is time for your Ministry to take action on this issue. 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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women, advocates say, *Toronto Star*, at <https://www.thestar.com/news/canada/2017/01/15/criminalization-of-hiv-non-disclosure-a-bigger-burden-on-women-advocates-say.html>.

<sup>2</sup> Robinson A. (2017, January 13). Document on HIV non-disclosure prosecutions disclosed, *Legal Feeds: The blog of Canadian Lawyer and Law Times*, online at <http://www.canadianlawyermag.com/legalfeeds/3633/document-on-hiv-non-disclosure-prosecutions-disclosed.html>.

cc

- Honourable Indira Naidoo-Harris, Minister of Women's Issues ([inaidoo-harris.mpp.co@liberal.ola.org](mailto:inaidoo-harris.mpp.co@liberal.ola.org))
- Honourable Eric Hoskins, Minister of Health and Long-Term Care ([ehoskins.mpp@liberal.ola.org](mailto:ehoskins.mpp@liberal.ola.org))
- Honourable Marie-France Lalonde, Minister of Community Safety and Correctional Services ([mflalonde.mpp.co@liberal.ola.org](mailto:mflalonde.mpp.co@liberal.ola.org))
- Honourable Glen Murray, Minister of the Environment and Climate Change ([gmurray.mpp@liberal.ola.org](mailto:gmurray.mpp@liberal.ola.org))
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