

From: Ryan Peck (HALC)
Sent: November-03-10 10:51 AM
To: Winocur, Erin (JUS)
Subject: Recommendation for a consultation process

Dear Ms. Winocur,

Please find attached the Ontario Working Group on Criminal Law and HIV Exposure recommendation for a consultation process for the development of prosecutorial guidelines for criminal allegations of HIV non-disclosure.

We are recommending that the process begin this year, with the constitution of an Expert Panel by December 1, 2010.

We respectfully request a response from the Ministry of the Attorney General by November 19, 2010.

We very much look forward to hearing from you.

Sincerely,

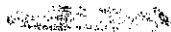
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Recommendation for a consultation process

Based on the research and findings described in the report "HIV Non-disclosure and the Criminal law: Establishing Policy Options for Ontario" by Eric Mykhalovskiy, Glenn Betteridge and David McLay, we call for a consultation process to inform the development of prosecutorial guidelines by the Ministry of the Attorney General for cases involving allegations of non-disclosure of sexually transmitted infections, including HIV.

The Ministry of the Attorney General shall play an active and leading role in this process through at least two representatives including an individual with decision making capacity. The consultation process will include the following steps:

1- December 1st - Constitution of an Expert Panel

The Expert Panel will be an advisory committee that will inform the development of prosecutorial guidelines by discussing key issues, providing feedback on a scoping paper (see below), soliciting the views of key experts, making recommendations and reviewing drafts of the guidelines.

Members of the Expert Panel will have a duty of confidentiality.

The following key sectors should be represented in the Expert Panel and actively participate in the consultation process:

- **People living with HIV**, *Murray Jose, Executive Director, Toronto People Living With AIDS Foundation; Darien Taylor, person living with HIV.*

- **AIDS Service Organisations**, *Ryan Peck, Executive Director, HIV & AIDS Legal Clinic (Ontario); Cécile Kazatchkine, Policy Analyst, Canadian HIV/AIDS Legal Network; Shannon Ryan, Executive Director, Black Coalition for AIDS Prevention.*

- **Ontario Advisory Committee on HIV/AIDS (OACHA)**, *Dr. Donald Kilby, M.D., Medical Director of Health Services, Ottawa University (to be confirmed).*

- **Research Community** including someone with expertise in the science of HIV transmission and someone from a social science background who has done work on the issue: *Dr. Rupert Kaul, Ph.D., M.D., Canada Research Chair in HIV, Assistant Professor, Department of Medicine, University of Toronto; Eric Mykhalovskiy, Ph.D., Associate Professor, Department of Sociology, York University and Canadian Institutes of Health Research New Investigator.*

- **AIDS Bureau, Ministry of Health and Long Term Care**

- **Public Health Profession**, including a public health unit familiar with the issue: *Dr. Rita Shahin, Associate Medical Officer of Health, Toronto Public Health; other to be determined.*

- **Health Care Providers**, *Dr. John Goodhew, Co-Chair, Toronto HIV Primary Care Physicians Group.*

- **Ministry of Community Safety and Correctional Services**

- **Criminal Defense Bar**, *Jonathan Shime, Partner, Cooper Sandler; [REDACTED], Associate, Cooper Sandler.*

2- December 1st - Scoping paper

A small group [Ryan Peck (HIV & AIDS Legal Clinic (Ontario)); Murray Jose (Toronto People with AIDS Foundation); Jonathan Shime (Partner, Cooper Sandler); ██████████ (Associate, Cooper Sandler); Cécile Kazatchkine (Canadian HIV/AIDS Legal Network)] will produce a scoping paper to provide guidance for the consultation process. The scoping paper will identify key issues and areas of discussion relevant for the development of prosecutorial guidelines for criminal cases involving allegations of non-disclosure of sexually transmitted infections, including HIV.

The scoping paper will be submitted to the Ministry of the Attorney General for approval before it is distributed to the members of the Expert Panel.

3- January 15 - Expert Panel - 1 day meeting

A one-day meeting of members of the Expert Panel will take place to provide feedback on the scoping paper and to discuss the key issues it identifies as in need of explication in prosecutorial guidelines. This meeting will be structured as a directed discussion rather than the more traditional oral presentations or submissions format.

The Ministry of the Attorney General, through its representatives, shall play an active and leading role in the meeting.

A revised scoping paper integrating key comments from the Expert Panel will be produced within **two weeks** of the meeting.

4- March 15 – Expert Panel report to the Ministry of the Attorney General

Expert Panel members will consult with additional experts and stakeholders as needed for feedback on the revised scoping paper. Feedback may take the form of written submissions. The Expert Panel will draw on this feedback, and the revised scoping paper, to formulate a report with recommendations for the development of prosecutorial guidelines.

5- April 15 - Draft of guidelines by the Ministry of the Attorney General

Based on the Expert Panel's report, the Ministry of the Attorney General will prepare a first draft of prosecutorial guidelines that will be circulated to the Expert Panel.

6 - May 15 - Comments and revision of the draft guidelines by the Expert panel – 2nd Meeting

The Expert Panel will meet to discuss the draft and make suggestions for changes.

The Ministry of the Attorney General, through its representatives, shall play an active and leading role in the meeting.

7 – June 15- Second draft of guidelines by the Ministry of the Attorney General

Based on the Expert Panel's comments and recommendations, the Ministry of the Attorney General will prepare a second draft of guidelines that will be circulated to the Expert Panel.

8 – June 30 - Expert panel final comments

*Ontario Working Group on Criminal Law and HIV Exposure
Submitted to Ministry of the Attorney General, 3 November 2010*

The members of the Expert Panel will have **two weeks** to provide final comments and recommendations.

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