

COPY



65 Wellesley Street East, Suite 400
Toronto, Ontario M4Y 1G7
Tel 416-340-7790 / 1-888-705-8889
FAX 416-340-7248 www.halco.org

January 5, 2011

Ms. Erin Winocur
Counsel, Criminal Law Policy Branch
Ministry of the Attorney General
720 Bay Street, 9th Floor
Toronto, ON M5G 2K1

Dear Ms. Winocur:

Re: Practice Memorandum for HIV-related prosecutions

On behalf of the Ontario Working Group on Criminal Law and HIV Exposure (CLHE), I thank you for your letter of December 16, 2010, confirming that the Ministry of the Attorney General (MAG) "is engaged in a process to develop a Practice Memorandum for Crown prosecutors in the area of HIV prosecutions." The letter further states that the consultation process undertaken by CLHE "will inform the process MAG will be engaged in regarding the development of Ministry guidelines," and that MAG will share a draft of the Practice Memorandum prior to its issuance.

CLHE is very pleased that MAG is developing a Practice Memorandum. We appreciate that MAG will not be able to follow the process CHLE had recommended, but we are pleased to read that MAG is open to receive further information and to consult with CLHE when developing said Memorandum. It is indeed essential that concerns and perspectives from people living with HIV, communities affected by HIV, legal, public health and scientific experts, health care providers, and AIDS service organizations will be meaningfully taken into account in the development of the Practice Memorandum. To that end, please be advised that we have secured funding to conduct, in the near future, a meaningful consultation with key stakeholders to inform the process engaged by MAG. It would be of great assistance to us, in conducting the consultation, to receive clarification on the following matters:

1. What is the timeframe for the issuance of the Practice Memorandum? In order to inform the process engaged by MAG, it would be beneficial for our consultation to be completed and the results provided to MAG prior to the issuance of the Memorandum. Thus, knowledge of the timeframe would be of great assistance.
2. Will CLHE have the opportunity to meet with drafters of the Practice Memorandum?
3. Will the Practice Memorandum be accompanied by a Policy Statement? If so, what will MAG include to guide Crown prosecutors? CLHE hopes that the "cautions" expressed by the Supreme Court of Canada in *R. v. Cuerrier* will be considered as a starting point.

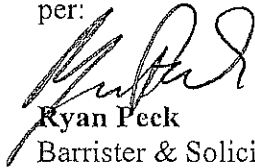
4. Will the Practice Memorandum apply only to cases of alleged HIV exposure, or to other sexually transmitted infections? CLHE urges the latter.
5. Given that criminal prosecutions relating to HIV exposure have direct impacts on HIV prevention work, will the Ministry be consulting with Public Health?
6. How will MAG take into account the issues raised at pages 70-71 of *HIV Non-Disclosure and the Criminal Law: Establishing Policy Options for Ontario* (2010)?

As indicated above, it would be of great assistance to us to have the answers to these questions prior to engaging in our consultation process. This will allow for a better and more focussed consultation, which, in turn, will ensure that we can provide MAG with the best information and assistance possible. We respectfully request a response by January 13, 2011, so that we can commence the consultation process as quickly as possible.

Thank you very much for your attention to this matter.

Sincerely,
HIV & AIDS Legal Clinic (Ontario)

per:



Ryan Peck
Barrister & Solicitor
Executive Director

- c.c. Mr. Murray Jose, Executive Director, Toronto People with AIDS Foundation
Ms. Cécile Kazatchkine, Policy Analyst, Canadian HIV/AIDS Legal Network
██████████, Associate, Cooper Sandler LLP
Mr. Jonathan Shime, Partner, Cooper Sandler LLP