



Statement Déclaration

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HIV AND HUMAN RIGHTS ORGANIZATIONS WELCOME FEDERAL GOVERNMENT'S INTEREST IN ENDING UNJUST HIV CRIMINALIZATION

TORONTO, December 1, 2016 — The Canadian HIV/AIDS Legal Network and the HIV & AIDS Legal Clinic Ontario (HALCO) welcome today's statement by Canadian Minister of Justice Jody Wilson-Raybould recognizing the ongoing problem of overly-broad, unjust criminalization of people living with HIV. Today, fittingly for World AIDS Day, the federal government has signaled its intent to address a critical issue that has long been of concern to people living with HIV and human rights advocates across Canada, and that has also attracted international criticism. Minister of Health Dr. Jane Philpott has also met with us on this very issue, and has noted that HIV criminalization in Canada is both a problem and a priority for the government to address.

Canadian civil society organizations have a great deal of expertise in this area. We welcome the commitment by the Government of Canada to engage provincial and territorial governments — and, importantly, community organizations, people living with HIV, and legal and scientific experts — to avoid miscarriages of justice through the over-application of the criminal law.

In 2014, more than 70 prominent Canadian medical experts signed an important consensus statement, highlighting their shared concern that the criminal justice system in this country has gone awry, as it regularly continues to ignore the science about actual HIV transmission risk.

On the international stage, all guidance and recommendations from United Nations and other bodies has been clear: any use of the criminal law should be limited to intentional transmission, as recommended by UNAIDS and the Global Commission on HIV and the Law. Most recently, just two weeks ago, the UN Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW) made historic recommendations to Canada, calling to attention our unjust prosecutions of people — including women — living with HIV. Indeed, organizations representing women living with HIV have long criticized overly-broad HIV criminalization as harmful for women. A growing number of feminist legal academics and women's rights advocates have raised concerns about the misuse of the criminal law in this area, and in particular the misuse of the law of sexual assault, which is to the detriment of both people living with HIV and to hard-won provisions regarding consent in Canada's sexual assault laws.

Overly-broad criminalization of HIV non-disclosure is discriminatory against people living with HIV and is also not in the public interest for other reasons. It creates a further disincentive to getting tested, which undermines public health, and acts as a barrier to people receiving the care they need when information given to health providers can be used as evidence against them in court.

With today's statement, we are cautiously optimistic that the federal government is ready to work with us in undoing the unjust use of the criminal to discriminate against people living with HIV and achieving instead a strictly limited, evidence-based, principled approach that protects both human rights and public health.

– 30 –

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