

HIV Criminalization: Governments of Canada and Ontario make important announcements

On Friday, December 1, 2017, World AIDS Day, the Governments of Canada and Ontario made important announcements about limiting the criminalization of HIV non-disclosure.

As we anticipated, the federal Justice Minister **Jody Wilson-Raybould** released a statement and her department's report on the criminal justice system's response to HIV non-disclosure. The report and related material are available on the government of Canada website:

- English:
www.canada.ca/en/department-justice/news/2017/12/government_releasesreportonthecriminalityofhivnon-disclosure.html
- Français :
www.canada.ca/fr/ministere-justice/nouvelles/2017/12/le_gouvernement_publicerapportsurlecaracterecrimineIdelanon-div.html

Also on December 1, Ontario Attorney General **Yasir Naqvi** and **Eric Hoskins**, Ontario Minister of Health and Long Term Care, issued the following joint statement:

“On World AIDS Day, it is important to pause and remember all those who have lost their lives to HIV/AIDS, and stand in solidarity with everyone impacted by this virus across Ontario and the world. We would like to recognize the dedicated individuals and organizations whose courageous work over the past decades have helped to reduce new HIV infections and improve the health and well-being of people affected by this virus. Medical treatment for HIV has advanced significantly in recent years and, with timely diagnosis and treatment, HIV is now a chronic, but manageable condition for many. It is important that Ontario's laws and criminal justice system reflects those advancements.

Ontario Attorney General and Minister of Health joint statement continued from page 1:

Today the federal government released its report on the Criminal Justice System's Response to Non-Disclosure of HIV, which includes the Public Health Agency of Canada's scientific analysis on the sexual risk of HIV transmission. The scientific conclusions reflect the growing body of evidence that shows that there is no realistic possibility of transmission of HIV if a person is on antiretroviral therapy and has maintained a suppressed viral load for six months. Ontario endorses the scientific analysis included in the federal report and will review the report's policy recommendations.

The Supreme Court of Canada has said that the scientific understanding of risk of transmission, as well as advances in medical treatment, may evolve over time, and allowed for the law to evolve accordingly. Therefore in light of the overwhelming scientific consensus for cases where an individual has a suppressed viral load for six months, Ontario's Crown Prosecutors will no longer be proceeding with criminal prosecutions.

Additionally, in early 2018, we will establish a joint MAG and MOHLTC roundtable with members from the HIV/AIDS community, health officials, and other stakeholders to hear their views on this important topic.

We will carefully monitor developments in HIV/AIDS case law and I encourage the federal government to share periodic updates to the analysis conducted by the Public Health Agency of Canada with all provinces and territories.

It is our hope that with this new report, Minister Wilson-Raybould will take immediate action and consider reforms to the *Criminal Code* to align with new scientific evidence and reduce the stigma of HIV/AIDS in Canada. We join the Canadian Coalition to Reform HIV Criminalization in their request that the federal government examine potential law reform in this area, and would welcome an opportunity to participate in these discussions.

Ontario is investing an additional \$2.7 million this year to further support the efforts of community HIV/AIDS programs. The province is also providing \$980,000 for additional harm reduction outreach workers at 19 organizations across Ontario and an additional \$3.4 million to improve access to harm reduction supplies across the province.

Ontario Attorney General and Minister of Health joint statement continued from page 2:

In September, our government also made anti-HIV drug, Truvada, and a generic version, more affordable by expanding the Ontario Drug Benefit program to include pre-exposure prophylaxis (PrEP). This will help more people access medication to decrease the risk of getting HIV and reduce rates of HIV across the province. Starting January 1st, with the launch of OHIP+ Pharmacare for Children and Youth, everyone under the age of 25 will be able to access Truvada free of charge through their local pharmacy.

We believe strongly that HIV should be considered with a public health lens, rather than a criminal justice one, wherever possible. We must continue to work towards reducing the stigma and discrimination of people living with HIV/AIDS and their families.”

While the decision by Ontario to cease prosecutions against those with a suppressed viral load is a welcome first step, it is but one of the minimum changes that must take place. As indicated for many years, and as reflected in the recently released **Community Consensus Statement** (www.hivcriminalization.ca) endorsed by more than 150 organizations across the country, criminal prosecutions should be removed from the reach of sexual assault laws and be limited to cases of actual, intentional transmission of HIV. In particular, HIV-related criminal charges are not appropriate where a person living with HIV engaged in activities that, according to the best available scientific evidence, posed no significant risk of transmission, which activities include:

- oral sex;
- anal or vaginal sex with a condom; and
- anal or vaginal sex without a condom while having a low viral load.

HALCO, the Canadian HIV/AIDS Legal Network, the Canadian Positive Peoples Network, the Ontario Working Group on Criminal Law and HIV Exposure (CLHE), and the Canadian Coalition to Reform HIV Criminalization issued a joint statement. CLHE also wrote to Ontario’s Attorney General and Minister of Health. The joint statement (English and Français) and the CLHE letter are on our website: www.halco.org/2017/news/hiv-criminalization-governments-of-canada-and-ontario-make-important-announcements

As always, HALCO provides free legal services for people with HIV in Ontario. People can call us directly at 416-340-7790 or toll-free 1-888-705-8889. We are open for intake for new inquiries on Monday, Tuesday, Thursday and Friday from 9 a.m. to 5 p.m. For new immigration/refugee inquiries, please call to request an appointment.

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