

October 26, 2018

The Honourable David Eby, QC
Attorney General of British Columbia
PO Box 9044 Stn Prov Govt.
Victoria, BC V8W 9E2

Sent via email: AG.Minister@gov.bc.ca

Re: Call for consultation process and for prosecutorial directive from Attorney General to stop unjust HIV-related prosecutions in BC (AG File Number 551016)

Dear Minister Eby:

We write on behalf of the Pacific AIDS Network (PAN), to request a meeting with you, alongside other HIV organizations, scientists and legal experts, to discuss current prosecutorial policy and practice in British Columbia regarding the non-disclosure of HIV. PAN and its member organizations are united in our sense of urgency about putting an end to the threat of unwarranted prosecutions, and the fear of prosecution, among people living with HIV in British Columbia, which environment also complicates the work of service providers such as those working in our member organizations. We respectfully reiterate our call to ask you to consider adopting a prosecutorial directive to halt any potential injustices from occurring in HIV-related prosecutions.

As background, PAN is a proactive provincial network of 43 community-based and allied organizations working to address HIV, hepatitis C and related conditions. PAN facilitates communication and the sharing of best practices, and provides professional/workforce development and leadership trainings to our members and people living with HIV (PLHIV). We also provide face-to-face networking opportunities, research and evaluation; and undertake collective action to influence public perceptions and policies affecting persons living with HIV, hepatitis C, those most “at risk” and other people with lived experience.

In June we brought our concerns to you about the BC Prosecution Service’s (BCPS) inadequate and deficient policy¹ regarding prosecutorial guidelines for instances of alleged HIV non-disclosure. Your July 13th, 2018 response to us highlighted certain pieces of this policy, but it did nothing to allay our concerns regarding the overcriminalization of HIV. These same concerns were flagged by the federal Attorney General in 2016.²

In the last 4 months the BCPS has been unwilling to review its new policy or to consult with concerned legal and scientific experts and community-based organizations, which has been disappointing. Meanwhile, there have been significant developments in the science that underscores the need to limit HIV criminalization –namely the recent expert consensus statement (from the International AIDS Society, the International Association of Providers in AIDS Care and UNAIDS)³ that concludes:

¹ <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/sex-2.pdf>

² <https://www.canada.ca/en/department-justice/news/2016/12/minister-wilson-raybould-issues-statement-world-aids.html>

³ <https://onlinelibrary.wiley.com/doi/full/10.1002/jia2.25161>

The application of up-to-date scientific evidence in criminal cases has the potential to limit unjust prosecutions and convictions. The authors recommend that caution be exercised when considering prosecution, and encourage governments and those working in legal and judicial systems to pay close attention to the significant advances in HIV science that have occurred over the last three decades to ensure current scientific knowledge informs application of the law in cases related to HIV.

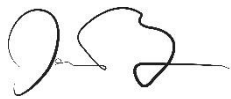
We concur with the Global Commission on HIV and the Law that *the use of criminal law in this area should be limited to cases of actual, intentional transmission of the virus*⁴ – in other words, only in the most egregious of circumstances. The overly-broad use of the criminal law in cases of alleged HIV non-disclosure, including charges of aggravated sexual assault, leads to unjust prosecutions and terrible consequences for the individual involved at every stage of the criminal justice process. The overcriminalization of people living with HIV also perpetuates ignorance, fear and stigmatization. This in turns undermines the effective response to HIV as it complicates prevention efforts and the provision of care, treatment and support.

The Canadian Coalition to Reform HIV Criminalization (CCRHC) Community Consensus Statement⁵ strongly recommended that provincial governments have an important role to play in ensuring more evidence-based approaches to the criminal law in the area of HIV and transmission, and that Attorneys General should adopt sound guidance to govern the conduct of provincial prosecutors. We recognize the federal government also has a crucial role, but that will move at a different pace, in a different arena, and meanwhile lives (and justice) are at risk.

The current policy of the BCPS is at odds with BC's progressive, world-renowned leadership in responding to HIV, as well as the science. As someone who has publicly stated their desire to see progress on this issue, we now call on you to consult with legal and scientific experts and community leaders, including people living with HIV, and to issue a directive that will ensure prosecutorial policy is more fully evidence-based, and does not result in unwarranted, unjust prosecutions,⁶ and further stigmatization.

We look forward to meeting with you at your earliest convenience.

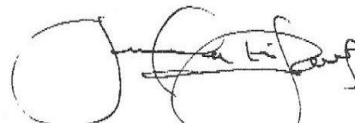
Most Sincerely,



Jesse Brown
Co-Chair, PAN



Katrina Jensen
Co-Chair, PAN



J. Evin Jones
Executive Director, PAN

CC: Elgin Lim, Executive Director, Positive Living BC
Richard Elliott, Executive Director, Canadian HIV/AIDS Legal Network
Micheal Vonn, Policy Director, BC Civil Liberties Association
Gala Milne, Ministerial Assistant, Ministry of the Attorney General

⁴ <https://hivlawcommission.org/report/>

⁵ <http://www.hivcriminalization.ca/download/92/>

⁶ <http://www.justice.gc.ca/eng/rp-pr/other-autre/hivnd-vihnd/index.html>