



aidsactionnow.org

14 November 2012

COPY

Mary Ann Lorraine Humphrey, Assistant Crown Attorney
Ministry of the Attorney General
101-361 University Ave
Toronto Ontario
M5G 1Y1

Dear Ms Humphrey,

Re: *Think Twice* before you prosecute HIV non-disclosure cases

AIDS ACTION NOW! (www.aidsactionnow.org) is Canada's oldest AIDS activist organization. Over the past five months the Attorney General of Ontario has received hundreds of postcards signed by people from all walks of life across the province, calling on him to end the witch-hunt against people with HIV. We have enclosed a postcard for your information. The text of the postcard was published in the *Ontario Reports* (22 June 2012; 109 OR (3d) Part 9), and we handed out postcards to Ministry of the Attorney General employees in Toronto on the morning of 24 July 2012.

In Ontario alone, at least 75 people have been charged with aggravated sexual assault and other serious offences for failing to disclose their HIV status. There have been numerous cases in which Ontario Crown prosecutors, contrary to the law established by the Supreme Court of Canada in *Cuerrier*, have pursued convictions against people whose conduct posed *no significant risk* of HIV transmission. Crown prosecutors are even pursuing cases where there was *no risk at all*. In other words, even under the new more stringent "realistic possibility" test set out by the Supreme Court in *Mabior*, there would be no principled legal basis to carry forward many such cases. This injustice must end.

These *unnecessary and unjust prosecutions* have grave social consequences beyond the individual injustice that they entail. Prosecutions are increasing stigma against people living with HIV. Prosecutions promote fear and misinformation about HIV and AIDS. Prosecutions make it even more difficult for people to disclose their status. Prosecutions are discouraging people from testing for HIV out of concern that knowing their status will make them vulnerable to prosecution. Prosecutions are discouraging people from seeking community-based counselling and public health services because they fear their records may be seized or subpoenaed in legal cases involving criminal complaints. Prosecutions may encourage HIV negative people to abandon safer sex in the belief that their partners all know and will disclose their status. In short, these *unnecessary and unjust* criminal prosecutions are making Canadians more vulnerable to HIV infection and threaten to fan the flames of the HIV epidemic.

Before you proceed with criminal charges based on allegations of HIV non-disclosure, please *Think Twice*. The Supreme Court confirmed in *Mabior* that HIV non-disclosure *per se* is not a crime. Assure yourself that the decision to proceed with prosecution is based on an assessment of HIV transmission risk, informed by complete and accurate understanding of up-to-date scientific and medical evidence provided by qualified experts—**not** on preconceptions, fear or prejudice. HIV non-disclosure is **not** about forced, coerced or violent sex. It should not be treated as such.

The United Nations Global Commission on HIV and the Law has come out strongly against HIV criminalization. (<http://hivlawcommission.org/>) Please read the report, and please *Think Twice* before you prosecute.

Sincerely,

[original signed]

Tim McCaskell,
on behalf of AAN Steering Committee!

cc Hon John Gerrestsen

Encl/ Think Twice Before You Prosecute postcard
Think Twice ad from *Ontario Reports*