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COURTHOUSE PROTESTORS CONDEMN “WITCH-HUNT” BY CROWN PROSECUTORS AGAINST PEOPLE LIVING WITH HIV, CALL FOR ACTION BY ATTORNEY GENERAL

TORONTO, July 8, 2013 —AIDS activists, feminists and legal experts are gathering today at the Barrie Courthouse to protest the unjust criminal prosecution of Ontario woman “JM.” JM faces one of the most serious charges under the *Criminal Code* — aggravated sexual assault — for allegedly not disclosing her HIV-positive status during sexual activity that carried little or no risk of transmission.

“This is a really sad case,” said Jessica Whitbread of Toronto, Global Chair of the International Community of Women with HIV/AIDS (ICW-NA). “This woman faces years in jail for consensual sex. She is charged with aggravated sexual assault, akin to someone who has violently forced themselves on another, and yet there was no intent to cause harm and no HIV transmission. Police, prosecutors and courts need to recognize that the misuse of criminal charges doesn’t protect women, it harms them — especially women living with HIV.”

Following a ruling last year by the Supreme Court of Canada, the law says someone can be convicted for not disclosing HIV when there is a “realistic possibility” of HIV transmission. The ruling was condemned by people with HIV and AIDS activists as interpreting this test far too broadly, effectively extending the risk of criminal prosecution very widely and discarding limits on criminal charges already recognized by lower courts based on scientific evidence.

Following the ruling, the law still remains unclear on every sexual act except vaginal intercourse. Now, an Ontario prosecutor is trying to expand the criminal law even further: one of JM’s charges is based solely on oral sex — despite the evidence that there is virtually no risk of transmission associated with the act that is alleged, and any miniscule risk is lowered even further by the fact that JM’s viral load was undetectable at the time.

“The fact that this charge was laid in the first place demonstrates ignorance and a lack of judgment on the part of the police involved,” said Richard Elliott, Executive Director of the Canadian HIV/AIDS Legal Network. “And the fact that the Crown prosecutor in charge of this case is pursuing a conviction, even in the face of expert scientific evidence, is even more outrageous.”

“This trial shows just what mischief and injustice results from bad laws poorly interpreted by overzealous prosecutors in a climate of misinformation, stigma and prejudice,” said Tim McCaskell of AIDS ACTION NOW! “The Attorney General must stop the ongoing witch-hunt against people with HIV. He should develop prosecutorial guidelines that encourage a balanced and strictly limited use of the law, and involve people living with HIV, community organizations and scientific and human rights experts in that process.”

Over 1,000 supporters of the Ontario Working Group on Criminal Law and HIV Exposure (CLHE) have already called on MAG to create prosecutorial guidelines. Last year, the independent, international Global Commission on HIV and the Law recommended limits on the criminal law relating to HIV non-disclosure or exposure. Just recently, UNAIDS released a detailed guidance document for governments on appropriately limiting the scope of HIV criminalization so as to avoid undermining human rights and public health. For more information, see:

www.aidslaw.ca/criminallaw
www.clhe.ca
www.aidsactionnow.org

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