

News Release Communiqué

JAMAICAN GAY ACTIVIST CHALLENGES TV STATIONS IN COURT

Stations refused to air LGBTI tolerance ad; one station now withdrawing its defence

February 1, 2016 — Today the Jamaican Court of Appeal will begin hearing a landmark case brought forward by Jamaican attorney and human rights activist, Maurice Tomlinson. The case is challenging national television stations that refused to air a “tolerance ad” promoting respect for the human rights of LGBTI people. The original hearing set for July 22–24 was rescheduled to allow the Attorney General’s office more time to prepare.

This landmark constitutional case is the first appeal in Jamaica to raise the issue of human rights of LGBTI people. It is also the first time the Court will consider how the rights protected under the 2011 *Charter of Fundamental Rights and Freedoms* should apply against private corporations and not just the government. Notably, one of the TV stations won’t appear to defend its original decision refusing the ad, while the remaining station has dropped one of its main arguments that Jamaicans cannot sue private individuals, such as TV stations, for breaches of their constitutional rights.

The tolerance ad, produced by AIDS-Free World, features Tomlinson in conversation with leading Jamaican human rights advocate, Yvonne McCalla Sobers, who now also works in a group committed to providing shelter for homeless LGBTI youth. The ad itself simply calls on Jamaicans to love and respect their gay family members, and the Broadcasting Commission of Jamaica had confirmed it did not breach any of the country’s broadcasting regulations or standards. The ad can be viewed at <https://youtu.be/AZwCW1LREXk>.

“With this ground-breaking case on freedom of expression, we hope to chart a new course not only for LGBTI Jamaicans, but also for all those who want Jamaica’s constitution to deliver on its promise of protecting human rights,” says Tomlinson. Forced to flee his homeland because of homophobia he personally experienced, Tomlinson now works as a senior policy analyst with the Canadian HIV/AIDS Legal Network, which is supporting the appeal.

Stigma, discrimination and sometimes murderous violence remain pervasive threats to the health and human rights of LGBTI people in Jamaica, and consensual sex between men is punishable by 10 years’ prison with hard labour. Homophobia and transphobia force LGBTI Jamaicans underground, creating further barriers to HIV prevention, treatment and support services. Indeed, the Caribbean has the world’s second-highest HIV-prevalence rate following sub-Saharan Africa — and the highest prevalence of HIV among gay men and other men who have sex with men (MSM) in the Americas.

“We have young LGBTI Jamaicans living in desperate conditions on the streets. They are forced from their own homes by their families, and are harassed out of vacant spaces and even sewers. They have no place to go where they can feel safe and protected,” says McCalla Sobers. “This ad is only the first step in trying to change hostile attitudes toward LGBTI family members, classmates, co-workers and fellow citizens in Jamaica and around the world. All deserve the right to live freely and safely without discrimination.”

Tomlinson and AIDS-Free World originally filed the claim against Television Jamaica and CVM Television — the two largest private TV broadcasters in Jamaica — on the grounds that their refusal to air the ad violated the constitutional rights to freedom of expression and to disseminate information and ideas through the media. That claim was denied in late 2013 by the trial court, but Tomlinson chose to appeal that decision. In his appeal, Tomlinson is arguing that the Court failed to sufficiently consider the role of TV stations in a healthy democracy. In Jamaica, private citizens are allowed to challenge other private citizens (including TV stations) for breaches of Charter rights — but this is the first appellate case to consider such a scenario.

The hearing takes place before the Jamaican Court of Appeal from February 1–4. For more information on the court case, see this Q&A document: <http://www.aidslaw.ca/site/qa-on-jamaican-tv-ad-court-case/>.

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About the Canadian HIV/AIDS Legal Network

The Canadian HIV/AIDS Legal Network (www.aidslaw.ca) promotes the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally, through research and analysis, advocacy and litigation, public education and community mobilization. The Legal Network is Canada's leading advocacy organization working on the legal and human rights issues raised by HIV/AIDS.