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CLA Statement on new Directive to federal prosecutors regarding the prosecution of HIV non-disclosure

Toronto, ON, December 1, 2018 – Earlier today the Minister of Justice announced a new Directive to federal prosecutors that will make significant strides towards reducing the unjust and discriminatory criminalization of HIV in Canada. The Criminal Lawyers' Association supports the Minister's new approach to the prosecution of HIV non-disclosure and calls on provincial Attorneys General to issue similar directives to prosecutors in their respective jurisdictions.

Canada's legal framework for the prosecution of HIV non-disclosure, as expressed by the Supreme Court of Canada in the *Cuerrier* and *Mabior* decisions, has long been outpaced by advances in the understanding and treatment of HIV. As Justice Canada's report on the *Criminal Justice System's Response to HIV Non-Disclosure* (December 2017) recognized, the risk of transmission is low to negligible for many common forms of sexual activity.

Too many individuals who posed a negligible risk of HIV transmission – those with low viral loads, or who practiced safe sex by using a condom – have been convicted of aggravated sexual assault, and other serious criminal offences. More still have found themselves marginalized and discouraged from seeking the very treatment and counselling that could prevent any inadvertent transmission of HIV.

The Criminal Lawyers' Association is pleased that the federal government has implemented many of the key recommendations from the 2017 Justice Canada report. As the report acknowledges, HIV is best treated through the public health system. Criminal sanction should be used as a matter of last resort.

While we commend the Minister's approach to future prosecutions of HIV non-disclosure, we implore her not to forget the many people who have been unjustly convicted of serious, sexual offences, despite not having transmitted HIV or having posed a risk to transmit HIV. The Criminal Lawyers' Association calls for a nation-wide review of possible wrongful convictions resulting from the persistent use of outdated science in cases where the risk of transmission was actually low.

The Criminal Lawyers' Association (CLA) is one of the largest specialty legal organizations in Canada, with more than 1,000 members. The CLA is a voice for everyone concerned with the quality of criminal justice. Our advice and perspective is sought often by all levels of government and the judiciary on issues relating to legislation and the administration of criminal justice. The CLA also strives to assist its members in every aspect of the practice of criminal litigation.

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