

Criminal charges against HIV-positive mother inappropriate response, says Canadian HIV/AIDS Legal Network

Toronto, 27 May 2005 – The Canadian HIV/AIDS Legal Network warned against inappropriate criminal prosecutions to deal with HIV transmission, reacting to an announcement today by the Hamilton Police Service that it had laid charges against a mother who withheld her HIV status from medical staff during the birth of her child.

“We are very concerned about this new case,” said Richard Elliott, Director of Legal Research and Policy with the Network. “There seems to be a disturbing trend toward using criminal charges in response to conduct that risks transmitting HIV, which is not helpful.”

While there have been cases in the past with people charged with aggravated assault for not disclosing their HIV-positive status to a sexual partner, this is the first reported case in Canada where a mother who has HIV is being charged in connection with not disclosing her HIV status and the infection of her baby. According to police, the woman has been charged with failing to provide the necessities of life and criminal negligence causing bodily harm. The exact basis for the charges remains uncertain at this point, but should become clearer after the woman appears in court today.

Elliott cautioned that resorting to criminal prosecutions for not disclosing one’s HIV-positive status could only ever be justified as a last resort and is likely to be counter-productive.

“Obviously nobody wants to see any case of HIV transmission,” said Elliott. “But criminalizing people is generally the wrong way to go. Prosecuting a mother for not disclosing her HIV status to health care workers is just the kind of action that would drive others in her situation underground and away from the assistance they need. If women face criminal charges in these situations, it’s a reason to avoid HIV testing and prenatal care, which harms both them and their babies. Do we really think that throwing this woman in jail is going to help either her or her children?”

The Canadian HIV/AIDS Legal Network is a national, non-governmental organization focusing on legal and policy issues related to HIV/AIDS. Through research, education and advocacy, it advocates for laws and policies that protect and promote human rights of people living with HIV/AIDS and that support effective HIV prevention, care, treatment and support. The Network has done extensive analysis on the issue of criminal law and HIV transmission/exposure (see: www.aidslaw.ca/Maincontent/issues/criminallaw.htm).