

Issue 20

Canadian HIV/AIDS Legal Network

June 2005

No more requirements for short-term visitors to Canada to disclose HIV status on visa application form

With the upcoming XVI International AIDS Conference being held in Toronto next year (13-18 August 2006), Canadian immigration policy and practice has drawn international attention. Several months ago, concerns were raised that Canadian immigration rules posed barriers to visitors to Canada who are living with HIV/AIDS by unjustifiably requiring disclosure of their HIV status and other unnecessary details of their health status. Canadian advocates brought the issue to the attention of the federal government, and Citizenship and Immigration Canada has recently changed its application form for "temporary resident visa" such that it no longer requires people to disclose their HIV status when applying for a visa for a short-term visit.

Even though Canada does not bar people with HIV/AIDS from entering the country as short-term visitors, attention was drawn to the need to review and revise specific aspects of the process for applying for a temporary resident visa. Canadian immigration policy requires nationals from many countries to apply for a "temporary resident visa" if they want to enter Canada as a short-term visitor. Before the recent change, the visa application form effectively required the applicant to disclose a diagnosis of HIV/AIDS (and other health conditions). The form asked:

Have you or any member of your family ever: (a) been treated for any serious physical or mental disorders or any communicable or chronic diseases? [...] If the answer to any of the above is "yes", give details.

Primarily affecting nationals of developing countries, this question was intrusive and overbroad in requiring people to disclose their HIV status, which presented a practical barrier for some people living with HIV/AIDS entering Canada, including to attend the 2006 Conference.

AIDS2006 Toronto Local Host (Canadian organizer), the International AIDS Society (IAS) and the co-organizers (International Council of AIDS Service Organizations, Global Network of People Living with HIV/AIDS, International Community of Women Living with HIV/AIDS, Canadian AIDS Society and UNAIDS) expressed concerns to the federal government. Citizenship and Immigration Canada (CIC) recognized the overly broad nature of the question and undertook a review, working with other government departments, the Local Host, IAS, the Ministerial Council on HIV/AIDS and the Canadian HIV/AIDS Legal Network. The City of Toronto Public Health department and other medical, public health and immigration law experts also provided valuable input.

Focusing on what information needs to be collected to meet its legislative requirements, Citizenship and Immigration Canada has amended its application form for a temporary resident visa to remove the overly broad question. It has been replaced with questions that more directly and narrowly address the legislative requirements of protecting public health and preventing excessive demand on

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For more information on Canadian immigration law and policy in relation to HIV/AIDS, see www.aidslaw.ca/ Maincontent/issues/ immigration.htm

health services. The new questions are:

Within the past two years, have you or a family member had tuberculosis of the lung or been in close contact with a person with tuberculosis of the lung?

Do you or an accompanying family member have any physical or mental disorder for which that person will require social and/or health services, other than medication, during the stay?

In all but rare circumstances, these questions do not require a person with HIV/AIDS to disclose their status on the application. A visa officer retains discretion to order a medical examination for any visa applicant if the officer decides the answers to these questions warrant one. If a medical examination is ordered, an HIV test is currently part of the examination, something that remains of concern. However, this requirement is expected to be reviewed in the near future, and the Legal Network will continue to advocate that HIV testing should no longer automatically be part of the medical examination for short-term visitors.

The new temporary resident visa application form is already publicly available on-line at <u>www.cic.gc.ca/english/applications/visa.html</u>. It has been sent to visa offices around the world as an immediate replacement for the old form.

CIC is engaged in the next steps to ensure that the positive change to the visa application form is complemented by necessary changes to operational guidelines and training for visa officers. The Canadian HIV/AIDS Legal Network will continue to work with the AIDS2006 Local Host, the Ministerial Council on HIV/AIDS and others to support these efforts and also to identify and work on other potential barriers to participation in AIDS2006 by people with HIV/AIDS and others.

Canada's immigration policy: the basics

- As a result of the recent change, Canada does <u>not</u> require disclosure of known HIV infection on the application form for a visa to enter the country as a short-term visitor.
- Canada does <u>not</u> routinely impose mandatory HIV testing on short-term visitors, nor does it categorically bar visitors based on their HIV-positive status.
- HIV-positive status does <u>not</u> prevent a person from visiting Canada, nor should a diagnosis of AIDS, but for the rare and exceptional circumstance where the person's health condition is such that they are assessed as likely to require health and social services, during their stay in Canada that will create an excessive demand on Canada's public system (e.g., hospitalization). This is the same standard applicable to all persons.

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Funded by the Public Health Agency of Canada. The findings, interpretations, and views expressed in this publication are entirely those of the authors and do not necessarily reflect official policy or positions of the Public Health Agency of Canada or the Canadian HIV/AIDS Legal Network.		The Canadian HIV/AIDS Legal Network is a charitable organization promoting the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally. We accomplish this through research, policy analysis, education, advocacy and community mobilization.		



Consolidation of Legal Network Offices in Toronto

The Canadian HIV/AIDS Legal Network will consolidate its two offices into one location in Toronto as of October 31. The Legal Network has for some time operated from two office locations in Montreal and Toronto. As we are in a position to build a bigger research and policy team and the critical mass of that team is in Toronto, we have decided to consolidate our office locations and establish a single office in Toronto. We are sure that this move will improve our ability to work as a team and will enhance the effectiveness of our work. The move will also result in cost savings in rent as we will no longer be paying for two locations. This move was endorsed unanimously by the Legal Network's board of directors.

Episodic Disability Advocates Push for Income Security

On 4 May 2005 in Ottawa, in partnership with the Canadian Working Group on HIV/AIDS and Rehabilitation, the Multiple Sclerosis Society of Canada, the Canadian AIDS Society, and eight other disability groups from across Canada, the Legal Network launched a *Statement of Common Agenda on Disability*, *Full Participation and Work*, calling for reforms to meet the income needs of people living with episodic disabilities like HIV/AIDS.

"Existing income security programs were designed with permanently disabled people in mind. They don't meet the needs of people with episodic disabilities," explained Francisco Ibáñez-Carrasco of CWGHR. "Without reform, many people with episodic disabilities will continue to lead lives characterized by income insecurity and poverty."

Francisco arrived in Canada 20 years ago and was diagnosed with HIV shortly after. He was then a 22-year-old new immigrant, and now is The move from Montreal will not affect the mandate of the Legal Network or diminish our interest in legal and human rights issues that may arise in Quebec. The Network will continue to interact with our members and partners in both English and French, to reach out to francophone partners and media, and to produce our publications in both languages.

New location as of October 31:

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the provincial HIV Community-Based Research Technical Assistant in BC, co-chair of the Canadian Working Group on HIV and Rehabilitation, and a fiction writer. His professional and personal lives are a testament to the fact that treatment access, even combined with great tenacity, still doesn't guarantee the ability to have an active life – income must be secure.

When an opportunistic illness hit him hard in 1993, he was completely unprepared. The ten years that followed were a roller coaster to regain physical, emotional, and mental strength. Like most people living with episodic disabilities, sometimes Francisco has been able to study, work and volunteer, and at times he has needed home care and meals on wheels.

For many people living with HIV/ AIDS across Canada, antiretroviral treatment has turned HIV/AIDS into



L to R: Stewart Wong (Multiple Sclerosis Society), Francisco Ibanez-Carrasco (CWGHR), Ainsley Chapman (CAS), Glenn Betteridge (Legal Network), Cheryl Elliott (MS Society), Eileen McKee (CWGHR), and Elana Wright (Legal Network).

an illness characterized by lifelong, episodic disability. Episodic disabilities are characterized by distinct periods of illness and wellness, and are becoming more prevalent in Canada. Other illnesses associated with episodic disability include cancer, lupus, muscular dystrophy, multiple sclerosis, mental illness and mood disorders.

The *Common Agenda* calls for the federal and provincial governments and the private sector to work together to reform existing public and private disability income support and replacement programs to meet the needs and respect the rights of people living with disabilities. This includes flexible work arrangements, partial disability pensions, complementary and integrated federal and provincial programs, as well as policies that encourage people to move into the workforce when they are well and able.

In addition to the press conference, the Legal Network and partner organizations met with government and opposition MPs, including members of the Subcommittee on the Status of Persons with Disabilities, Ministerial policy advisors, and program directors from Social Development Canada. These meetings were rich opportunities to talk face to face with legislators and decision-makers about the priorities for reform to federal disability income security programs like the Canada Pension Plan disability benefit. These priorities include: more flexible definitions of disability that take into account the intermittent, recurring nature of certain diseases; common definitions of disability across programs; transparent, consistent and principled disability adjudication, staffed by people knowledgeable about episodic disabilities; incentives to help people return to work; as well as improved communication with applicants and recipients of disability income security programs. The Legal Network will release its report on income security and HIV this year, and will continue to work with its partners to follow up on that issue.

The following resources on income security and episodic disability can be found on our website at www.aidslaw.ca/Maincontent/ issues/incomesecurity.htm.

- <u>Statement of Common Agenda on Disability</u>, <u>Full Participation and Work</u>
- <u>HIV & Disability Insurance in Canada: An</u> <u>Environmental Scan</u> (CWGHR)
- <u>Unpredictable Episodes of Illness in the Experiences of Persons Living with HIV/AIDS:</u> <u>A Qualitative Study</u> (CWGHR)
- <u>Looking Beyond the Silo: Disability Issues</u> <u>in HIV and Other Lifelong Episodic Condi-</u> <u>tions</u> (CWGHR)
- <u>Canadian AIDS Society resources on Income</u> <u>Security and HIV/AIDS</u>, including <u>HIV and</u> <u>Poverty Fact Sheets</u>

"Nothing about us without us": Update on the Network's project on greater involvement of people who use illicit drugs

As mentioned in issue 18 of *Network News* (at 3), the Network recently started a new project, entitled "Greater, meaningful involvement of people who use illicit drugs in work on HIV/AIDS: An ethical and human rights imperative."

Over the last months, a project advisory committee was established, and extensive consultations were undertaken, including with people who use illicit drugs and AIDS service organizations. In addition, over 60 individuals and organizations responded to a call for input. The project has been very well received, and most of those who responded said it was high time to pay increased attention to involvement of people who use illicit drugs in work on HIV/AIDS and hepatitis C. Over the next months, three documents will be finalized: a paper on user involvement, a series of info sheets, and a user manifesto.

For more information about the project, including a presentation given at the 16th International Conference on the Reduction of Drug Related Harms, see <u>www.aidslaw.ca/</u><u>Maincontent/issues/druglaws/</u><u>greater_involvement.htm</u> or contact Ralf Jürgens, the consultant working on this project, at idu-udi@aidslaw.ca.

Harm reduction under attack: Key moment for support

Syringe exchange for injection drug users is one of the most widely studied and effective HIV prevention measures available. In the past, the U.S. government has refused to endorse syringe exchange, but rarely has the U.S. so actively sought to undermine syringe programs as in the weeks before the annual session of the UN Commission on Narcotic Drugs (CND) in March. The U.S. Congress held public hearings in February entitled "Harm reduction or harm maintenance?" in which defenders of syringe exchange were accused by members of Congress of promoting drug use among young people. Before CND, a highlevel State Department official told Antonio Maria Costa, the director of the UN Office of Drugs and Crime, that the U.S. wanted to see any endorsement of syringe programs cleansed from UN publications. The cannons were loaded for CND.

Thanks in part to the work of an impressive NGO coalition, the European Union delegation to CND and those of European member states stood up strongly for harm reduction and syringe exchange, and so did WHO. At the end of the HIV/AIDS discussion in which only two countries spoke explicitly against harm reduction, UNAIDS Executive Director Peter Piot concluded the debate by emphasizing that there was "no consensus" on harm reduction. This was technically true, but not helpful from someone who should be the world's leading advocate for harm reduction at a moment when harm reduction was under assault. Piot also emphasized prevention of drug use as the "number one priority," not reflecting what the

vast scientific evidence says about the centrality of harm reduction for HIV prevention. As the CND considered resolutions on a wide range of issues, the U.S. excised any wording remotely suggestive of harm reduction or even of HIV prevention services for drug users, leaving only recommendations for prevention of drug use. Since the CND operates on a consensus system rather than by majority rule, there was no stopping the U.S.

If CND is any guide, the June 2005 meeting of the governing body of UNAIDS (called the Programme Coordination Board or PCB) could be a showdown on the future of UN endorsement of harm reduction. The PCB member states will be finalizing a Global Prevention HIV Strategy. The draft strategy document available at this writing confirms UN support for provision of sterile syringes to drug users as a central element of HIV prevention. The question is whether that language will survive the expected attack from Washington and its few allies – and also whether UN officials will stand firm in their defense and promotion of harm reduction measures. HIV/AIDS and harm reduction NGOs around the world are lobbying PCB country delegations. Canada will not be a voting member at the PCB, but Canada's comments on the draft strategy document included a strong statement of support for harm reduction. Though not voting, Canada must continue to express its support for harm reduction on the floor of the PCB. Its voice is an important one, and we will all be listening.

-Joanne Csete

Network at UN meeting on HIV/AIDS in prisons

On 17 and 18 February 2005, the Legal Network's former Executive Director Ralf Jürgens attended, on behalf of the Network, a consultative meeting on HIV/AIDS prevention, care and support in prison settings organized by the United Nations Office on Drugs and Crime (UNODC). The aim of the meeting was to "develop a comprehensive strategy to address HIV prevention and care in prisons, including a global plan of action and guidelines for country-level action."

Participants at the meeting included representatives of various UN agencies (WHO, UN- AIDS, UNDP, UNFPA, UNICEF, ILO, and UNESCO), the prison services of Iran, Uganda, Jamaica, Spain, and Poland, nongovernmental agencies, and researchers. Rick Lines of the Irish Prison Reform Trust and Heino Stöver prepared three background documents for the meeting: a review of the existing literature on HIV/AIDS in prisons, a "Framework for Effective National Responses," and guidelines for country-level implementation of HIV/AIDS policies and programs in prison settings. These documents are currently being revised. The meeting was



opened and closed by Rob Boone, Chief, Human Security Branch, UNODC, and facilitated by Christian Kroll from the HIV/AIDS Unit at UNODC. Mr Boone said that prison issues have traditionally been neglected within the "UN family," but that a working group on prisons was established in April 2004, and that UNODC has taken the lead role among UN agencies on prisons. He emphasized that the UN now wants a coherent strategy followed by country-level action on HIV/AIDS in prisons. In 2006, UNODC is planning to assist 10 countries with development of strategies and programs. Before then, a "policy dialogue" on HIV/AIDS in prisons will be organized by Health Canada, the Open Society Institute, CIDA, UNAIDS,

and UNODC, to take place in Canada in October 2005.

Asked about whether the meeting had been successful, Ralf said: "The meeting was extremely important because it was the first time the UN organized such a high-level consultation on HIV/AIDS in prisons. It is sad that it took so long to get us there, but at least we are seeing some action. What remains to be seen is whether in the current climate of backlash against harm reduction the UN agencies will do the right thing and advocate for, and assist with implementation of, harm reduction measures in prisons at country level."

Two Projects to Advance Prisoners' Right to Health

Despite major efforts by prison systems, Canadian prisoners with HIV/AIDS continue to experience interruptions to their highly-active anti-retroviral therapy (HAART). The Legal Network is beginning a project which will investigate the reasons this happens, by consulting with prisoners, prison medical staff, and public health officials. A short paper will review the problem and its implications, and make recommendations for reform so that the problem will be addressed by provincial/ territorial and the federal prison systems.

In 2002, the Legal Network published a report card called *Action on HIV/AIDS in Prisons: Too Little, Too Late,* offered a survey of the provision of harm reduction measures in Canadian prisons in 2002. Now, in 2006, the Legal Network, in close collaboration with the Prisoners' HIV/AIDS Support Action Network (PASAN), will offer an update on harm reduction in federal, provincial, and territorial correctional systems.

The Network and PASAN will take a comprehensive look at both policies and practice, by interviewing prisoners, prison administration and health care staff, and community organizations that work with prisoners, to see what progress has been made, and where improvements are needed. Based on Canadian law, policy, and standards, as well as international standards, best practices for federal, provincial, and territorial jurisdictions will be recommended.

Update on the Network's work in Ukraine

We reported on the Network's project to assist with the implementation of harm reduction measures in prisons in Ukraine in Network News 15 (at 6) and 18 (at 5). In March, Ralf Jürgens, who now works as a consultant on this project, returned to Ukraine. "After we signed the collaboration agreement between the Legal Network and the Ukrainian prison administration in October 2004, under which the Network will assist with the implementation of methadone maintenance and needle exchange pilot projects in Ukrainian prisons, things came to a halt because of the elections in Ukraine and the subsequent formation of a new government," said Ralf. "It was important to go back now, establish links with the new prison administration, and develop a new workplan for the activities."

Ralf was able to meet with the new Head of the Prison Administration, Vasiliy Koschinets, who had been appointed only the week before. Mr Koschinets' staff announced that since the last visit two prisons had been selected as sites for the needle exchange pilot project: colony #53 in Olshansk (Mykolayiv region) and colony #48 in Lviv. Over the next few months, the Network will assist with the preparation of the pilot projects. In particular, two Ukrainian lawyers, including a lawyer working for the prison administration, will spend six weeks at the Network's office to examine the changes to prison system regulations and the law of Ukraine that may need to be undertaken to authorize implementation of prison needle exchange. Reflecting on his last visit to Ukraine, Ralf said: "A lot of work remains to be done, but it is exciting to see that the political will is there in Ukraine to implement needle exchange in prisons, and that concrete steps are being taken to ensure that pilots will start soon. Unfortunately, that political will is still missing in Canada. We like to say that we are leaders in the fight against HIV/AIDS, but in many ways our efforts are lagging behind what other, far less resource-rich countries are doing."

Legal Network calls on Commission on Human Rights to adopt a resolution on sexual orientation, gender identity and human rights

As an NGO in "special consultative status" with the Economic and Social Council (ECOSOC) of the United Nations, the Legal Network accredited two representatives to work on specific issues before the UN Commission on Human Rights this year. Davinia Ovett, of the organization 3D (Trade \rightarrow Human Rights \rightarrow Equitable Economy) worked to secure advances in the Commission's yearly resolution on access to medication, which is considered every year. The resolution adopted this year includes new language urging states to take full advantage of the flexibility in WTO rules on patents in order to protect public health. This year's resolution also includes new language calling on states to conduct "impact assessments" of the effects of international trade agreements on public health and on realization of the human right to the highest attainable standard of health. This aspect of the resolution may help advocates in resisting pressure on countries to sign trade agreements that include very stringent intellectual property provisions – even more stringent than existing WTO rules – which could further restrict countries' policy options for improving access to more affordable medicines.

The Legal Network also was a visible and vocal supporter of human rights for lesbian, gay, bisexual and transgender people. John Fisher of ARC International, was accredited as a Legal Network representative and was a very active member of a larger global coalition working on securing recognition by the Commission, in various ways, of human rights abuses based on sexual orientation and gender identity. The Legal Network's representatives presented 5 different written or oral statements under various items on the Commission's agenda on human rights issues, such as sexual orientation, gender identity, HIV/AIDS, violence against lesbians, and discrimination, and again lent our voice to the global call for a Commission resolution condemning human rights abuses based on sexual orientation and gender identity. Some important gains in visibility for this issue were made, and increasingly human rights mechanisms such as Special Rapporteurs have been incorporating these issues into their reports. However, no resolution has yet been adopted by the Commission, and advocates are now planning the next steps in what is necessarily a longer-term campaign.

The Legal Network thanks Davinia and John for ably representing the Network at the Commission.

The Legal Network's statements at the Commission are available at: <u>www.aidslaw.ca/</u> <u>Maincontent/issues/gayandlesbian.htm</u>.



New Board Members

The Network is pleased to welcome three new members to our Board of Directors.

David Barr has been an advocate for HIV/AIDS treatment since 1987, and has worked both in the US and in the former Soviet bloc. He was a staff attorney for the Lambda Legal Defense Fund, and policy director for the Gay Men's Health Crisis. He was the executive director of the Forum for Collaborative HIV Research and executive manager of the Drug Policy Alliance. He is currently senior philanthropic advisor for the Tides Foundation and recently helped to mobilize over US \$1 million to be used in a small grants program for antiretroviral treatment preparedness in countries where injection drug use is an important means of HIV transmission.

Robert Carr is executive director of Jamaica AIDS Support (JAS), the country's biggest AIDS service organization and one of the leading organizations in the Caribbean region. JAS provides education, care and support and policy advocacy, including extensive programs for sex workers, prisoners, and young people. Jamaica AIDS Support has done ground-breaking work against homophobia and against numerous forms of stigma and discrimination related to HIV/AIDS. He is also co-founder of the Coalition of Vulnerable Communities of the Caribbean, a regional group representing populations vulnerable to HIV/AIDS. Trained in social work and management, he has worked as a counselor and program manager in numerous AIDS programs and services in Jamaica and Trinidad.

Le-Ann Dolan has worked in the field of HIV/AIDS since 1997. She is currently the Community Development Leader with AIDS Calgary Awareness Association. She is the advocacy representative for the Calgary Coalition on HIV and AIDS, Co-Chair of the Advocacy Committee for the Alberta Community Council on HIV, and a board member with the Interagency Coalition on AIDS and Development. Le-Ann's work ranges from international development to front-line work with those involved in sex work and injection drug use.

Student interns at the Legal Network



L to R: 2005 summer students Sarom Bahk, Katie Gibson, and Gord Cruess.

This summer, the Legal Network welcomes three law students as interns in the Montreal office. Katie Gibson, a student in the joint MBA and law program at McGill, and who previously worked for a reproductive health organization, will be working on the Network's model legislation project as part of McGill's human rights internship program.

Gord Cruess, who worked at the Network last year as a pro bono student, returns to the Network this summer. Sarom Bahk, a second-year student at McGill who spent last summer doing an internship at the B.C. Civil Liberties Association, will also join us. These interns will be doing research on several Network projects, and will contribute to the next issue of the HIV/AIDS Law and Policy Review.



- HIV/AIDS Policy & Law Review 10(1) www.aidslaw.ca/Maincontent/otherdocs/Newsletter/vol10no12005/issue.htm
- Harm Reduction in Prisons and Jails: International Experience (presentation) April 2005 www.aidslaw.ca/Maincontent/issues/prisons/amfARPres-Harmreduc.pdf
- Обмен игл в тюрьмах: Уроки всестороннего изучения международного опыта и подтверждённых доказательствами результатов March 2005
- www.aidslaw.ca/Maincontent/issues/prisons/pnep/PNEP-report-ru.pdf



Thanks for all the wonderful work that you continue to do.

-Dr. Catherine Dodds, Research Fellow, Sigma Research, UK

Thank you for being on the ball [by distributing resources to help ASOs respond to media enquiries about the recent case of a woman in Ontario charged with aggravated assault for allegedly having unprotected sex with at least one man without disclosing her HIV-positive status]. The media coverage has been most unhelpful in its "analysis" of the cases to date.

-LaVerne Monette, Provincial Coordinator, Ontario Aboriginal HIV/AIDS Strategy

Employment opportunity at the Legal Network

Applications are now being accepted for the position of **Communications Director** based at the Legal Network's Toronto office.

Deadline to apply: **29 July2005.** Job description and information on how to apply can be found at: <u>www.aidslaw.ca/AbouttheNetwork.htm</u>



Mark your calendars: AGM weekend from 9-11 September 2005

Once again this year, the Legal Network and the International Coalition on AIDS and Development (ICAD) will hold their AGMs jointly in Montreal. On Friday, 9 September, the Legal Network will present two half-day workshops, one entitled *Rights Now! Canadian and International Perspectives on the Health and Human Rights of Sex Workers*, and the other called *Nothing About Us Without Us: Greater Involvement of People who use Illicit Drugs—An Ethical and Human Rights Imperative*. In the evening, a dinner will feature a special guest speaker, and the presentations of the *Awards for Action on HIV/AIDS and Human Rights*.

On Saturday, September 10th, ICAD will hold its AGM in the morning, and the Legal Network will hold its AGM in the afternoon. On Sunday, September 11th, ICAD will conduct a strategic planning discussion with its members, and the Legal Network will present a workshop on our model legislation project. All events will be held at the Crowne Plaza Hotel in Montreal, on Sherbrooke St. near St-Denis. **Be sure to mark these days on your calendar!**

Network logo: new look

Our new graphic design agency, Oblik Communication-Design, has improved our logo, making it more legible.

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