Canadian HIV/AIDS Legal Network | Réseau juridique canadien VIH/sida

December 12, 2005

**Re: Toronto Drug Strategy**

Dear Councillor:

The Canadian HIV/AIDS Legal Network wishes to express its support for the visionary report and recommendations of the Toronto Drug Strategy Advisory Committee. In adopting the recommended strategy as policy, the City of Toronto would distinguish itself as having a drug policy based on sound empirical evidence, informed public health principles and respect for human rights.

We understand that objections have been raised regarding certain recommendations, particularly with respect to the distribution of safer crack use equipment to people who use this illicit drug, and a needs assessment and feasibility study of supervised consumption sites.

The Canadian HIV/AIDS Legal Network is dedicated to promoting laws and policies that respect, protect and fulfil the human rights of people living with HIV/AIDS and those vulnerable to the disease. As a national, not-for-profit organization focussing on legal and policy dimensions of HIV/AIDS, we wish to address some of the legal aspects of these two recommendations. In our view, the distribution of safer crack-use equipment to people who use this illicit drug, and a needs assessment and feasibility study of supervised consumption sites, are permissible under Canadian law and consistent with Canada's human rights obligations under international law as well as urgently needed from a public health perspective.

**Safer crack use kits**

Providing sterile needles to people who inject drugs has been effective in preventing the spread of blood-borne pathogens such as HIV and hepatitis C, in addition to abscesses and other negative consequences of sharing injection equipment. Virtually all sterile syringe programs in Canada distribute other injection equipment in addition to syringes – including sterile water, sterile filters and cookers and alcohol wipes – without which these programs would be less effective. Harm reduction initiatives are unnecessarily and unjustifiably hampered if they are restricted to providing only clean needles when the needs of the people they serve are actually broader.

In addition to the good public health rationales for ensuring access to sterile crack use equipment, there are also sound reasons from the perspective of the government's human rights obligations and international guidance, and in keeping with Ontario's public health law. Canada has ratified the *International Covenant on Economic, Social and Cultural Rights*. Consequently, the City of

Toronto is obligated to take measures within its jurisdiction to ensure Canada's compliance with this treaty.

Most importantly, Article 12 of the *Covenant* recognizes the human right "to the highest attainable standard of physical and mental health":

> 1. The States Parties to the present Covenant recognize the right of everyone to the highest attainable standard of physical and mental health.
>
> 2. The steps to be taken by the Parties to the Present Covenant to achieve the full realization of this right shall include those necessary for: […]
>
> > c. the prevention, treatment and control of epidemic… and other diseases; […].

It has long been recognized that needle exchange programs, by providing access to sterile equipment to those who use illicit drugs, are a critical and effective component of preventing HIV transmission among this population. They reflect one measure taken in compliance with Canada's obligations under international human rights law to prevent and control epidemic diseases. If such programs are to have the greatest public health benefit, it is important that they provide the full range of equipment that is used in the consumption of illicit substances.

The United Nations Committee on Economic, Social and Cultural Rights, which is tasked with monitoring states' compliance with their *Covenant* obligations, has clarified what "right to health" entails. In its *General Comment* on Article 12 of the *Covenant*, adopted in 2000, the Committee clarified that the right to health includes the *availability* of health care facilities, goods and services, and programs in sufficient quantity, as well as *accessibility* to these without discrimination (para 12). If we are to expect that hospital patients benefit from the use of sterile equipment (needles *and* whatever accompanying equipment is needed) in the delivery of injections and other health care procedures, then it is important that publicly funded health protection and promotion programs that serve some of the most vulnerable and marginalized populations also provide an equivalent level of access, notwithstanding the fact that clients of such programs inject themselves, often with illegal substances. The health protection objective is the same, regardless of the legal status of the substance or of the person using it. Access to *all* necessary sterile equipment should be the norm.

We also note that the *International Guidelines on HIV/AIDS and Human Rights* have been promulgated by the Joint United Nations Programme on HIV/AIDS and the Office of the United Nations High Commissioner for Human Rights, in order to translate international human rights norms (such as those found in the *Covenant*) into practical observance in the context of HIV/AIDS. These Guidelines have been endorsed by Canada. The guidelines stress, *inter alia*, that:

> <u>Guideline 6 (revised 2002): Access to prevention, treatment, care and support</u>
>
> States should also take measures necessary to ensure for all persons, on a sustained and equal basis, the availability and accessibility of quality goods, services and information for HIV/AIDS prevention…
>
> State should take such measures… with particular attention to vulnerable individuals and populations.

Guideline 8: Women, children and other vulnerable groups

> States should support the implementation of specially designed and targeted HIV prevention and care programmes for those who have less access to mainstream programmes due to language, poverty, social or legal or physical marginalisation, e.g., […] injecting drug users. (Guideline 8, para 38j)

In addition, in June 2001, all UN member states adopted the *Declaration of Commitment on HIV/AIDS*, in which they recognized "that effective prevention… strategies will require … increased availability of and non-discriminatory access to, inter alia … sterile injecting equipment" (para 23). They therefore committed to ensuring "expanded access to essential commodities, including … sterile injecting equipment; harm reduction efforts related to drug use" (para 52) by 2005. The commitment is not limited to ensuring access to sterile needles and also refers to harm reduction efforts broadly (recognizing that it is not only drug injection that is of concern). It would run counter to this HIV prevention commitment to limit access to sterile equipment among those who continue to use illicit drugs.

We note that Ontario's *Health Protection and Promotion Act*, R.S.O 1990, c. H.7, states that its purpose is:

> [T]o provide for the organization and delivery of public health programs and services, the prevention of the spread of disease and the promotion and protection of the health of the people of Ontario.

A reasoned analysis of the relevant provisions in the Canadian *Criminal Code* leads to the conclusion that, as with the distribution of sterile syringes through needle exchange programs, the distribution of safer crack kits should not be seen as contrary to Canadian law. We note that while the *Criminal Code* establishes criminal liability for promoting or selling an "instrument for illicit drug use", a "device", as defined in the *Food and Drugs Act* (s. 2), is expressly exempted from the definition of "instrument for illicit drug use". The *Food and Drugs Act* defines "device" as: "any article, instrument, apparatus or contrivance, including any component, part or accessory thereof, manufactured, sold or represented for use in … the diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal physical state, or its symptoms, in human beings or animals." Just as with the distribution of sterile needles to drug users, safer crack use equipment distributed as part of a "safer crack use kit" to prevent or reduce the spread of blood-borne pathogens such as HIV or hepatitis C fall within this definition of a device and are therefore excluded from the definition of "instrument for illicit drug use." Needle exchange programs have been operating for almost two decades in Canada, with official government approval and financial support. Yet the distribution of sterile equipment aimed at reducing the harms associated with the unsafe injection of illicit drugs is not qualitatively different from the proposal to distribute sterile pipes aimed at reducing the harms associated with the unsafe smoking of illicit drugs. It would be illogical to fund the former as a sensible, pragmatic and cost-effective public health measure, yet declare the latter to be criminal.

**A needs assessment and feasibility study for supervised consumption sites**

There are three main ways in which supervised consumption sites can be effective at improving public health:

1. Preventing fatal overdoses;

2. Preventing the spread of blood-borne diseases and other injuries caused by unsafe injecting; and
3. Acting as a gateway to education, treatment and rehabilitation.

Supervised consumption sites are not "shooting galleries," which are not legally or officially sanctioned and are often unsafe because they do not offer hygienic conditions, access to sterile injection equipment, supervision and immediate access to health-care personnel, or connections to other health and support services.

International law requires that states remove obstacles to trialling supervised consumption sites as part of the international legal obligation to provide people with the highest standard of health possible. Furthermore, the provisions of the international drug conventions are flexible enough to permit the trial of supervised consumption sites. For example, Article 38(1) of the 1961 *Single Convention*, entitled "Measures Against the Abuse of Drugs," states:

> The Parties shall give special attention to and take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved and shall co-ordinate their efforts to these ends.

Concerns about criminal and civil liability are often exaggerated and not insurmountable obstacles to implementing supervised consumption sites. Nevertheless, the Legal Network supports the establishment of a clear legal framework for the operation of supervised consumptions sites.

Some have suggested that establishing supervised consumption sites sends the wrong message to the community — namely, that drug use is acceptable and has official support. It is argued that this will contribute to increased use. In fact, in cities in Europe that have supervised consumption sites, the total number of drug users has decreased.

Another concern is that the introduction of supervised consumption sites would increase the concentration of drug users in the area in which the supervised consumption site is located, thereby affecting the quality of life in the neighbourhood. In reality, supervised consumption sites are expected to reduce nuisance and visibility problems: crime, violence, loitering, drug dealing and property damage could be diminished, and many needles would be disposed of safely, rather than discarded on the streets. European studies support this contention, with police reporting declines in street robbery, car break-ins, and heroin trafficking and related offences after the introduction of injection facilities.

There is a substantial body of evidence from supervised consumption facilities in a number of other countries reflecting the success of such sites as a public health intervention. The results to date from Insite in Vancouver are similarly positive. A preliminary review of its first year of operation found that the site provides a secure environment for injection for over 3000 people who inject illicit drugs in Vancouver. The facility averages some 500 to 600 injections daily. In its first year of operation, there were over 100 observed overdoses, but no fatalities, due to rapid staff interventions. There have been a large number of referrals to counselling and treatment services. Research has indicated that the opening of the site was associated with improvements in public order, including reduced injection drug use and syringe disposal in public places. Further evaluation is ongoing.

We welcome the City of Toronto's continued support for effective harm reduction programs and interventions to protect and promote the health of vulnerable people, including people who use drugs. We welcome the leadership being shown by the Toronto Drug Strategy Advisory Committee in responding to the needs of the communities whose health it is mandated to protect, and hope that you and your fellow Council members will show similar leadership. We hope you will ensure that this opportunity to achieve the Toronto Drug Strategy's health protection and promotion objectives is not lost. If there are questions about any of the points noted above, please do not hesitate to contact me (jcsete@aidslaw.ca or by telephone at 416-595-1666).

Sincerely

Joanne Csete
Executive Director