

December 21, 2007

The Honourable Stockwell Day
Minister of Public Safety
House of Commons
Ottawa, Ontario
K1A 0A6



Dear Minister:

Re: Recommendations of the CSC Review Panel

The Canadian HIV/AIDS Legal Network is Canada's leading organization working on the legal and human rights issues raised by HIV/AIDS. We write to express our concern about certain recommendations made by the Correctional Services Canada (CSC) Review Panel in its recently released final report, *A Roadmap to Strengthening Public Safety* — recommendations which, in our view, are not guided by the best available evidence and by human rights principles. We wish to highlight two recommendations in particular.

Firstly, the Panel recommends amending the *Canada Labour Code* to require mandatory blood testing of prisoners following occupational exposures to prison staff, and introducing mandatory testing of offenders for infectious diseases upon incarceration. Any assessment of proposed policy should be informed by scientific evidence about the transmission of blood-borne pathogens, and by a commitment to respecting and protecting the federal government's legal obligations to safeguard the human rights of those in its custody. With respect, the imposition of involuntary blood testing of prisoners is unwarranted in the interests of public health and constitutes an unjustifiable infringement of prisoners' human rights.

Ensuring access to adequate information, counselling, support and treatment in the event of an occupational exposure is a more constructive and useful alternative to forced blood testing of prisoners. To date, this is the approach that has been followed by the CSC, which has put in place a detailed protocol for managing exposure to blood and other bodily fluids, applicable to both CSC staff and prisoners. There is inadequate justification, from a legal or occupational health perspective, for departing from this well-considered approach.

Between 1997 and 2002, CSC staff reported just 45 incidents of puncture injuries from prohibited, often improvised tattooing needles. (All such exposures were accidental; there were no reports of attacks on guards using these needles circulating within prisons.) Evidence also shows that the risk of HIV transmission from an occupational exposure is exceedingly low. Researchers have estimated

that the likelihood of HIV infection from an exposure such as a needle-stick injury is 0.3% (a 1 in 300 chance) if the person on whom the needle has been used is already known to be HIV-positive. The risk is statistically even lower if the person's HIV status is unknown, or in the case of other kinds of exposures to bodily fluids. Given the exceedingly minimal risks at issue, such a crude overreaction as forced blood testing of prisoners is unwarranted. Indeed, in over twenty-five years of the HIV epidemic, there has been only one definite case of HIV transmission through workplace exposure in Canada. Physicians and nurses are the professionals with the greatest rates of occupational exposure. Yet organizations such as the Canadian Medical Association and the Canadian Nurses Association do not support mandatory testing.

Mandatory blood testing is not only unnecessary, but constitutes a gross violation of prisoners' constitutional rights to bodily integrity and privacy, which are meant to be guaranteed by the *Charter of Rights and Freedoms*. Canadian courts have unequivocally affirmed that it is unethical and illegal to perform a medical procedure such as HIV testing on anyone without his or her informed consent. The Privacy Commissioner of Canada has also stated that "compulsory blood testing, and compulsory disclosure of the results of blood testing, is a massive violation of privacy and the personal autonomy that flows from privacy." Correspondingly, under the *International Guidelines on HIV/AIDS and Human Rights*, produced by UNAIDS and the United Nations Office of the High Commissioner for Human Rights to assist States in shaping their responses to HIV/AIDS, governments should ensure that HIV testing of individuals only be performed with the specific informed consent of that individual, including those in prisons. Any exceptions should require judicial authorization, granted only after due evaluation of the important considerations involved in terms of privacy and liberty.

Secondly, the Panel has failed to recommend evidence-based responses to public health concerns that are of much greater significance in prisons than concerns about occupational exposures. In its report, the Panel recognizes that the use of illegal drugs, which can lead to the transmission of diseases such as HIV and hepatitis C (HCV) when drug injection equipment is shared, is a reality in federal prisons. It proposes renewed efforts at eliminating drugs from prisons. However, research shows that no country has ever succeeded in eradicating illegal drug use in prisons — and that not providing programs and services to reduce the risks of existing drug use, in the hope that prohibition will work despite all the evidence and experience to the contrary, puts the health and human rights of both prisoners and prison staff at risk.

There are numerous proven interventions that can contribute to enabling a safe and secure prison environment by reducing the spread of disease in correctional institutions. For example, many countries have implemented well-controlled needle exchange programs in a wide variety of prison settings, with dramatic results in reducing the risks of HIV and HCV transmission. Prison programs to

prevent the spread of HIV and other blood-borne infections benefit not only prisoners, but also prison staff and the public at large by lowering the prevalence of infections. The provision of such disease-prevention measures in prisons is a public health imperative that has been recommended by international health agencies and Canadian medical expert bodies. The Public Health Agency of Canada's own recent review of the evidence and experience with prison-based needle exchange programs was favourable. Similarly, the best guidance from the World Health Organization, the Joint United Nations Programme on HIV/AIDS (UNAIDS), and the United Nations Office on Drugs and Crime (UNODC) is that effectively responding to HIV in prison settings requires ensuring access to sterile injection equipment, given the reality of drug use in prisons despite best efforts at interdiction.

Implementing such health protection programs is also one means of discharging Canada's legal obligations, under national and international law, to respect, protect and fulfil human rights to life, to security of the person, and to the highest attainable standard of physical and mental health. It is a well-established legal principle that the standard of health care provided to prisoners must be equivalent to that available in the general community. This includes with respect to disease prevention through such things as needle exchange programs, which evidence has repeatedly shown to be one of the most important measures to prevent the spread of HIV through the sharing of needles to inject drugs.

In light of the legal, human rights and public health implications of instituting additional measures to eliminate drugs in prison and mandatory blood testing of prisoners, we strongly urge you to reject the CSC Review Panel's misguided recommendations on these matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Elliott', with a long horizontal flourish extending to the right.

Richard Elliott
Executive Director