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

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ENDING THE EPIDEMIC: HIV AND HUMAN RIGHTS IN CANADA AND AROUND THE WORLD

TOP ISSUES FOR UPCOMING AIDS 2012 CONFERENCE

July 17, 2012 — From July 22–27, activists, health workers, researchers, government officials and people living with HIV from around the world will gather in Washington, D.C. for AIDS 2012, the XIX International AIDS Conference. For this important week, the spotlight will be on how to turn the tide of the global epidemic, at the very moment in history when we stand on the precipice of an AIDS-free generation. The Canadian HIV/AIDS Legal Network highlights some of the top issues on the agenda in Washington, and what they mean in the Canadian context.

1. Access to medicines: patent law reform and trade agreements

Despite significant progress in scaling up access to treatment over the last decade, at the end of 2010 there were still an estimated 7.5 million people — more than half those in need — without access to life-saving antiretroviral treatment (ART). And there are growing threats to the achievement of the international community's oft-stated goal of "universal access." Developing countries are facing pressure from multinational pharmaceutical companies and high-income countries to refrain from adopting policies that would help increase access to lower-cost generics. Patents are increasingly covering the most advanced and effective lines of treatment for HIV, choking off generic competition and causing treatment costs to shoot back up. Furthermore, many new trade agreements being negotiated between developed and developing countries seek to impose even more intrusive and stringent rules regarding patents, generics manufacturing and export that impede timely access to affordable treatment.

In Canada, a new bill to reform Canada's Access to Medicines Regime (CAMR), Bill C-398, was introduced in the House of Commons in February and is expected to go to a vote this fall. In more than eight years, CAMR has been used exactly once — Canada has not delivered on its pledge to help get more affordable medicines to developing countries. Despite the abrupt loss of the necessary reforms (in Bill C-393) when the minority government fell last year, Parliament once again has an important opportunity to fix CAMR, saving lives and setting a positive global precedent. Meanwhile, the federal government is negotiating a Comprehensive Economic and Trade Agreement (CETA) with the European Union and seeking to join the Trans-Pacific Partnership (TTP). Both sets of negotiations threaten to further tighten intellectual property rules, imposing further costs on provincial health insurance plans, private insurers and patients in Canada.

2. "Treatment as prevention"… and ensuring respect for human rights

Lending new urgency to the call for global access to medicines is the breakthrough scientific research of the past year demonstrating that access to ART not only saves lives and improves the health of people living with HIV, but also reduces the risk of HIV transmission — according to a 2011 study, by 96 percent. In the lead-up to AIDS 2012, "treatment as prevention" (TasP) is already attracting considerable attention globally and here in Canada. While incorporating treatment into HIV prevention efforts is both welcomed and promising, there are important ethical and legal issues that must be addressed in any implementation. Already, some authorities have adopted the practice of broad, routine HIV testing for people, unless individuals explicitly refuse testing, while weakening requirements for ensuring informed consent. TasP

cannot be allowed to further drive such unethical approaches. Often the right to opt out of testing is not understood or communicated properly to individuals, and we have already seen in some contexts, particularly amongst pregnant women, ample evidence warranting the concern that HIV testing is too often done without informed consent. Whether in Canada or abroad, there is simply no justification for ignoring the ethical and legal requirements of ensuring properly informed consent for medical procedures, especially a procedure as significant in its consequences as an HIV test.

3. Vulnerable populations: sex workers, people who use drugs and people in prison

Punitive laws and widespread stigma and discrimination are hardly news to some of the most marginalized populations in the world, sex workers and people who use illegal drugs among them. As just highlighted by the recent report of the Global Commission on HIV and the Law, such hostile legal and social environments fuel the HIV epidemic in multiple ways. In fact, restrictions on their entry to the United States are preventing many sex workers and people who use drugs from even attending AIDS 2012, forcing them to meet at separate conference hubs in Kolkata, India and Kiev, Ukraine, respectively.

In Canada and other countries, illegal drug use and addiction are treated largely as criminal law concerns, rather than as public health issues. Over-reliance on criminal law and its enforcement undermines public health programs that have proven effective at improving the health of people who use drugs and reducing the spread of infectious diseases. Yet, despite the Supreme Court of Canada's 2011 decision in favour of Insite — Vancouver's supervised injection site — questions remain as to how the federal government will respond to new applications for such services in other municipalities.

Rather than expand such evidence-based health services, Canada is taking steps to put more people with addictions in prison. The recent "omnibus crime bill" (Bill C-10), including its mandatory minimum prison sentences for drug offences, will all but ensure that our prisons become overcrowded. In addition, Canadian prison systems continue to violate human rights by denying access to key health services in prisons. Despite documented high levels of addiction among prisoners, and of significant rates of sharing equipment to inject drugs, the federal government continues to refuse to implement prison needle exchange programs. Such health services operate in communities across Canada, and have operated for two decades in prisons in a growing number of countries, but are denied in Canadian prisons even though this is a population at even greater risk of HIV and hepatitis C infection. Higher infection rates ultimately result in greater health-care costs, and since most prisoners are eventually released back into the community, the public health implications of imprisoning non-violent people who use drugs cannot be ignored.

Sex workers also face extreme human rights abuses, in Canada and abroad. While sex work itself is not illegal in Canada, many of the provisions in Canada's *Criminal Code* make it all but impossible to engage in sex work without risk of prosecution. This year, the Ontario Court of Appeal delivered a landmark decision in *Bedford v. Canada*, recognizing that some of the current provisions have serious and negative impacts on the constitutional rights of sex workers, including by exacerbating risks to their health and safety. Sex workers remain at increased risk while their federal government appeals the decision, seeking to continue criminalizing them, rather than working with sex workers to protect and promote their safety.

4. Criminalization of HIV non-disclosure

More than 130 people living with HIV have faced criminal charges involving HIV non-disclosure in Canada, making it one of the world leaders in criminalizing people living with HIV. These include numerous cases where their activity posed no "significant risk" of HIV transmission, contrary to the test set by the Supreme Court of Canada in its first decision 14 years ago. In several cases, prosecutors are now advancing an extreme position that would divorce the law from the available science about HIV and instead fuel unjust convictions of people simply because they have HIV, not because they caused harm or posed any significant risk of harm to others. The dramatic rise in prosecutions in Canadian courts contributes to a climate of anxiety, fear, stigma and misinformation that undermines HIV counselling, education and prevention efforts — and puts all Canadians at greater risk.

In February 2012, the Supreme Court of Canada heard two landmark cases on this important issue. The Court's pending decisions in these two appeal cases will have profound implications not only for people living with HIV, but also for Canadian public health, police practice and the criminal justice system. We

have urged the Supreme Court to clarify the "significant risk" test for prosecuting HIV non-disclosure, so as to more closely reflect a decade of new scientific evidence demonstrating the significance of condom use and undetectable viral load in drastically reducing the risk of HIV transmission in sexual encounters. The global phenomenon of unjust criminalization was recently condemned again by the Global Commission on HIV and the Law as unwarranted and counterproductive, and it will attract considerable attention at AIDS 2012.

5. Funding the response to AIDS, domestically and globally

Cuts and delays in HIV funding have serious implications for front-line community services that do HIV prevention and support services, and most importantly, the people who depend on those services. In Canada, federal government AIDS funding has been flat-lined since 2007 — and in the most recent round of funding decisions, the government has declared "ineligible for funding" any activity that *might* be used for advocacy.

Thirty years of the AIDS epidemic have demonstrated the crucial role of community organizations defending and promoting human rights in the face of misinformation, stigma, prejudice and political scapegoating of people living with HIV and communities particularly affected by the epidemic. The key message of the recent report of the Global Commission on HIV and the Law is that such punitive approaches only worsen the epidemic, but that laws and policies can and must be changed to be based on evidence and a commitment to human rights, thereby making HIV prevention and treatment efforts more effective. Ensuring that people know their rights, promoting human rights awareness among Canadians and challenging infringements of human rights — in other words, advocacy — are key to overcoming HIV. Creating a chill on community groups that speak out in favour of human rights, and of evidence-based policies and programmes, only weakens Canada's response to the epidemic.

On the global front, UNAIDS is estimating a multi-billion shortfall, U.S. funding (PEPFAR) is stagnating, and donor support for the Global Fund to Fight AIDS, Tuberculosis and Malaria — the most effective multilateral source of funding for prevention and treatment of HIV, TB and malaria — is falling short of the minimum required just to sustain current efforts. We are at a crucial turning-point in this epidemic, and unless *all* countries not only fulfill but exceed their responsibilities, this opportunity could slip out of our grasp. Though Canada made a welcome increase of 20 percent in its latest round of commitments to the Global Fund, it still amounts to just over $5 per Canadian per year — one-third of the price of a movie ticket. We can and should double that amount and make a commitment of at least 5 years. This modest contribution would still leave our overall official development assistance (ODA) far below the internationally agreed-upon target of 0.7 percent of Canada's gross national income — a target Canada helped set at the UN more than 4 decades ago but has never reached.

Further resources can be found at www.aidslaw.ca. A detailed schedule of our participation in AIDS 2012 is also available.

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