



August 20, 2021

Mr. Justin Trudeau  
Leader of the Liberal Party of Canada

Mr. Erin O'Toole  
Leader of the Conservative Party of Canada

Mr. Jagmeet Singh  
Leader of the New Democratic Party of Canada

Mr. Yves-François Blanchet  
Leader of the Bloc Québécois

Ms. Annamie Paul  
Leader of the Green Party of Canada

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Dear Madam and Sirs:

**Re: Your party's position on key questions related to HIV and human rights**

The HIV Legal Network (formerly the Canadian HIV/AIDS Legal Network) promotes the human rights of people living with, at risk of, or affected by HIV and AIDS, in Canada and around the world, through research and analysis, litigation and other advocacy, public education, and community mobilization. Today, we're one of the world's leading organizations tackling the legal and human rights issues related to HIV. Our extensive library of materials is readily available (at [www.hivlegalnetwork.ca](http://www.hivlegalnetwork.ca)) to you and your colleagues. A non-partisan organization, we represent a wide range of member organizations and individuals across Canada concerned about HIV and related human rights issues, including people living with HIV, members of communities particularly affected by HIV, front-line AIDS service organizations, other community service agencies, clinicians, researchers, lawyers, students, and more.

As we will soon be heading to the polls, we believe it is vital that people in Canada and affected communities know where your party stands on important issues related to HIV and human rights. We have prepared five key questions on HIV and human rights to which we request your direct response.

**We kindly request your party's reply no later than Tuesday, September 7.**

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## **1. Restoring funds to the federal HIV strategy**

Canada has signed on to UNAIDS' targets for HIV prevention and treatment, which aim to achieve zero new infections, zero deaths from AIDS, and zero discrimination related to HIV in Canada, and to achieve the Sustainable Development Goal of ending AIDS globally by 2030. As the new [Global AIDS Strategy 2021–2026 underscores](#), we need to reduce inequalities and prioritize individuals who do not have access to life-saving HIV services. [Canada has not met any of the three 90-90-90 targets individually](#), and with more than 2242 new HIV diagnoses reported in 2018 (an increase since 2016), there is little hope of realizing such goals without adequately funding the HIV response. This includes the vital services and programs that offer HIV prevention and provide care, treatment, and support to people living with and affected by HIV, and the programs that address social inequalities and advance the human rights of people living with HIV and communities particularly affected by HIV. In 2003, the House of Commons Standing Committee on Health unanimously recommended that Canada double its HIV funding to \$85 million annually. In 2004, the federal government committed to largely reaching this target, with funding to increase gradually to \$84.4 million per year by 2008–09.

But as we outlined in our 2021 pre-budget consultation brief entitled "[Funding the Fight: Federal Support Needed to End HIV as a Public Health Threat in Canada](#)," that committed funding increase was halted in 2007 and has since flatlined at the level of roughly \$70 million a year. As a result, year-over-year underfunding has meant that more than \$123 million committed to the HIV response have simply never been delivered. Services and organizations have closed or discontinued programs despite the clear need that exists. In 2019, the federal government released a federal action plan on HIV and other sexually transmitted and blood-borne infections (STBBIs), but the lack of firm targets remains a concern and the commitment of \$87 million annually for HIV and all other STBBIs is well below what was committed for HIV alone. Reiterating the call for an adequately funded federal HIV strategy, in June 2019, the House of Commons Standing Committee on Health unanimously recommended an increase in federal HIV funding to \$100 million annually. On World AIDS Day (December 1<sup>st</sup>) 2020, the Senate of Canada adopted a [motion](#) urging the federal government to follow through on this latest recommendation of the Standing Committee with a commitment to this level of funding.

***Question: Will your party commit to collaborating with HIV organizations in Canada to restore the diverted and lapsed resources needed to address the gaps in Canada's HIV response and adequately fund the federal action plan on HIV?***

## **2. Protecting public health and saving lives through harm reduction services and smarter, evidence-based drug policy**

Canada continues to experience an unprecedented drug poisoning crisis; more than 21,000 people died of opioid overdose between January 2016 and December 2020. Punitive drug laws and policies purported to deter drug use have failed — and worse, they have done catastrophic harm. As we have documented in recent [reports](#) and at our [symposium](#) earlier this year, criminalizing activities related to drug use, such as possession for personal use, fuels stigma and discrimination against people who use drugs and hinders their access to vital health and harm reduction services and emergency care in the event of an overdose. Drug prohibition also harms Indigenous, Black, and other racialized, marginalized, and low-income communities, who are profiled and disproportionately arrested and incarcerated for drug offences, and far more likely to be subject to child apprehension orders. Meanwhile, the increasing toxicity of the illegal, and hence unregulated, drug market contributes to the ongoing overdose crisis. As the drug poisoning crisis continues to devastate communities and families across the country, and as cities, other jurisdictions across Canada, and Health Canada's own [Expert Task Force on Substance Use](#) increasingly call for decriminalization, the federal government must take immediate steps to protect the health and human rights of our family and community members who use drugs.

***Question: Will your party adopt the following necessary steps to address the overdose crisis?***

- 1. Fully decriminalize activities related to simple drug possession, removing criminal sanctions and all other penalties (administrative or otherwise) for personal drug use and for splitting and sharing drugs.***
- 2. In meaningful consultation with people who use drugs, implement various options for ensuring a safe supply of controlled substances to those who are otherwise at risk of potentially fatal overdose or other serious injury from a toxic illegal drug market.***

### **3. Protecting prisoner and public health by supporting effective prison-based needle and syringe programs**

For almost three decades, needle and syringe programs have been available in prison systems around the world and have been endorsed by numerous health and human rights organizations in Canada and internationally. Evaluations of these programs have consistently demonstrated that they reduce needle-sharing and the risk of HIV and hepatitis C transmission, do not lead to increased drug use, reduce overdoses, facilitate referrals of clients to drug treatment programs, and have not resulted in needles or syringes being used as weapons.

Acknowledging the health benefits of needle and syringe programs in prison, the Correctional Service of Canada began implementing a prison needle exchange program (PNEP) in federal prisons in 2018. While this was a welcome development in principle,

details of the PNEP reveal serious deficiencies that are not in keeping with public health principles or professionally accepted standards for such programs — deficiencies that were confirmed in a 2020 interim PNEP evaluation. As a result, most prisoners lack access to the program and continue to be subject to multiple health risks.

Moreover, the PNEP was suspended at the onset of the COVID-19 pandemic and there has been little information shared since then about its current status, including where the program still operates. Troublingly, the program remains vulnerable to cancellation.

***Question: Given the overwhelming evidence regarding the effectiveness of prison-based needle and syringe programs, will your party:***

- a) support their continued implementation in Canada’s federal prisons;***
- b) promote transparency about the status of PNEP operations; and***
- c) commit to consulting with prisoners, researchers, and community organizations with expertise in prison health to fix fundamental problems with the current program so that prisoners who need this health service can gain effective access?***

#### **4. Limiting the “overcriminalization of HIV”**

People living with HIV currently face a maximum penalty of lifetime imprisonment for aggravated sexual assault — one of the most serious criminal offences in the *Criminal Code* — and a lifetime designation as a sex offender for not disclosing their HIV status to sexual partners, even in cases where there is little or no risk of transmission. This means a person engaging in consensual sex that causes no harm, and poses little or no risk of harm, can be prosecuted and convicted like a violent rapist. To date, approximately 200 people across Canada have been charged, including in cases when there was little or no risk of passing on the virus.

Numerous HIV organizations and intergovernmental agencies (including at the United Nations level) across Canada and internationally oppose criminal charges for non-disclosure in cases of otherwise consensual sex, except in limited circumstances (such as when people are aware of their status and maliciously infect others). Recognizing the need to limit the “overcriminalization of HIV” in Canada, in December 2018 the Attorney General of Canada directed federal Crown attorneys (who handle such criminal cases in the three territories) to stop prosecuting people whose HIV viral load is suppressed. She also directed prosecutors to “generally” not prosecute people who used a condom, took HIV treatment as prescribed, or just had oral sex, because she concluded that there is “likely no realistic possibility of transmission” in these circumstances. While this is a step in the right direction, law reform is necessary to end unjust prosecutions and remove HIV non-disclosure from the law of sexual assault, as recommended by the House of

Commons Standing Committee of Justice and Human Rights in its [report](#) released in June 2019.

**Question: Does your party commit to implementing the recommendations of the Standing Committee to:**

- a) reform the Criminal Code in consultation with the HIV sector (including removing HIV non-disclosure from the reach of sexual assault laws); and**
- b) engage with provincial counterparts to develop improved, and consistent, prosecutorial policy across the country?**

### **5. Protecting the health and human rights of sex workers**

In 2014, the *Protection of Communities and Exploited Persons Act* (PCEPA) was passed, a law that was universally denounced by sex workers' rights and human rights organizations, some of whom subsequently developed extensive [recommendations for law reform](#), including changes to the federal criminal law, that would better protect the health and rights of sex workers. As outlined in these recommendations, prohibitions on sex work force sex workers into a criminalized context where they are isolated from supports, made vulnerable to poor working conditions, and targeted for violence. Migrant sex workers also face the risk of loss of immigration status and deportation.

Yet, despite repeated calls from sex worker groups and their allies for discussion and collaboration to repeal sex work criminal prohibitions and [a legislative mandate](#) to comprehensively review “the provisions and operation” of the PCEPA in 2019, there has been no legislative change and sex workers continue to face violations of their health and human rights. In the face of this inaction, in March 2021, the Canadian Alliance for Sex Work Law Reform — an alliance of 25 sex worker rights groups across the country led predominantly by and for sex workers — along with several individual applicants, launched a constitutional challenge to the sex work prohibitions against impeding traffic, public communication, purchasing, materially benefiting from, recruiting, and advertising sexual services in the *Criminal Code* because they violate sex workers' constitutional rights to security, personal autonomy, life, liberty, free expression, free association, and equality.

**Question: Will your party support the repeal of all sex work-specific criminal laws, including the Protection of Communities and Exploited Persons Act, and consult with sex workers to develop a holistic vision of law reform that will improve their health and safety?**

We are at a pivotal moment in the HIV response. With universal access to HIV prevention and treatment, and a steadfast commitment to safeguarding human rights, particularly of key populations affected by the epidemic, we can end AIDS as a public health concern. All countries, including Canada, have committed to this as one of the Sustainable Development Goals. But it will not be reached without adequately investing in the response, ensuring robust coverage of evidence-based health services, and respecting and realizing human rights, particularly of those most marginalized. With the COVID-19 pandemic, we have witnessed firsthand what can be achieved when governments prioritize ending public health threats. Forty years into the HIV and AIDS epidemic, the same level of commitment is needed and requires your leadership today.

We look forward to your party's response on these important matters of health and human rights, and we thank you for taking the time to reply.

Sincerely,

Sandra Ka Hon Chu and Janet Butler-McPhee  
Co-Executive Directors, HIV Legal Network