

Network news

Issue 14

Canadian HIV/AIDS Legal Network

March 2004

Network Challenges Montreal Archbishop – And Wins!

Canada's Drug Patent Act Amendment	2
Consultation on Sex Work	3
Submission on sexual orientation to UN Com- mission on Human Rights	4
Dublin Declaration on HIV/AIDS in Prisons	4
Community Mobilization Workshop	5
Microbicide, Treatment and Vaccine Advocacy	5
Deadly Public Policy	6
Inside the Network	6
Coming Soon	7
Feedback	8
New Resources	8

In the space of a few weeks in January, actions by three different institutions in Québec (the Catholic Church, the police, and a hospital) combined to threaten the human rights of people living with HIV/AIDS, raise the spectre of mandatory HIV testing, and create unnecessary public fears about the spread of HIV infection. In response to what we called “the worst weeks in recent history for people living with HIV/AIDS in Québec,” the Legal Network, working in partnership with COCQ-sida (the Québec Coalition of Community-Based Organizations Fighting AIDS) called for a province-wide campaign against HIV/AIDS-related stigma and discrimination.

First, all Quebecers living with HIV received a slap in the face from Montreal Cardinal Turcotte, when he made public statements defending the decision to ask all priesthood applicants to undergo HIV testing, and suggested that HIV-positive people would not be able to fulfill the duties of priesthood. Then, in response to news that an HIV-positive surgeon had operated at Ste-Justine Hospital in Montreal since the mid 1990s, there were calls for mandatory HIV testing of health-care workers, despite 20 years of consensus that this is not the best way to protect patients, and despite the minimal risk of HIV transmission from health-care providers to patients. And finally, Peter Yeomans, City of Montreal Executive Committee member responsible for public security, irresponsibly suggested that applicants for Montreal’s police need to be free from HIV to be able to do their job.

These events all took place in Montreal within a couple of weeks, but everyone concerned about good public policy and the rights of people living with HIV/AIDS in Canada should be worried. The Legal Network reacted within a couple of days from the first announcement, and in the weeks following issued two press releases, published op-eds in the *Toronto Star* and in *Le Devoir*, and wrote to the Montreal Archbishop, the City of Montreal, and the Quebec Minister of Health. Most importantly, we asked the Quebec Human Rights Commission to launch an investigation into the matter of HIV testing of priesthood candidates.

One month later, and before the Human Rights Commission could even issue an opinion, the Archdiocese of Montréal issued a statement saying that it had rescinded its plan to require that applicants for priesthood undergo HIV testing. Our hard work and that of our partners had clearly paid off. Yet, as Ralf Jürgens, the Network’s Executive Director says, “we are afraid that what we saw in Montreal in January is only the tip of the iceberg. A sustained campaign against HIV-related stigma and discrimination is needed. Ignorance and prejudice continue, or are even getting worse. A lot of work lies ahead of us.”

For more information about the Network’s work, see www.aidslaw.ca/Maincontent/issues/testing.htm, as well as an upcoming article in issue 9(1) of the *Canadian HIV/AIDS Policy & Law Review*.





Network News Flashes

Failing to Properly Amend Canada's Drug Patent Act Would Betray Patients in Developing Countries

Network News readers will be familiar with our current efforts, in collaboration with other members of the Global Treatment Access Group (GTAG), to push for improvements to amendments to the Patent Act and the Food and Drugs Act that would permit export of low-cost generic drugs from Canada to developing countries where they are desperately needed.

First introduced as Bill C-56 in November 2003, and reintroduced with the opening of the new Parliamentary session in February 2004 as Bill C-9, the bill has the potential to alleviate great suffering and save many lives in countries that cannot make their own generic medicines.

As it is currently drafted, however, Bill C-9 will *not* lead to cheaper medicines for people most in need. The bill is seriously flawed in several ways:

- It allows brand-name companies to scoop contracts negotiated by generic drug makers with developing countries;
- It includes a limited list of pharmaceutical products – for example, many of the AIDS drugs currently used in Canada are not even on the list;
- It excludes some countries with limited resources, high poverty rates and low levels of access to medicines, because they do not belong to the World Trade Organization;
- It does not allow generic companies to contract directly with non-governmental organizations that are critical providers of health care in many developing countries.

Bill C-9 is currently being reviewed by the House of Commons Standing Committee on

Industry, Science and Technology, which will make recommendations on whether the bill should be changed before it is enacted.

In conjunction with the Committee's review, the Network and other GTAG members have stepped up efforts to ensure politicians are aware of the problems with Bill C-9. To this end, the Network has distributed a briefing kit

Network News aims to keep readers up to date on activities undertaken by the Canadian HIV/AIDS Legal Network.

© 2004 Canadian HIV/AIDS Legal Network. We encourage the dissemination of the information contained in this newsletter and will grant permission to reprint material provided that proper credit is given.

Editor: Elana Wright
Translator: Josée Dussault
Lay-out: Mélanie Paul-Hus
Contributors: Thomas Haig,
 Ralf Jürgens, Richard Elliott
Illustrations: Marc Fraser,
 Grant Loewen



Canadian HIV/AIDS Legal Network
 417 Saint-Pierre St., Suite 408
 Montréal, QC H2Y 2M4
 Tel: 514 397-6828
 www.aidslaw.ca

Fax: 514 397-8570
 info@aidslaw.ca

ISSN 1488-0997

Funded by Health Canada, under the Canadian Strategy on HIV/AIDS.

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 Health 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.

to all 301 MPs with recommendations on how the bill must be amended. We have also launched an Action Alert, resulting in hundreds of e-mails, letters and faxes being sent to the government from every province and territory – and countries ranging from the U.S. to Bangladesh, France to Ghana – urging that Bill C-9 be changed to ensure it meets its goal.

On Thursday, 26 February, the Network was one of four NGOs invited to present their concerns at public hearings the Standing Committee has been holding on Bill C-9. The Network's presentation included a detailed proposal with specific language for amending the bill to address these concerns.

At a press conference held that same afternoon by the Network and Médecins Sans Frontières, Richard Elliott, the Network's Director of Legal Research and Policy, asked: "Will Canada show real leadership, or will it embarrass itself and set a bad global precedent with flawed legislation?"

Statements by Industry Minister Lucienne Robillard at the Committee hearings on 25 Febru-

ary indicate the government may be ready to make changes to the bill: "Our government really does not want to find itself in a situation where it enacts a law and then no one participates in sending the medicines."

This makes it all the more important that the Government hear from Canadians that they want the flaws in Bill C-9 fixed, and in ways that do not let brand-name companies use patents on medicines to block the competition by generic producers that is needed to bring prices down and keep them down for developing countries. Recently, Canada's lobby group for brand-name pharmaceutical companies has proposed a so-called "alternative" to the much-criticized "right of first refusal". However, this alternative has been condemned by a wide range of civil society organizations, including the Legal Network and international law experts, as not substantially different from the right of first refusal, and have called upon the government to reject this proposal. The Network has provided our views on this matter in a supplementary submission to the Committee, which will continue to meet in March.

ACTION ALERT



Join the campaign to fix Bill C-9 by sending a letter to your MP and to the Prime Minister by 22 March 2004. If possible, please send your letter by FAX or REGULAR MAIL in addition to email, as this can have greater impact. For sample letters, fax numbers and addresses, and additional information, see:

[www.aidslaw.ca/
Maincontent/issues/cts/
patent-amend.htm](http://www.aidslaw.ca/Maincontent/issues/cts/patent-amend.htm)

Consultation with sex workers, activists and researchers

Sex workers are frequently considered to be "vectors" for HIV transmission rather than persons who, for many reasons, including legal reasons, are vulnerable to contracting HIV.

Last year, Network members selected sex work as the "new, emerging, and pressing issue" that the Network should examine in 2003/2004 (see *Network News* 11, August 2003). This affords an opportunity to analyze the legal, ethical, and human rights issues related to sex work in the context of HIV/AIDS.

As part of the research we are undertaking, we held a two-day workshop in Montreal on 20 – 21 February 2004. Participants included sex workers, activists, and researchers from coast to coast. Facilitated by Priscilla Alexander, long-time sex work activist and head of the US-based National Task Force on Prostitution, and Anna-Louise Crago, co-founder of the Montreal-based Coalition for the Rights of Sex

Workers, the meeting provided a great opportunity for participants to discuss their issues and priorities.

The need to examine sex work issues at this time partly stemmed from the expectation that the House of Commons Standing Committee on Justice and Human Rights would review Canadian criminal laws related to prostitution in late 2003 following a motion put forward by Libby Davies, MP for Vancouver East. With the change in parliamentary sessions, it is now unclear when this review may take place.

Based on extensive research and the input provided at the February workshop, the Network will publish a report later this year with recommendations for reform that we hope will help protect the rights of sex workers and facilitate HIV prevention efforts. For more information about this project, see: [www.aidslaw.ca/
Maincontent/issues/prostitution.htm](http://www.aidslaw.ca/Maincontent/issues/prostitution.htm)

Addressing Sexual Orientation and Gender Identity at the UN Commission on Human Rights

The full statement to the Commission is available at:

www.aidslaw.ca/Maincontent/issues/gayandlesbian.htm

In recent years, there has been increasing recognition by the UN Commission on Human Rights of the need for measures to protect human rights in the context of HIV and AIDS. In 2003, the Commission adopted a resolution calling for the elimination of stigma and discrimination against vulnerable groups affected by HIV/AIDS.

With the Commission's 60th session convening in Geneva this April, a number of advocacy groups and NGOs including the Legal Network are working to have the Commission adopt a further and more specific resolution affirming the rights of lesbians, gays, bisexuals and transgendered people to be protected from discrimination.

The Network's special consultative status with the Economic and Social Council of the United Nations (ECOSOC) allows us an opportunity to submit a written statement and present this statement during the Commission's hearings.

The Network's statement endorses the need for a resolution, calls on the Office of the High Commissioner for Human Rights to undertake a study of human rights violations based on sexual orientation and gender identity, and asks that the Commission make recommendations concerning the obligations of States to promote and protect human rights on these grounds.

If successful, these efforts will mark the first time protection on the grounds of sexual orientation and gender identity is formally recognized by the States comprising the UN's highest body dealing with international human rights law, and will draw international attention to a critical dimension of HIV prevention.

As the Network's statement notes: "For gays, lesbians, bisexuals and transgendered people, preventing HIV transmission requires eliminating discrimination based on sexual orientation and gender identity."

Dublin Declaration on HIV/AIDS in Prisons in Europe and Central Asia



Ralf Jürgens speaking on « Human Rights for People Living with HIV/AIDS » on the occasion of the launch of the Dublin Declaration.

HIV/AIDS is a serious problem for prison populations across Europe and Central Asia. As in Canada, rates of HIV infection in most countries are many times higher amongst prisoners than in the population outside prisons, yet adequate preventive measures are not provided even though such measures have been successfully introduced in other prison systems and shown to be effective. This failure to act has serious implications for both human rights and public health.

On 23 February 2004, the *Dublin Declaration on HIV/AIDS in Prisons in Europe and Central Asia* was launched in Dublin, Ireland. It provides a framework for mounting an effective

response to HIV/AIDS within prison systems based upon international best practice, scientific evidence, and the obligations of States to fulfil the fundamental human rights of people in prison. Although it focuses on Europe and Central Asia, it is extremely relevant to the Canadian context.

The Network's Executive Director, Ralf Jürgens, participated in the drafting of the Declaration, and the Network was one of the first organizations to endorse it. The full text of the Declaration is available on the Network's website at www.aidslaw.ca/Maincontent/issues/prisons.htm

Mobilizing Communities to Take Action on Stigma and Discrimination

With the goal of developing action plans to address HIV-related stigma and discrimination, representatives from community groups across Canada participated in a three-day workshop organized by the Network from 30 January -1 February 2004 in Montreal. As explained in *Network News* 11 (August 2003), the workshop comes out of a one-year capacity-building project (2003-2004) aimed at reducing stigma and discrimination at the local level.

The meeting provided participants with the opportunity to work through and share their action plans in relation to various models of community mobilization. Over the past four months, participants have been exchanging information and experiences using an electronic discussion list, and the remainder of the project will see them sharing their successes and challenges via the list as the action plans are implemented. The Network will also prepare and send out a final evaluation. Already, we can say that this has been one of the most

challenging projects we have ever undertaken. In part, this is due to the fact that Health Canada has provided only one-year funding for capacity building initiatives, when it is clear that capacity-building must be a sustained effort that takes place over a number of years. In addition, community-based organizations tend to be so stretched due to the huge demands put on them that taking up long-term, strategic actions against stigma and discrimination at the local level often seems difficult, if not impossible.

Finally, the Network has traditionally undertaken a lot of research and advocacy and little capacity building, and will learn from the experience of the workshop. For more information about this project, see: www.aidslaw.ca/Maincontent/issues/discrimination/mobilization_project.htm



AIDS Community workers from across Canada at the workshop

Microbicide, Treatment and Vaccine Advocates Work Towards Joint Statement

In follow-up to the expert consultation the Network held last November in Montreal (as reported in *Network News* 13, January 2004), microbicide, treatment and vaccine ("MTV") advocates are building momentum for a common agenda to accelerate research and development and ensure global access to HIV/AIDS treatments and to new prevention technologies.

The Network is coordinating follow-up to the meeting, and is putting together a Reference Committee that will provide strategic advice on how to move the MTV agenda forward.

Three documents will be produced in the coming months: (1) a revised MTV Action Plan (based on input provided at the November

2003 consultation); (2) a Joint Statement of Commitment; and (3) a short background document on why treatment, vaccine, and microbicide activists can benefit from pursuing a common agenda.

Once the Joint Statement of Commitment is finalized, the Network's Community Development Coordinator, Elana Wright, will widely circulate it for endorsement by organizations and experts from around the world as part of a major effort to build greater, more informed collaboration among MTV advocates. For the latest news on this initiative, visit:

www.aidslaw.ca/Maincontent/issues/vaccines.htm

Deadly Public Policy: HIV/AIDS and Government (In)action

As the AIDS community awaits to hear whether there will finally be an increase in federal funding for AIDS in the next budget, the Network's Executive Director, Ralf Jürgens, looked back at the past ten years of "deadly public policy on HIV/AIDS," concluding that "policy making in the area of HIV/AIDS in Canada has been characterized by government inaction and a failure to adopt a coherent policy framework."

Ralf made these remarks as the invited guest speaker at The Third Annual Arthur Kroeger

College Lecture in Public Affairs and Civic Society, at Carleton University in Ottawa on 22 January 2004.

The full text of his speech, which urges policy makers to move beyond their "fragmented, half-hearted policy approaches" to a strategy based on promotion of human rights and public health, and which contains a series of recommendations to the new federal government, is available via www.aidslaw.ca/Maincontent/issues/discrimination/rights_approach.htm



New Board Members

To learn more
about our
Board Members, visit:

[www.aidslaw.ca/
AbouttheNetwork/
bodbios.htm](http://www.aidslaw.ca/AbouttheNetwork/bodbios.htm)

The Network is pleased to welcome two new members to our Board of Directors, filling positions recently left vacant by Marlene Daley and Ken Clement. **Laverne Monette** is a lawyer, a two-spirited Ojibway, and Coordinator of the Ontario Aboriginal AIDS Strategy. Originally from Winnipeg, she is a co-founder and past Board Member of 2-Spirited People of the 1st Nations as well as the Canadian Aboriginal AIDS Network. She is currently active with several councils and committees related to HIV and Aboriginal people.

Montreal-based community worker and harm reduction activist **Darlène Palmer** has worked with CACTUS, a Montreal harm-reduction group that runs a needle exchange and provides support for sex workers, since 1995. Since 1996, she has coordinated the Réseau SurvUDI Montréal, a Quebec study on HIV/AIDS and intravenous drug users. She is also a member of the board of Méta d'Âme, and works with NAOMI (*North American Opiate Medication Initiative*).



Coming Soon

“HUMAN RIGHTS AT THE MARGINS: HIV/AIDS, Prisoners, Drug Users and the Law” Bangkok, 9 July 2004

Network members attending the XV International AIDS Conference in Bangkok, Thailand should register now for this one-day satellite conference taking place just prior to AIDS 2004 on Friday, July 9.

Rates of HIV are high among injection drug users and prisoners in many parts of the world, and the failure to implement adequate harm reduction measures raises serious human rights issues, as does the failure to provide adequate care, treatment, and support.

Co-organized by the Canadian HIV/AIDS Legal Network, the Lawyers Collective HIV/AIDS Unit (India) [www.lawyerscollective.org], International Harm Reduction Development [www.soros.org/initiatives/health/focus_areas/ihrd], and the Thai Drug Users Network, the satellite will give participants from developing and developed countries a unique opportunity to discuss and collaborate on these important issues. The conference is co-hosted by the Joint United Nations Programme on HIV/AIDS (UNAIDS) [www.unaids.org].

To register, visit: www.aidslaw.ca/bangkok2004/e-bangkok2004.htm.

Justice Michael Kirby at 2004 Network AGM

The Network's 2004 AGM, which will take place in Montreal from 10 to 12 September 2004, promises to become yet another great event. Justice Michael Kirby from the High Court of Australia (the equivalent to Canada's Supreme Court) will be one of our keynote speakers. The program will also include workshops on (1) "HIV/AIDS, Drug Policy, Harm Reduction, and Human Rights";

(2) "Mandatory HIV Testing: How to Stem the Tide"; and (3) "HIV Treatments, Vaccines, and Microbicides: Joint Action Now!" Other speakers and workshop topics will be finalized in the next weeks, and more info will soon be available at www.aidslaw.ca/Maincontent/events/future.htm.



Justice Michael Kirby

Reserve those dates now! We look forward to seeing you in Montreal in September.



Feedback

Mr. Elliott,

I would just like to commend you for the EXTRAORDINARY counter-points you presented during the interview on CBC's "The Current" today. Having just spent a good 10 minutes screaming at my radio listening to the Montreal seminary defend its policy followed by Peter Yeoman's weak (read: non-existent) defence of police exclusion of HIV positive candidates, your clear, simple, point-by-point demolition of this recent surge in HIV-AIDS hysteria was very welcome. I felt my blood pressure return to normal during your discussion.

*-Murray B. Hay, Université Laval,
Québec*

Your intervention re the AIDS test at the seminary is dynamite.

-Thomas Waugh, Concordia University

I warmly congratulate you for the letter you wrote to Cardinal Turcotte. He is sending a very clear message to employers: it is okay to screen out potential employees who have HIV/AIDS. I am very happy that you have taken action on this matter, and fully support you.

-Michael Peters, Montréal

I am writing to congratulate you for your article [on HIV testing] in Le Devoir. Excellent work.

*-Réjean Thomas, MD, President, Clinique
médicale l'Actuel, Montreal*



New Resources

Canadian HIV/AIDS Policy & Law Review, Volume 8, Number 3, December 2003:
www.aidslaw.ca/Maincontent/otherdocs/Newsletter/vol8no32003/issue.htm

"[Human Rights for People Living with HIV/AIDS](http://www.aidslaw.ca/Maincontent/otherdocs/Newsletter/vol8no32003/issue.htm)," presentation by Ralf Jürgens at "Breaking the Barriers - Partnership to fight HIV/AIDS in Europe and Central Asia," Dublin, 24 February 2004:
www.aidslaw.ca/Maincontent/issues/discrimination/HR_PLWHADublin_feb2404.pdf

Proceedings from our 2003 AGM, including the keynote address by Stephen Lewis, United Nations Special Envoy for HIV/AIDS in Africa: www.aidslaw.ca/Maincontent/events/proceedings/e-agm2003.pdf