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

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HIV AND HUMAN RIGHTS IN CANADA: TOP 5 KEY ISSUES FOR WORLD AIDS DAY 2011

December 1, 2011 — On World AIDS Day, the Canadian HIV/AIDS Legal Network would like to draw your attention to some of the most pressing issues for people living with or vulnerable to HIV and AIDS. Of course, this list is by no means exhaustive, as the fight to stem the tide of this epidemic is multi-faceted and complex. But these are the issues playing out here at home which demand immediate attention.

1. *Access to medicines, globally and domestically*

At the end of 2010, of the estimated 15 million people in clinical need of life-saving antiretroviral (ARV) drugs, an estimated 9 million were without access. This number will grow unless concerted action is taken. Over the last decade, significant progress has been made in scaling up access to AIDS treatment, thanks largely to harnessing the power of generic competition. But developing countries are facing pressure to refrain from adopting policies that would increase access to lower-cost generics and new trade agreements are being negotiated that would impose even more impediments to generics access. On a smaller scale, these pressures are also facing developed countries. As Canada and the EU negotiate a Comprehensive Economic and Trade Agreement, intellectual property issues are one of the remaining contentious points. Leaked text of the draft agreement suggests Canada and the EU are on the verge of finalizing proposals that would further restrict the introduction of cost-saving generics into the Canadian market when patents expire, unnecessarily driving up health care costs at a time of budget pressures.

Canada's Access to Medicines Regime — passed unanimously by Parliament in 2004, but unusable because of unnecessary red tape — could help ease the burden for millions of dying people in the developing world. A bill to streamline the law passed with a large majority in Parliament in March 2011, but was fatally stalled in the Senate at the behest of Big Pharma until it died on the Order Paper. With strong public support (80% in a nationwide poll last year), this bill needs to be reintroduced in Parliament and passed once and for all.

2. *Drug policy, prisons and harm reduction*

The Supreme Court of Canada's recent decision in favour of Insite — Vancouver's safe injection site — was a great victory for science and reason. But questions remain whether the federal government will abide by this decision and consider new applications for safe injection sites in other municipalities, or whether it will continue to force service providers to go to court each and every time, wasting taxpayer dollars in opposing evidence-based, life-saving health services for some of Canada's most marginalized and at-risk populations.

The federal government's attitude toward the needs of these populations is again on display in its short-sighted omnibus crime bill. Bill C-10 will implement mandatory minimum sentences for even minor drug offences, despite the abundantly documented harm such measures will have — to the public purse, to human rights and of course, to public health. As prisons become overcrowded through increased convictions, more people will be exposed to risks of infection by HIV and hepatitis C — particularly since the government also refuses to implement basic prevention measures for prisoners, such as needle exchange programs. This prison epidemic will ultimately find its way back into the community at large.

3. ***Criminalization of HIV non-disclosure***

In recent years, a surge of prosecutions against people living with HIV has included troubling charges for some of most serious offences in the *Criminal Code,* even in cases where there has been no significant risk of transmission of HIV — in effect, criminalizing a person simply on the basis of his/her HIV-positive status. Sensationalized accounts of these cases appearing in certain media have only served to further stigmatize people living with HIV. The lack of clarity, reason and fairness in the law has highlighted the importance of getting prosecutorial guidelines in place to ensure that prosecutors are guided by the best available science when deciding whether and how to proceed with charges. In Ontario, a community coalition has done consultations around the province and is calling on the Attorney General to follow through on earlier commitments to develop such guidelines, working with community. Interest is growing in other provinces as well.

At same time, two important appellate court decisions (in Manitoba and Quebec) have recognized that there must be limits to the use of the criminal law, as the Canadian HIV/AIDS Legal Network has long argued, maintaining that the law needs to evolve with the science of HIV. In hearing appeals to both these cases early next year (February 7, 2012), the Supreme Court of Canada will have a chance to revisit its original 1998 decision on this issue (*R. v. Cuerrier*) and clarify the law. As part of a broad coalition, the Legal Network will be intervening to urge the Court to affirm that disclosure is only required where there is a "significant risk" of HIV transmission and that this clearly excludes certain situations, such as cases of condom use or an undetectable viral load on the part of the HIV-positive person.

4. ***HIV among Aboriginal people***

HIV has taken a significant and disproportionate toll on Aboriginal communities across Canada, fuelled by various factors that undermine the health of Aboriginal people generally. Approximately 3.8 percent of Canadians self-identify as Aboriginal, yet in 2008 (the most recent year for which data has been issued by the Public Agency of Canada), Aboriginal people accounted for an estimated 8 percent of all people living with HIV and about 12.5 percent of all new HIV infections. Overall, infections are seen at a younger age among Aboriginal people and also affect a higher proportion of women than in the non-Aboriginal population.

The lived experience of HIV-positive Aboriginal persons sits at the intersection of several systemic issues, including discrimination, poorer access to health services (including delayed uptake of HIV treatment), and addiction. With injection drug use as the single greatest category of exposure to HIV for Aboriginal persons, they are thus disproportionately vulnerable to policies that punish people who use drugs, such as the "tough-on-crime" law enforcement measures that Bill C-10 will impose and barriers to harm reduction services, both inside and outside of prison.

5. ***Funding the response to AIDS, domestically and globally***

At home, federal funding for HIV has been flat-lined since 2007 and, as of this writing, it is unknown whether federal funding will be cut even further next year. Cuts and delays in funding would 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.

On the global front, just as we are seeing results from sustained global investments in HIV prevention and treatment, funding is stalling and governments are failing to support what is needed. In 2010, UNAIDS estimated a $10 billion shortfall for a comprehensive and effective global AIDS response. In the US, PEPFAR funding is stagnating and eroding. Globally, 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 — has fallen short of the minimum required just to sustain current efforts, let alone expand to maintain its momentum in turning the tide on the epidemic. In fact, just last week the Global Fund was forced to take the extraordinary decision to cancel the latest round of funding opportunities and exclude many countries from applying for current renewals in funding as well as future funding opportunities. Though Canada made a welcome increase of 20 percent in its latest round of commitments to the Global Fund, our contribution still comes to just over $5 per Canadian per year — 1/3 of the price of a movie ticket.

We can and should double that amount and make a commitment of at least 5 years. We also must pay our annual share by December 31, 2011, just to honour our current commitment. This modest contribution would still leave our overall official development assistance (ODA) far below the internationally agreed-upon target for 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.

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