

July 16, 2007

Ottawa City Council
110 Laurier Avenue West
Ottawa, Ontario
K1P 1J1



Dear Mayor O'Brien and councillors:

On behalf of the 200 organizational and individual members of the Canadian HIV/AIDS Legal Network, I am writing to urge you to reconsider the termination of the Safer Crack Use Initiative, as decided by City Council on July 11, 2007.

Opposition to this program is based in part on the mistaken belief that it contravenes the law. As Canada's leading organization working on the legal and human rights issues raised by HIV/AIDS, we wish to explain how the distribution of safer crack kits is not only sensible as a matter of public health (as demonstrated by the available evidence, including peer-reviewed evaluations by University of Ottawa epidemiologists), but also permissible under Canadian law and consistent with Canada's obligations to protect and promote health under international human rights law.

Distributing safer crack use kits does not contravene the *Criminal Code*

The distribution of safer crack use kits is not qualitatively different from the distribution of sterile needles. In Canada, needle exchange programs (NEPs) have been operating for almost two decades with official government approval and financial support. Both NEPs and safer crack kits are sensible, pragmatic and cost-effective public health measures that reduce the risk of HIV and hepatitis C (HCV) transmission — and both are legal under the *Criminal Code*.

Section 462.2 of the *Criminal Code* states: "Every one who knowingly . . . promotes or sells instruments . . . for illicit drug use is guilty of an offence". However, the *Criminal Code* (s. 462.1) also states that the definition of an "instrument for illicit drug use" does not include a "device" as defined in the *Food and Drugs Act*. The definition of "device" under the *Food and Drug Act* (s. 2) includes any article or instrument that is used in the "mitigation or prevention of a disease".

As with the distribution of sterile needles, distributing safer crack use kits to prevent or reduce the spread of blood-borne pathogens such as HIV or HCV means these kits fall within this definition of "device" and are therefore excluded from the definition of "instrument for illicit drug use." The bottom line: Distributing safer crack use kits does not contravene the *Criminal Code*.

Distributing safer crack use kits meets human rights obligations to protect and promote health

Not only is there a good public health rationale for ensuring access to safer crack use kits, but doing so is also sound from the perspective of Canada's international human rights obligations and Ontario's public health law.

Under the *International Covenant on Economic, Social and Cultural Rights*, Canada is legally obliged to take the steps "necessary for . . . the prevention, treatment and control of epidemic . . . and other diseases." The Safer Crack Use Initiative helped fulfill this legal obligation, recognizing that not all people who use drugs do so by injection. Up until July 11, the distribution of safer crack use kits provided people who *smoke* crack with the necessary equipment to reduce their risk of HIV and HCV infection.

Similarly, the *International Guidelines on HIV/AIDS and Human Rights* (from the Joint United Nations Programme on HIV/AIDS and the Office of the United Nations High Commissioner for Human Rights) recommend that governments ensure the availability and accessibility of services for HIV prevention, particularly with attention to vulnerable groups such as people who use drugs. The provision of safer crack use kits was such a public health service.

Finally, we note that Ontario's *Health Protection and Promotion Act* states as its purpose ". . . to provide for the organization and delivery of public health programs and services, the prevention of the spread of disease and the promotion and protection of the health of the people of Ontario." Again, Ottawa's Safer Crack Use Initiative was an example of such a program.

Cancelling the crack kit distribution program constitutes a huge step backwards, and not just in terms of public health and human rights. As you heard from Ottawa's chief medical officer of health, the program was a sensible investment of taxpayers' dollars, considering the savings to the public purse of preventing new cases of HIV or HCV infection. Your constituents deserve a responsible, effective response to drug addiction that is based on sound evidence and respect for human rights. You can deliver such a response by reinstating the Safer Crack Use Initiative. We urge you to do so.

Very truly yours,



Joanne Csete
Executive Director