



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

L E G A L N E T W O R K N E W S

Issue 41 | Nov 2010

### Save the date

The Legal Network's Annual General Meeting and 3<sup>rd</sup> Annual Symposium on HIV, Law and Human Rights will be held from **June 9–10, 2011 in Toronto**. You are all invited, so please save these dates in your calendars and stay tuned for event details.

### Join us on World AIDS Day

This year for World AIDS Day, December 1, the Legal Network would like to invite you to join us for an important symposium being held jointly by the African and Caribbean Council on HIV/AIDS in Ontario (ACCHO), HIV/AIDS Legal Clinic Ontario (HALCO), and the Legal Network, titled ***Criminals And Victims? Race, Law and HIV Exposure in Ontario***. This symposium will launch ACCHO's paper on the impact of the criminalization of HIV non-disclosure on African, Caribbean and Black communities. While there have been efforts to examine the general implications of the criminalization of HIV non-disclosure, little attention has been given to its potential impact on key vulnerable populations, including new immigrants, sex workers, prisoners, people who use drugs, and members of racialized communities. This event provides an important opportunity to learn more about these issues and join the discussion on the need for effective policy and practice to circumvent the impacts the current climate has on vulnerable communities.

The symposium will be held on **Wednesday, December 1 from 4:30 p.m. – 6:30 p.m.**, at Bennett Lecture Hall at University of Toronto, 84 Queen's Park Circle. This event will also be simultaneously broadcast on the internet. To register, please email **Precious Maseko** at [p.maseko@accho.ca](mailto:p.maseko@accho.ca) by Wednesday, November 24th, 2010.

### CAMR Reform Campaign heats up

October was a challenging month for the campaign to reform Canada's Access to Medicines Regime (CAMR), the 2004 law on exporting lower-cost, generic medicines to developing countries that has delivered so little.

Bill C-393 has been endorsed by dozens of Canadian civil society organizations, prominent Canadians, and various international legal and health experts as a sensible alternative to the current, dysfunctional regime. In October, the Legal Network, along with intellectual property experts and representatives from several prominent civil society organizations working on HIV in the field, testified before the House of Commons Standing Committee on Industry, Science and Technology on the merits of Bill C-393 and the importance of the reforms to address the growing global AIDS epidemic. This was followed by clause-by-clause hearings over two days, marked by a protest in the committee room and on the street by grandmothers from the national Grandmothers-to-Grandmothers Campaign over the shameful and timid actions of some committee members seeking to simply run out the clock and/or jettison the bill entirely. (Watch a video of their demonstration at <http://www.youtube.com/watch?v=gMT--IMJQgY>.)

Despite the overwhelming evidence that CAMR in its current form is a failure and evidence from numerous experts that the reforms proposed by Bill C-393 could help make it workable, intensive lobbying by the brand-name pharmaceutical industry led a majority of the committee members to play politics with human lives. The five Conservative MPs on the committee, joined by a single Liberal MP, stripped Bill C-393 of its key provisions — including the “one-licence solution” — before reporting the bill back to the House of Commons. (For more details and the names of MPs on the Committee, see <http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=1131>) As it currently stands, Bill C-393 would leave the current flawed regime largely unchanged.

In addition, Bill C-393 is currently without a sponsor in the House of Commons. Its original sponsor, NDP MP Judy Wasylycia-Leis (Winnipeg North) stepped down from her seat in April. Her colleague, Brian Masse, the NDP’s industry critic and MP for Windsor West, has taken up the cause as champion of Bill C-393 before Committee and as would-be sponsor of the bill in the House of Commons. (We thank them both for their tremendous support in this effort!)

However, while there is little in the way of established precedent, it is widely believed that transferring the bill to a new sponsor may require unanimous consent of the House of Commons, meaning a single opposing voice has the potential to kill the bill completely by denying it a new sponsor. Earlier in the month, a Conservative MP disclosed to us that the Conservatives were willing to oppose the request for a new sponsor and effectively kill the bill on this procedural technicality. Such a move would undermine the support that the bill attracted from all parties at second reading and widespread public support — demonstrated not least by more than 10 000 postcards sent from across the country to the Industry Committee alone.

In response, the Legal Network released an urgent action alert, asking supporters to call the offices of federal party leaders, as well as Conservative committee members Mike Lake and Mike Wallace, and urge them to confirm that their party members would not vote against a new sponsor for the bill when it returns to the House. We were thrilled to learn that this action was supported by Canadian author Margaret Atwood and musician K’Naan, and the issue gained national coverage in the *Globe and Mail* (<http://tinyurl.com/26by5kx>).

There was a great momentum behind this action and it is reported that at least a few MPs were overwhelmed by the number of phone calls that they received. Thank you to all of you who participated — the response to this action by our members was wonderful! While we still cannot be sure what will happen when the matter of a new sponsor comes to a vote, it is important that these MPs and party leaders are now aware that Canadians from across the country are paying very close attention to their actions on this issue. It is our hope that this level of public attention to the issue will influence these MPs to make the right decision and ensure that a bill supported not only by international experts and dozens of civil society organization, but also by 80% of Canadians (see <http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=994>), is given proper democratic consideration and is not derailed unfairly.

Now that the Industry Committee has stripped Bill C-393 of its key provisions and sent it back to the House of Commons, there will be an opportunity for further debate at “report stage”, likely sometime in December. The Legal Network is working hard to re-introduce the one-licence solution as an amendment. Grassroots supporters of the bill from across the country are mobilizing to remind our MPs why reforming CAMR and ensuring access to affordable medicines for the developing world is so important. We encourage you to contact your local MP by phone, hand-written letter or e-mail. Let them know that, as a constituent, you support reforming CAMR to make it work, including the “one-licence solution” that must be restored to Bill C-393 by the House of Commons when it comes up for a vote. For more information on how you can do this, please visit [www.aidslaw.ca/camr](http://www.aidslaw.ca/camr).

### **Criminalization of HIV: a tentative win and a pending decision**

In February of this year, the Legal Network intervened before the Court of Appeal of Manitoba in the

*Mabior* case. On October 15, the Court of Appeal released its long-awaited judgment. Based on the facts and medical evidence presented in the case, the Court of Appeal decided that when a condom was carefully used or when the accused's viral load was undetectable there was no significant risk of HIV transmission; therefore, there was no duty to disclose in those situations. The appellant, who was convicted on six counts of aggravated sexual assault for HIV non-disclosure at trial, was acquitted on four counts, related to those encounters when a condom had been carefully used or his viral load was undetectable.

We welcome the Court's decision for recognizing that either condom use or an undetectable viral load can be sufficient to rule out any criminal liability. The Court of Appeal also recognized that the nature of the disease has evolved with the availability of treatments and that HIV is no longer a death sentence. Therefore, while the Court was clear that HIV infection still constitutes a "serious bodily harm" for purposes of the criminal law of assault, it questioned whether exposing someone to a significant risk of HIV transmission could constitute "endangering" the person's life. For a more detailed summary of the Court's decision, see <http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=1125>.

Lower courts (trial courts) in Manitoba will be bound by the decision of the Court of Appeal. Outside of Manitoba, the decision will not be binding, but it is likely to influence lower courts and Courts of Appeal from other provinces in Canada. At this time we cannot exclude the possibility that the decision might be appealed to the Supreme Court of Canada. However, this decision is an encouraging sign that some headway is being made in limiting the scope of the criminal law in cases of HIV non-disclosure.

### **Push for Prosecutorial Guidelines**

While intervening in court cases is an important strategy for shaping the law, it isn't and shouldn't be the only one — hence the Legal Network's active involvement in the Ontario Working Group on Criminal Law and HIV Exposure. Bringing together community-based organizations and individual activists, the Working Group seeks to ensure that the use of criminal law in cases of HIV non-disclosure is compatible with scientific, medical, and public health evidence, and does not hinder community efforts to prevent the spread of HIV and to provide care treatment and support to people living with HIV. Yet, many of the verdicts in these types of cases have ignored the science and perpetuated HIV-related stigma.

On September 30, the Legal Network co-hosted an event to launch the Working Group's campaign for prosecutorial guidelines that would limit appropriately the use of criminal law in cases of alleged HIV non-disclosure and help ensure that HIV-related criminal complaints are handled in a fair and non-discriminatory manner. The Working Group is collecting e-signatures from Ontario residents for a letter addressed to the Attorney General, calling for a public consultation on the need for guidelines.

If you are an Ontario resident and would like to learn more about this campaign and sign on to this important initiative, please visit [www.ontarioaidsnetwork.on.ca/clhe](http://www.ontarioaidsnetwork.on.ca/clhe). If you do not live in Ontario, we ask that you forward the link to your friends and colleagues who do live in Ontario and encourage them to support the campaign by becoming a signatory. This campaign is already sparking interest in other provinces and could be useful for advocacy across the country on this issue.

### **On the go**

Last month, we welcomed back senior policy analyst Alison Symington from maternity leave. Among other things, Alison will continue contributing to our work on the issue of criminalization of HIV non-disclosure, as well as taking the lead on creating a UNAIDS-commissioned handbook for training judges on HIV-related legal issues.

Since his arrival, our new senior policy analyst Mikhail Golichenko has been active in preparing submissions for a variety of UN human rights bodies regarding human rights of people who use drugs, people in prison and others, in countries such as Georgia, Tajikistan, Azerbaijan, Uzbekistan, and the Russian Federation, as well as laying the groundwork for possible litigation at the European Court of

Human Rights on the issue of access to opioid substitution treatment.

Legal Network staff members have been busy delivering workshops and presentations to a wide range of community groups. In late-September, executive director Richard Elliott joined other panellists for a well-attended public forum on criminalization organized by the AIDS Committee of Ottawa in the wake of a high-profile prosecution. In early October, he also delivered a public lecture on the criminalization of HIV non-disclosure in Edmonton as part of HIV Edmonton's "Distinguished Speakers Series" to mark its 25<sup>th</sup> anniversary. Deputy director Patricia Allard gave a workshop for women, most of them recent immigrants, at a retreat organized by the AIDS Committee of Toronto. Policy analyst Cécile Kazatchkine delivered a workshop jointly with CAAN at the 4<sup>th</sup> Annual Aboriginal HIV/AIDS & HCV Conference in Saskatoon. Later this month, she will be leading a workshop on criminalization and HIV disclosure in Vancouver, being hosted by BCPWA and YouthCO AIDS Society. Meanwhile, senior policy analyst Sandra Ka Hon Chu will give a presentation later this month to community legal workers at Toronto's George Brown College on issues such as drug policy, sex workers' and prisoners' rights, harm reduction and criminalization.

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**About the Canadian HIV/AIDS Legal Network**

The Canadian HIV/AIDS Legal Network ([www.aidslaw.ca](http://www.aidslaw.ca)) promotes the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally, through research, legal and policy analysis, education, and community mobilization. The Legal Network is Canada's leading advocacy organization working on the legal and human rights issues raised by HIV/AIDS.

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