



## **Statement on Bill C-9, An Act to amend the Patent Act and the Food and Drugs Act 2 April 2004**

As the House of Commons rises today, with the future agenda of this Parliamentary session uncertain, Bill C-9, Canada's legislative initiative on access to cheaper medicines for developing countries, remains stuck before the Standing Committee on Industry, Science and Technology.

The Canadian HIV/AIDS Legal Network wishes to remind the federal Government of its pledge to proceed with this initiative. The Legal Network also reiterates its view that the Government must fully and faithfully implement the WTO General Council Decision of 30 August 2003. That decision relaxed international patent rules in order to allow this kind of legislation and is the basis for Bill C-9. Canada must live up to the agreement reached between all WTO members, and must not undo that carefully-crafted international consensus.

The Government and the Standing Committee have had the benefit of multiple submissions from many interested parties. These include detailed proposals from the Canadian HIV/AIDS Legal Network for amendments to fix the flaws currently found in Bill C-9. Each such amendment has been backed up by a solid rationale and expert academic analysis. The concerns expressed by the Legal Network in its submissions to the Government and the Standing Committee are shared by numerous other civil society organizations that have also made representations regarding the needed changes to the bill.

The Legal Network notes the following flaws with Bill C-9:

- the so-called “right of first refusal” provisions that allow patent-holding companies to scoop contracts negotiated between generic producers and developing country purchasers and block the generic producers from obtaining the licence needed to legally produce that medicine for export;
- the arbitrary limit of 2 years on any compulsory licence that may be issued to a generic producer authorizing it to produce a medicine for export to a developing country;
- a limited initial list of medicines, with a process for adding new products that is unnecessarily subject to industry lobbying;
- the possibility that the regulatory system will not be sufficiently flexible to allow the manufacture and export of “fixed dose combination” anti-retroviral products, which

combine several medicines into a single pill, when such simpler, easier dosing regimens are critical for patients living with HIV/AIDS, particularly in settings of limited resources;

- the refusal to let developing countries import cheaper generic medicines from Canada unless they belong to the WTO;
- the failure to let non-governmental organizations purchase generic medicines from Canadian suppliers; and
- the failure to implement the WTO rules that allow for a fast-track issuing of a compulsory licence to a generic producer when the medicine is produced to respond to cases of emergency, or for public non-commercial use, or to remedy anti-competitive practices by the patent-holder.

With respect to the “right of first refusal”, the Legal Network welcomes the apparent acknowledgement, by both the Government and the pharmaceutical industry, that the current provisions of Bill C-9 must be removed. The Legal Network has maintained from the outset that such a provision is anti-competitive and exceeds the requirements of WTO treaties on patents.

However, the Legal Network rejects the so-called “alternative” that has been put forward by the patent-protected pharmaceutical industry as equally flawed, for the same reasons. What the brand-name industry has cynically labelled as a system providing an “equal opportunity to supply countries in need” would, in fact, amount to an “early opportunity to block competition” in the market, preserving monopolies on medicines at the price of people’s lives.

The Legal Network calls on the Government to simply remove these provisions from Bill C-9. The Government should refrain from attempting to substitute additional privileges for brand-name pharmaceutical companies that are unnecessary under WTO rules. This initiative is supposed to make it possible for countries lacking the capacity to manufacture needed pharmaceutical products to effectively issue licences to generic producers in a country like Canada. To instead add unnecessary “rights” for brand-name companies, which have already been proposed and rejected in the WTO negotiations, would set a damaging global precedent and undermine ongoing efforts to overcome patent-related barriers that limit access to more affordable medicines for poor people and countries.

This entire exercise is aimed at creating more flexibility in patent rules, so as to promote access to more affordable medicines. It would be entirely contrary to the objective at hand, and an act of bad faith toward developing countries, to insert into this legislation a provision that gives even stronger rights to companies already holding monopolies on these desperately needed products. As the first country to implement the WTO Decision from last August, Canada’s has a particular responsibility to respect the international consensus achieved at the WTO after years of divisive debate, and should not unilaterally undermine that consensus.

The entire Liberal Party of Canada should support the Government in making Bill C-9 a model piece of legislation, and all opposition parties should call for such changes.

Indeed, the New Democratic Party already has, with repeated questions to the Government in the House of Commons and with its public statement indicating that it shares the key concerns raised by civil society organizations.

Other parties should also follow through on their statements that they wish to pass legislation that will benefit the sick and poor of the world. The Bloc Québécois has stated that Canada must “make sure that we have the best legislation possible.” The Conservative Party has stated that it “recognize[s] that there are some concerns with the legislation,” but that it also believes “that because of the good faith surrounding these issues we can address these concerns quickly.” We call on these parties to make clear to the Government that they will support amendments that remedy the flaws currently found in Bill C-9, and that they will oppose counter-productive proposals that undermine the faithful implementation of the WTO decision that is the basis for the Bill.

Poor people need medicines for cancer, diabetes, or pain as well as medicines for epidemic diseases such as HIV. Poor people need medicines regardless of whether their country belongs to the WTO. Poor people need medicines that they can, unfortunately, sometimes only get from NGOs delivering health care, and health care workers need to be able to respond. People need medicines not just for 2 years, but on a sustained basis. People need medicines that are easier to use, especially if support infrastructures are under-developed or absent.

Poor people do not need Members of Parliament playing partisan politics with Bill C-9. All political parties should support the Government of Canada in quickly passing this legislation, ***if*** it fixes the flaws currently found in the bill. The Canadian HIV/AIDS Legal Network will certainly do so.

As an act of global leadership, the Government of Canada should take a principled stand that puts the basic human rights to health and to life before the patents of multinational brand-name pharmaceutical companies. Such a stand is ethical, is sound public health policy, is firmly rooted in international law on trade and on human rights, and would enjoy the solid support of Canadian and global public opinion.

What is needed now is the political will to do the right thing.

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

The Canadian HIV/AIDS Legal Network ([www.aidslaw.ca](http://www.aidslaw.ca)) is a national organization engaged in education, legal and ethical analysis, and policy development. Founded in 1992, the Network's promotes responses to HIV/AIDS that respect human rights; facilitate prevention efforts and access to care, treatment and support; minimize the adverse impact of HIV/AIDS on individuals and communities; and address the social and economic factors that increase vulnerability to HIV/AIDS and to human rights abuses. The Network is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations and a partner organization of the AIDS Law Project of South Africa.