

October 27, 2017

## **AN OPEN LETTER REGARDING PRISON HARM REDUCTION TO:**

The Right Hon. Justin Trudeau, Prime Minister of Canada  
The Hon. Ralph Goodale, Minister of Public Safety and Emergency Preparedness  
The Hon. Ginette Petitpas Taylor, Minister of Health  
The Hon. Jody Wilson-Raybould, Minister of Justice and Attorney General  
The Hon. Jane Philpott, Minister of Indigenous Services  
The Hon. Carolyn Bennett, Minister of Crown-Indigenous Relations  
The Hon. Patricia Hajdu, Minister of Employment, Workforce Development and Labour  
The Hon. Maryam Monsef, Minister of Status of Women



Dear Prime Minister and Ministers:

We write to you with urgency and call on you to take this opportunity to do the right thing.

As you know, in September 2012 we initiated an application in the Ontario Superior Court of Justice, under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*, to secure reasonable and effective access to needle and syringe programs in Canada's federal prisons (*Simons et al. v. Minister of Public Safety et al.*, Court File No. CV-12-46416). We launched this court case because it was clear that, despite all the evidence, the Harper government would never agree to implement this basic harm reduction measure in federal prisons.

In contrast, your government has repeatedly declared that you are committed to harm reduction, to evidence-based policy, to *Charter* rights and to the health and welfare of vulnerable Canadians. Harm reduction programs in prisons—and prison-based needle and syringe programs, in particular—reflect all of these.

In fact, during the last election, your party told us explicitly in writing that there is "compelling evidence" for prison-based needle and syringe programs. We enclose for your reference a copy of the Liberal Party of Canada's letter of September 19, 2015. [See Tab 1 of the enclosed Documents Brief.] All but one of the other federal parties represented in Parliament support these programs. During the last election, the New Democratic Party, the Bloc Québécois and the Green Party all unequivocally declared their support (in writing) for implementation of these health services in prisons. The Conservative Party did not respond to our inquiry.

The evidence is clear that in federal prisons, injection drug use is common, drug injection equipment is shared, and HIV and HCV are rampant—and consequently further transmitted when needles and syringes are shared. Figures from the Correctional Service of Canada (CSC) indicate federal prisoners have rates of HIV and HCV many times higher than in the population as a whole. Meanwhile, rates of HIV and HCV among Indigenous prisoners—and Indigenous women in prison in particular—are higher still. Factor in the costs of HIV and HCV treatment, and also the reality that most prisoners eventually return to their communities, and we have a public health and fiscal crisis in our federal prison system, for which system you are responsible.

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It is a firmly established principle of international human rights law, in instruments repeatedly endorsed by Canada, that prisoners have the right to the same standard of health care as is available in the community. The federal *Corrections and Correctional Release Act (CCRA)* requires this same treatment.

The CSC has known all this for years, and that access to sterile injection equipment is a necessary part of the solution and a human right.

In 1999, almost twenty years ago, CSC convened its own Study Group on Needle Exchange Programs (also referred to as the Study Group for the Risk Management of Infectious Diseases), which included the participation of CSC staff (security, health services, administrators and others), CSC physicians, Health Canada representatives, independent experts with relevant expertise and others.

The Study Group recommended that the Service obtain Ministerial approval for a multi-site pilot program for prison-based needle exchange in men's and women's correctional institutions, including "development and planning of the program model" and "implementation and evaluation of the pilot program". [See Tab 2 of the enclosed Documents Brief, List of Participants follows the Final Report.] It emphasized the important ways in which needle exchange advances CSC's mandate—protecting public safety and the safety of CSC staff in addition to prisoner health and safety—and that:

CSC also has a legal obligation under the CCRA to provide offenders with essential health care that contributes to their rehabilitation and reintegration into the community. Health care provided to offenders by CSC must reflect the standards of care available in the larger community. Not doing so could leave CSC open to legal action.

Fourteen years ago, in his 2003-2004 Annual Report, Canada's Correctional Investigator reported that the clandestine use of scarce drug injection equipment had caused great harm, and recommended that, failing appropriate action by CSC, the Minister responsible direct implementation of a prison-based needle exchange program by March 31, 2005. [See Tab 3 of the enclosed Documents Brief.]

Eleven years ago, in 2006, at CSC's request, the Public Health Agency of Canada reviewed the evidence in Canada and internationally and found "definitive data" that prison-based needle and syringe programs decrease needle-sharing practices in prison, overdose-related health care interventions and deaths and health care interventions related to injection-site abscesses, while increasing referrals to drug treatment programs. The review also concluded that such programs do not lead to increased drug use (including injection drug use), the use of injection equipment as weapons or an increase in needle-stick injuries, and that prison staff attitudes and readiness to accept prison-based needle and syringe programs shifted from fear and resentment to acknowledgement that the programs represent an "important and necessary addition to a range of harm reduction services and health and safety interventions." [See Tab 4 of the enclosed Documents Brief.]

Since that review by the Public Health Agency in 2006, the current crisis of opioid overdoses has emerged, as a new and frightening public health emergency confronting this government and demanding immediate and robust public health measures. In such a context, evidence of increased referrals to drug treatment programs is another important consideration. There is no doubt that drugs such as fentanyl and carfentanil will, increasingly, find their way into CSC prisons. Prison-based needle and syringe programs will serve as a bridge to care that will help to protect prisoners and prison staff from the very serious risks presented by these drugs.

Two years ago, in 2015, the Canadian Agency for Drugs and Technologies in Health (CADTH) reported the following key findings based on a comprehensive review of the medical and scientific literature:

... needle/syringe exchange programs significantly reduced the sharing of injection equipment in correctional settings without increasing overall drug use or drug injecting. Needle exchange programs also reduced the incidence of drug overdose and injection abscesses. Implementation of needle/syringe program did not result in needles being used as weapons against staff or other prison inmates.

CADTH was created in 1989 by Canada's federal, provincial, and territorial governments to provide health care decision-makers with objective evidence to help make informed decisions about the optimal use of health technologies. The federal government is represented on CADTH's Board of Directors by Health Canada's Assistant Deputy Minister, Strategic Policy Branch. [See CADTH's report at Tab 5 of the enclosed Documents Brief]

Prison-based needle and syringe programs were first introduced in Switzerland 25 years ago and now operate in dozens of prisons in a growing number of countries. The evidence of their benefits is, as the Liberal Party of Canada has recognized, compelling. Given such evidence, implementing such programs has also been recommended by the Canadian Human Rights Commission, Canadian Public Health Association, Canadian Nurses Association, Canadian and Ontario Medical Associations, World Health Organization, UNAIDS and the UN Office on Drugs and Crime.

Despite all the evidence, and despite the widespread consensus among health and human rights experts and agencies, both domestic and international, your government still refuses to commit to implement needle and syringe programs in our prisons. This disregard for the evidence is not only negligent and damaging to public health, it is incredibly costly, with reported treatment costs of \$16.5 million for HCV medication alone in 2017-18, or nearly four times the amount budgeted in 2010.

Furthermore, denying prison-based needle and syringe programs is discriminatory in its impact, harming women and racialized people disproportionately. Last year, the UN Committee on the Elimination of Discrimination Against Women called on Canada to implement such programs to protect the health and rights of women in prison (who are disproportionately Indigenous). Earlier this year, concerned about the disproportionate incarceration of Indigenous and Black people, the UN Committee on the Elimination of Racial Discrimination recommended that Canada implement "key harm reduction measures" across all prisons in order to fulfill its human rights obligations. We note that these recommendations are also consistent with the call by the Truth and Reconciliation Commission for government action to address differential health outcomes between Indigenous and non-Indigenous people in Canada.

We have drawn the evidence and these recommendations in support of prison-based needle and syringe programs to your attention before.

You have repeatedly stated that your government is committed to "evidence-based policymaking." The revised federal drugs strategy introduced in December 2016 contains a welcome commitment to a "comprehensive, collaborative, compassionate and evidence-based approach to drug policy," and in keeping with this approach, restored the integral pillar of harm reduction. Your government has also declared its commitment to women's rights and to the health and welfare of Indigenous Peoples. Numerous current and former Liberal Cabinet

members — including several of you addressed in this letter — and MPs have stated their support for harm reduction, including in prisons. Finally, Prime Minister, you have instructed the Attorney General to resolve outstanding litigation that is not consistent with your government's commitments, values or the *Charter*.

Despite all this, your government has so far refused to commit to implement needle and syringe programs in our prisons.

**The time for study is over. If your government is serious in its commitments to evidence-based policymaking, to harm reduction and to human rights, then it's time to do the right thing: make an immediate and clear commitment to implement needle and syringe programs in Canada's federal prisons, without delay and with a firm deadline.**

We look forward to hearing you. We can be reached care of the Executive Director of the co-applicant in the litigation, the Canadian HIV/AIDS Legal Network, at 416 595 1666 (ext. 229).

Sincerely,



*On behalf of the Applicants:*

Steve Simons

Richard Elliott, Executive Director, Canadian HIV/AIDS Legal Network

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