Clean Switch: making the case for prison-based needle and syringe programs in Canada

**OHRDP 2012: Promoting a continuum of care for clients with a history of incarceration**

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The Canadian HIV/AIDS Legal Network (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.
HIV and HCV in Canadian prisons

- In Canada, HIV and HCV prevalence in prison is at least **10 and 30 times higher** than in population as a whole.

- A national 2007 survey indicated that almost **1 in 6 people** in federal prisons reported having injected drugs in the previous six months in prison.

- Of those people who injected drugs in prison, approximately:
  - **1/2 used someone else’s used needle** and
  - **1/3 shared a needle with someone with HIV, HCV or unknown infection status.**
Existing harm reduction measures in federal institutions

- **Bleach:** in 3 discreet locations in each prison, in order to “promote public health and a safe and healthy environment ... as a harm reduction measure against the transmission of HIV and other infectious diseases.” (CD 821)

- **Opiate substitution therapy:** methadone, both continuation and initiation (CD 800-1)

- **Condoms, dental dams and lubricant:** in discreet and accessible locations (CD 821)

- **But no prison-based needle and syringe programs (PNSPs).**
Constitutional challenge

In the face of the government’s refusal to implement PNSPs

- a man formerly incarcerated in a federal prison in Ontario, Canada,
- the Canadian HIV/AIDS Legal Network (Legal Network), and
- the Prisoners with HIV/AIDS Support Action Network (PASAN)

are about to initiate a lawsuit against the federal correctional service to compel it to introduce PNSPs.

The applicant was infected with HCV after using injecting equipment that had been used by a fellow prisoner with HCV. His infection was entirely preventable had there been a PNSP in place.
Legal arguments

The lawsuit will rest on:

• **federal correctional legislation**, which requires the government to provide prisoners with essential health care and recognizes that prisoners retain the rights and privileges of all other members of society (except those necessarily limited by incarceration);

• **international law principles** protecting prisoners’ rights to life and health and mandating the principle of equivalence in health care; and

• the **Charter of Rights and Freedoms**, which protects prisoners’ rights to life, liberty and security of the person, equality, and freedom from cruel and unusual treatment or punishment.
Approach

- Struck an **advisory committee** comprised of prisoners’ rights, HIV/AIDS and harm reduction advocates, including staff of community-based needle and syringe programs

- Publicized through various channels, including *Cell Count* and prison visits, proposed litigation in order to **identify a willing applicant**

- Established a paper trail with the Minister responsible for federal corrections & federal correctional authorities to **document the government’s explicit refusal to implement PNSPs** in federal institutions
Approach

• **Fundraised** to secure $ for legal representation and discussed our proposed legal strategy with seasoned litigators, who advised us about key pieces of missing information (e.g. cost-benefit analysis of PNSPs)

• **Developed “in-house” legal factum** that was reviewed by advisory committee and *pro bono* counsel and revised based on their input

• **Seeking other organizational co-applicants** willing to participate in litigation, engage with media and lend credibility to the case
Approach

- Identified **expert witnesses**, including prison physicians, who could provide testimony regarding:

  - the extent of injection drug use in Canadian prisons;
  - the experience of needle and syringe programmes in the community; and
  - the experience of PNSPs worldwide
Approach

Engaged in advocacy before other bodies, including:

- Parliamentary Committees studying (1) mental health and addiction in federal prisons and (2) drug and alcohol use in federal prisons;
- Correctional Investigator of Canada; and
- Members of Parliament

resulting in recommendations from one Parliamentary Committee and the Correctional Investigator for PNSPs in federal prisons

Carried out media campaign to keep issue of PNSPs in public eye:

- articles in correctional magazines;
- press release to highlight HIV/HCV rates behind bars & pressing need for harm reduction measures in prisons; and
- letters to the editor denouncing government bills to incarcerate more people who use drugs in inhumane conditions.
Approach

Developing **communications campaign**, including:

- a video advocacy series involving partners, family members and other loved ones of prisoners on their views on PNSPs; and

- a “manifesto” on the need for PNSPs based on human rights that will be disseminated for endorsements from prominent supporters. The manifesto will be accompanied by “Q&A” to address common misconceptions, as well as advocacy actions, such as calls to contact MPs.
Where are we now?

- Various forms of advocacy undertaken before the launch of the lawsuit have been instrumental in building public support for PNSPs and identifying a man who was infected with HCV through injection drug use while incarcerated in a federal prison.

- *Pro bono* lawyers have been formally retained, and the case will be launched this year, when we will devote significant communications resources to build on existing momentum.

- If a court grants the remedy sought, the ultimate outcome of the lawsuit will be the introduction of PNSPs in Canadian federal prisons.
Building a legal case requires more than strong legal arguments

A successful lawsuit could still mean prisoners are not able to access sterile injecting equipment because there is:

- **no input** from prisoners and harm reduction experts on how PNSPs could be effective;
- **no “buy in”** from prison administration; and/or
- **little public support or political will** to ensure it’s done right.

As the lawsuit winds its way through court, we will continue to:

- **mobilize community**, including people in prison, on the need for PNSPs;
- **develop partnerships** with people working on/in prisoners’ rights, public health, harm reduction, HIV/AIDS, academia (e.g. possibility of potential interveners); and
- **engage with media** and other bodies to raise awareness of pressing need for PNSPs in Canada.
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