

July 4, 2000

Ralf Jürgens
Executive Director
Canadian HIV/AIDS Legal Network
484, Rue McGill 4^{ième} étage
Montréal (Québec) H2Y 2H2

Dear Mr. Jürgens,

Re: *Injection Drug Use and HIV/AIDS: Legal and Ethical Issues*

I am writing to you on behalf of the Canadian Bar Association's Sexual Orientation and Gender Identity Conference (SOGIC). We thank you for providing us with a copy of the above report, which is an important contribution to meeting the challenge of the epidemic of HIV/AIDS among injection drug users. We appreciate having the opportunity to comment and apologize for the delay in responding.

The foundation of the report is the harm reduction philosophy, which rejects the use of criminal sanctions as a means of reducing drug use and related crime, health and social problems. The approach sees drug use as a health problem to be combatted through providing appropriate health and social supports to drug users instead of using the criminal law. As the report notes, the harm reduction philosophy makes HIV/AIDS easier to prevent and control among drug users by ensuring, among other things, that addicts are treated in an environment which is medically safer and where information is more easily disseminated, without threat of legal reprisal.

For a long time the CBA's National Criminal Justice Section has endorsed the harm reduction philosophy. Criminalization of drug distribution and use has proven to be ineffective in reducing drug use, in reducing drug-related crime and in improving Canadians' health. By contrast, the harm reduction philosophy would remove prohibitions on drugs in favour of prevention and treatment. The approach would minimize the use of incarceration for drug offences that cause no evident harm to persons other than the user. This would dry up the markets for drug dealers and traffickers, reduce drug-related crime and allow addicts to kick their habit by obtaining low-cost drugs under medical supervision.

Since 1974, the CBA has questioned the propriety of using the criminal law to control drug use. In that year, the Association passed a resolution endorsing the controlled medical distribution of heroin to addicts by approved institutions, believing this to be an effective alternative to control and treat heroin addiction. In 1978, the CBA adopted a resolution supporting the decriminalization of possession and cultivation of marijuana for personal use and non-profit distribution of the drug between adults.

In a May 1994 submission to Parliament, the National Criminal Justice Section opposed Bill C-7, which would have introduced a new *Controlled Drugs and Substances Act*. The Section's submission pointed out that there was no evidence that increased use of incarceration had an impact on reducing supply or demand for illicit drugs. Indeed, evidence from England suggests that medical treatment, education and

needle exchange programs can achieve a significant reduction in crime and a reduced rate of HIV infection. Such programs, which include a component of physicians prescribing heroin and other drugs to addicts at a fraction of their street cost, are aimed at helping addicts overcome their addiction.

The Section's 1994 submission concluded by pointing out that money spent on drug prohibition could instead be redirected to treatment and prevention programs. These would give special emphasis to pre- and post-natal care, education and drug maintenance programs. This wouldn't create the *panacea* of a drug-free society but it would reduce the harm of drug abuse and the costs of drug prohibition.

The National Criminal Justice Section reiterated its submissions in March 1996 when Bill C-7 was reintroduced with modifications as Bill C-8. The CBA also had a representative participate in the work of the Task Force on HIV/AIDS and Injection Drug Use that produced its National Action Plan in May 1997.

Our endorsement of the overall approach in your report is subject to three comments:

1. Recommendation 12 suggests that professional associations should organize training programs on guidelines established for health-care providers dealing with HIV-positive drug users. SOGIC will do its best to participate in educating lawyers about these important issues, recognizing that we cannot to compel our members to participate in a program of education.
2. Recommendation 40 deals with individuals participating in clinical trials and other medical research involving HIV/AIDS and drug use. It would prohibit government and law enforcement officials from having access to information identifying participants in research files. This recommendation would require a significant change in the law and raises wider questions concerning personal privacy and the appropriate limits on the reach of the law.

It stands to reason that medical research into HIV/AIDS and drug use will be significantly impaired unless participants have a guarantee of confidentiality. Recent cases concerning the confidentiality of sexual assault victims' medical records indicate that there is precedent for limiting access to such information where there is arguably a greater social good. We believe the greater social interest in effective research requires that legislators seriously consider preserving confidentiality of participants' medical records. This is especially true in the context of access by law enforcement officials, given the above-noted inefficacy of the criminal justice system in controlling drug use and distribution.

3. Finally, we do not object in principle to further study of the issues identified in the report. However, your organization must remain cognizant of the danger that Government will fund further study as a substitute for more politically challenging action on some of the tougher recommendations. There is an urgent need for action. The necessary steps have been clearly identified. What is required is the political will to make these recommendations a reality.

If you have any questions or comments about the above, do not hesitate to contact Richard Ellis, Legal Policy Analyst at the CBA's National Office. He can be reached at 1-800-267-8860, ext. 144; fax: (613) 237-0185; email: richarde@cba.org.

Yours truly,

Sheila M. Mann
Chair, Sexual Orientation and Gender
Identity Conference