

## REPORT 2009 INTERNATIONAL HUMAN RIGHTS SUMMER INTERNSHIP PROGRAM



*Summer 2009 interns with the Canadian HIV/AIDS Legal Network Milton Castelen and Sandra Dughman both Graduate Students 2008-09 of the Faculty of Law of the University of Toronto enrolled in the Sexual and Reproductive Health Law Program.*

### **The Host Organization**

On May 11, 2009, I started my 10 week internship with the Canadian HIV/AIDS Legal Network. Together with two other interns I received a welcome/information binder which gave insight in the ongoing work of the Legal Network and the planned projects. After introduction to the rest of the staff we had separate meetings with staff members responsible for the implementation of projects in which we had the opportunity to participate. The final

session was the project selection by us (interns) in which we wanted to participate, followed by a welcome drink on a roof-terrace of one of the pubs in Yorkville.

### **My Selected Projects of Interest**

The two projects I selected are “HIV and the Criminal Law” and “Drug Treatment Courts”. Both projects have a rights based approach with a focus on the functioning of criminal legal system of Canada. The “HIV and the Criminal Law” project related assignments were according to my interpretation conducted in the context of the right to a fair trial. The goal of the project is to track, collect and process all available case law data to inform/educate all stakeholders involved in the so called HIV criminal cases. In this project I had two specific outputs that I delivered. The first one was an updated tracking list of the HIV sexual assault cases tried in Canada from January 2007 to present. The second output was the development of a sentencing chart, highlighting the sentences and their reasons given between January 2006 to present by the courts in Canada in (aggravated) sexual assault HIV cases where transmission of HIV or exposure to HIV occurred.

The “Drug Treatment Courts” (DTCs) project in general covers the justification of existence, the structure and procedures and the effectiveness / ineffectiveness of the DTCs. I analysed the DTCs from 4 perspectives; (1) the justification for the existence of the DTCs in Canada; (2) a crime and punishment approach analysis, including a charter

section 11 and 12 analysis of the DTC intervention; (3) a public health approach analysis including a right to health and a right to the security of the person analysis; (4) a constitutional law analysis. The results were presented in a report that also included general comments on the effectiveness of the DTC system.

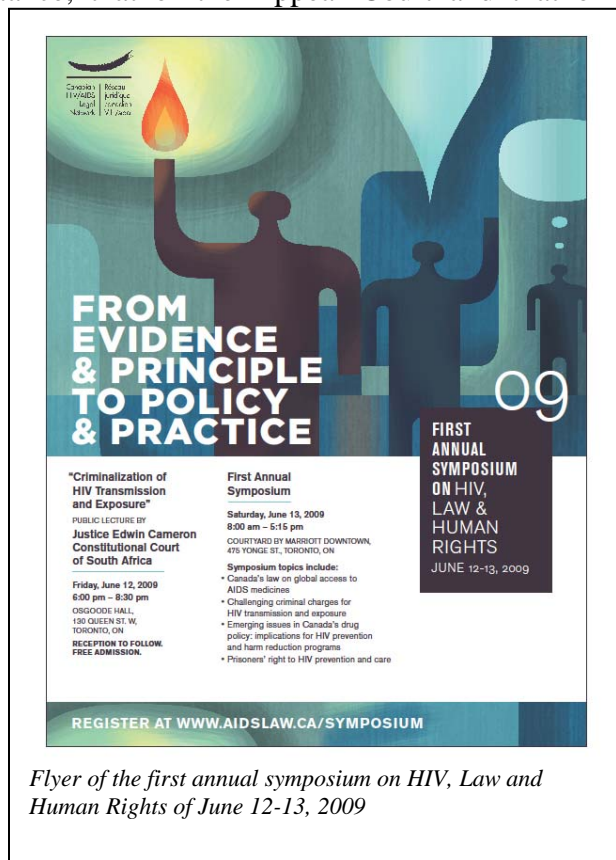
### **Other activities I participated in**

Other than the two major projects I have assisted by reporting the session “Challenging Criminal Charges for HIV Transmission and Exposure” of the first annual symposium of the Legal Network. The report is posted on the Legal Network site AIDSlex. I also did a “Brown Bag” presentation on my thesis research together with one of the other interns (Sandra Dughman). The “Brown Bag” presentation session is a forum for staff members or guests to inform colleagues about their ongoing projects around lunchtime. The audience provide for their own lunches (the well known brown paper bags). It is an informal activity and was held for the first time at the Legal Network. I also reviewed a complaint with regard to the use of marijuana for health therapy purposes. The complainant, a person living with HIV, sought support from the Legal Network in the form of a support letter, which I had the opportunity to draft. Finally I made a summary of the development of a HIV criminal case of the Netherlands. The summary includes the judgement of the Court in First Instance, that of the Appeal Court and that of the Supreme Court in 2007. This case is exceptional in the Canadian context, because the Supreme Court of the Netherlands holds a completely opposite legal view on the role of criminal law regarding risk full behaviour in the context of public health. It is for this difference in view that the defendant was acquitted from murder charges, aggravated assault charges and attempted aggravated assault charges. Sexual assault was not charged because exposure to HIV and transmission of HIV through unprotected sex are not considered a sexual assault. I did a free translation from Dutch to English of these case summaries for the Legal Network.

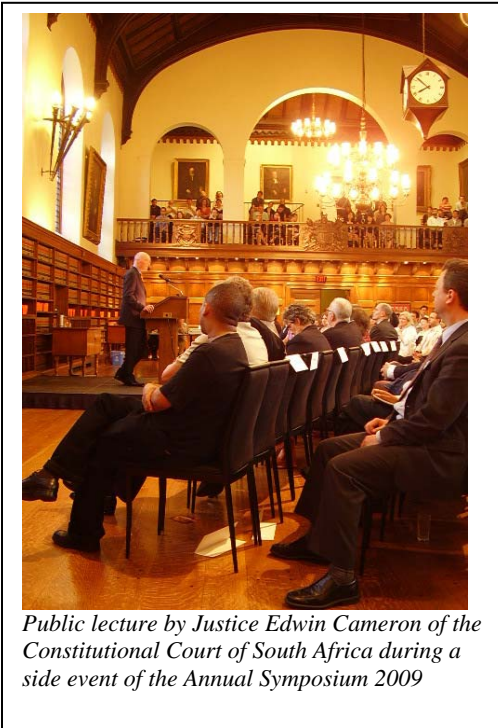
### **Social Events**

Besides work there were also some enjoying team building activities with the staff of the Legal Network.

We had a picnic in High Park on one of the sunniest Fridays of July 2009. Also we, the interns, were treated on a lunch at a restaurant by the permanent staff members of the Legal Network.



*Flyer of the first annual symposium on HIV, Law and Human Rights of June 12-13, 2009*



*Public lecture by Justice Edwin Cameron of the Constitutional Court of South Africa during a side event of the Annual Symposium 2009*

### **The Overall Experience**

I am convinced that my contribution to the work of the Legal Network has been relevant and most useful. To me as a foreign trained civil law lawyer the experience was extremely beneficial. By working with a very professional organization as the Canadian Legal Network that has both common law legal system and the civil law legal system experts on board helped me to expand my professional network. My Canadian criminal law focused projects enabled me to understand criminal case law better and to build more skills in working with case law as well as to understand the dimensions which federalism adds to the operation of the legal system. It is for those two reasons - my ability to meaningfully contribute to the work of the Legal Network and the opportunity given to me to build my skills in working with specific health related criminal case law in Canada- that I

offered to extend my stay with the Legal Network as a volunteer.

### **Recognition**

In conclusion I would like to thank the Reproductive and Sexual Health Law Program of the Faculty of Law of the University of Toronto also the Canadian HIV/AIDS Legal Network and the International Human Rights Program for making this extremely wonderful learning experience possible for me as well as for enabling me to contribute to the great work of the Canadian HIV/AIDS Legal Network through knowledge and experience sharing.