

# Aboriginal People and HIV/AIDS: Legal Issues

**info** sheet 4

*This info sheet suggests a number of non-legal approaches to dealing with HIV-related discrimination against Aboriginal people. It emphasizes the importance of education by and for Aboriginal people and of involving Aboriginal leaders in HIV/AIDS issues.*

## DEALING WITH DISCRIMINATION

### WHAT IS THE LEGAL APPROACH TO HIV/AIDS-RELATED DISCRIMINATION?

A number of approaches to improving the human rights situation of Aboriginal people living with or affected by HIV/AIDS were suggested throughout the discussions undertaken for this project. Significantly, very few of those consulted, particularly from the Aboriginal community, expressed much faith in human rights legislation.

The human rights system in Canada involves an adversarial process that is generally initiated by the filing of a complaint by an individual who experiences discrimination. The appropriate human rights agency investigates the complaint and determines whether a complaint has merit, settlement is possible, or a hearing required.

### WHAT ARE THE PROBLEMS WITH THE LEGAL APPROACH?

A backlog in cases, extensive delays, the inaccessibility of the process, problems associated with funding cuts in the system, and unsatisfactory remedies make the human rights system less than ideal, particularly for people living with or affected by HIV/AIDS.

The human rights system is underutilized by Aboriginal people, particularly those who experience HIV-related discrimination.

There is a perception that the complaints process does not reflect the circumstances of Aboriginal people. In addition, the process is seen as inappropriate for complaints by Aboriginal people against Aboriginal organizations, employers, or governments.

### NON-LEGAL APPROACHES TO HIV/AIDS-RELATED DISCRIMINATION

There are a number of non-legal approaches to problems of discrimination against Aboriginal people living with or affected by HIV/AIDS:

**Education:** Misinformation about HIV/AIDS contributes to discrimination both within Aboriginal communities and in the rest of Canada. Education efforts must continue in First Nations, Métis, and Inuit communities. It is widely recognized that education is a crucial component in both addressing the discrimination that often accompanies HIV/AIDS and in reducing the spread of HIV. It is important, however, that HIV/AIDS education initiatives for Aboriginal people take into account broader health and social issues, including the impact of a foreign culture on community practices and traditions, the effects of residential schools and assimilationist policies, and the high incidence of other health problems.

This is one of a series of nine info sheets on Aboriginal People and HIV/AIDS: Legal Issues

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Health practitioners and others working in mainstream services must also be exposed to information about Aboriginal living conditions, cultures, and traditions.

*Engaging the leadership:* The involvement of Aboriginal leaders in HIV/AIDS issues is important to help overcome homophobia, AIDSphobia, and reluctance to deal openly with sexuality and lifestyle issues, all of which hamper education and prevention initiatives and contribute to HIV/AIDS-related discrimination. Leadership is also necessary at the provincial and federal government levels to address HIV/AIDS issues for Aboriginal people.

*Aboriginal control and participation:* Throughout the process leading to self-government, Aboriginal people have emphasized the importance of Aboriginal control of, and participation in, decision-making affecting Aboriginal communities. The field of HIV/AIDS is no different. Due to their personal experience with HIV/AIDS, Aboriginal HIV/AIDS workers and Aboriginal people living with or affected by HIV/AIDS have a particularly significant contribution to make to the

development of a legal, educational, and health-care framework addressing HIV/AIDS issues, and should be prominently featured in the design of HIV/AIDS initiatives.

### SUMMARY

1. Problems with the human rights complaints system make it ineffective for everyone, but especially for Aboriginal people. Efforts must be directed toward improving this system.
2. An important response to HIV/AIDS-related discrimination is to reduce such discrimination through education and community engagement, with the assistance of community leaders.
3. The best people to guide the development of a comprehensive HIV/AIDS framework for Aboriginal people are Aboriginal people themselves, particularly those who have been personally affected by HIV either through their work or through their own experience as a person with HIV.

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The information in this series of info sheets, prepared in partnership by the Canadian HIV/AIDS Legal Network (Legal Network) and the Canadian Aboriginal AIDS Network (CAAN), is taken from three discussion papers prepared by Stefan Matiation, based on discussions with key informants working in the field of Aboriginal people and HIV/AIDS: (1) *Discrimination, HIV/AIDS and Aboriginal People*; (2) *HIV/AIDS and Aboriginal People: Problems of Jurisdiction and Funding*; and (3) *HIV Testing and Confidentiality: Issues for the Aboriginal Community*. Copies of the revised, second edition of the papers and of the info sheets are available on the Legal Network website at [www.aidslaw.ca](http://www.aidslaw.ca), through the Canadian HIV/AIDS Clearinghouse (tel: 613 725-3434, email: [aids/sida@cpha.ca](mailto:aids/sida@cpha.ca)), or through CAAN (tel: 613 567-1817; fax: 613 567-4652; email: [caan@storm.ca](mailto:caan@storm.ca)). Reproduction of this info sheet is encouraged. However, copies may not be sold, and the Legal Network and CAAN must be cited as the source of this information. For further information, contact the Legal Network (tel: 514 397-6828; fax: 514 397-8570; email: [info@aidslaw.ca](mailto:info@aidslaw.ca)) or CAAN.

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