

Aboriginal People and HIV/AIDS: Legal Issues

info sheet 5

This info sheet discusses jurisdictional barriers and their impact on HIV/AIDS programs, care, treatment, and support; and suggests ways to overcome these barriers.

JURISDICTIONAL BARRIERS

WHAT ARE THE JURISDICTIONAL BARRIERS FOR ABORIGINAL PEOPLE?

“Jurisdiction” means the legal authority of one order of government to legislate with respect to a subject matter. The term is also used here to refer to the authority of certain entities to manage or administer with respect to a subject matter.

There are three orders of government that have powers and responsibilities affecting Aboriginal people: federal, provincial/territorial, and Aboriginal (including band councils and Aboriginal political entities exercising self-governing powers). There are also a number of entities such as government departments and Aboriginal organizations that exercise management and administrative authority with respect to certain subject matters. The relationship between these governments and political/administrative entities is complicated.

As a result of this complexity, Aboriginal people encounter jurisdictional barriers with respect to HIV/AIDS programs, care, treatment, and support.

Divisions between federal and provincial governments

Territoriality issues between governments can hamper the coordination of efforts at

controlling the spread of HIV/AIDS. Territoriality disputes often involve both the federal and provincial governments trying to reduce their fiduciary responsibilities to Aboriginal people. The result can be a policy vacuum or service patchwork.

The Royal Commission on Aboriginal Peoples (RCAP) supports cooperative, coordinated action by all three orders of government, and recommends the institution of a framework for discussion of Aboriginal issues, with a view to establishing collaborative measures to resolve problems. Nowhere is cooperation and coordination more important than with respect to HIV/AIDS.

Interdepartmental barriers

A number of federal government departments have responsibilities that relate to Aboriginal people, including Health Canada, Indian and Northern Affairs, and Correctional Services. Although HIV/AIDS issues arise in all of these departments, interdepartmental divisions persist.

Divisions among Aboriginal people

Artificial jurisdictional distinctions divide the Aboriginal community against itself in many ways. The historical territories of First Nations, Métis, and Inuit communities have

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

ISSUES
(Info Sheet 1)

DISCRIMINATION
(Info Sheet 2)

HUMAN RIGHTS LAW
(Info Sheet 3)

DEALING WITH DISCRIMINATION
(Info Sheet 4)

JURISDICTIONAL BARRIERS
(Info Sheet 5)

HEALTH CARE,
(Info Sheet 6)

CONFIDENTIALITY
(Info Sheet 7)

HIV TESTING
(Info Sheet 8)

ACCESS TO HIV TESTING
(Info Sheet 9)



For further information please contact

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been disturbed by the imposition of provinces and reserves and by resettlement policies. Further, the interests and circumstances of on and off reserve, treaty and non-treaty, Métis, and Inuit groups are very different. In some cases imposed jurisdictional distinctions lead to conflict within the Aboriginal community.

It is important to respect the diversity of the Aboriginal community and allow self-naming by First Nations, Métis, and Inuit groups without a loss of services. It is also important to recognize that these diverse groups also share many interests and some problems, including a rising incidence of HIV. Creating linkages is important in the fight against HIV, a disease that respects no boundaries.

HOW CAN JURISDICTIONAL BARRIERS BE OVERCOME?

The need for coordination with respect to Aboriginal HIV/AIDS programs and services has long been identified as a priority by Aboriginal organizations.

The following initiatives help to overcome jurisdictional barriers:

Working groups. Interdepartmental and cross-jurisdictional working groups can be used to share information and develop coordination in policies and programs. However, in order for such initiatives to be effective, Aboriginal input must be included in the planning and decision-making process.

Aboriginal HIV/AIDS strategies. The first Aboriginal

HIV/AIDS strategy took shape in Ontario in 1994. The focus of the Ontario Strategy is on Aboriginal community-based design, development and delivery of services and programs that are Aboriginal-directed.

The newest comprehensive strategy is at the implementation stage in British Columbia. The BC strategy seeks to overcome jurisdictional barriers and establish a long-term framework for HIV work involving Aboriginal people. There is a strong commitment to make the strategy Aboriginal-designed and directed.

In 1995, an Aboriginal HIV/AIDS project was initiated in Alberta with the support of provincial Aboriginal leaders. The Alberta project sought to maximize Aboriginal control of HIV/AIDS initiatives for Aboriginal people and to unite cross-jurisdictional interests. The funding for the Project ended, however, in the spring of 1998.

No other province or territory has an Aboriginal-specific HIV/AIDS strategy.

Canadian Aboriginal AIDS Network (CAAN): CAAN seeks to improve coordination between organizations and individuals working in the field of Aboriginal people and HIV/AIDS across the country, and to be a national voice on HIV/AIDS issues for Aboriginal people.

It is also important to recognize the work of Aboriginal HIV/AIDS organizations that are not affiliated with CAAN.

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, through the Canadian HIV/AIDS Clearinghouse (tel: 613 725-3434, email: aids/sida@cpha.ca), or through CAAN (tel: 613 567-1817; fax: 613 567-4652; email: 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) or CAAN.

Funded by the HIV/AIDS Programs, Policy and Coordination Division, Health Canada, under the Canadian Strategy on HIV/AIDS. The views expressed are those of the author and do not necessarily reflect the official views of Health Canada.

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