

Aboriginal People and HIV/AIDS: Legal Issues

info sheet 7

This info sheet explains why confidentiality is so important in the context of HIV/AIDS, discusses some of the problems experienced in protecting it, and suggests ways to ensure that it is safeguarded.

CONFIDENTIALITY

WHY IS CONFIDENTIALITY IMPORTANT?

Discrimination and stigmatization continue to be experienced by those living with or affected by HIV/AIDS. HIV/AIDS-related discrimination is exacerbated by the vulnerability to further stigmatization of certain groups, including injection drug users, prison populations, men who have sex with men, and women. A person who is Aboriginal and HIV-positive can be among the most marginalized in Canada.

Confidentiality is critical in reducing the experience of discrimination and stigmatization related to testing positive for HIV, and in increasing the number of people who seek voluntary testing for HIV and treatment.

WHAT PROBLEMS ARE THERE FOR ABORIGINAL PEOPLE WITH RESPECT TO CONFIDENTIALITY?

For many reasons protecting confidentiality is difficult and often unrealistic.

Confidentiality and health practitioners

In some provinces, provisions in public health legislation impose a duty of confidentiality on public health officials. In addition, physicians have a legal and ethical duty of confidentiality to their patients, although

there are situations where a breach of confidentiality is thought to be justified.

Despite such legal and ethical duties, many Aboriginal people tell stories about breaches of confidentiality by health-care practitioners, including physicians, Community Health Representatives, and clinic staff. Such breaches are often the result of misunderstandings about HIV or are due to local gossip. It must be emphasized that most health-care practitioners are professional in this regard, but that the perception that practitioners do not respect confidentiality exists.

In response to these issues, the need for confidentiality policies has been widely recognized, and such policies have been implemented by some Aboriginal communities and health organizations. It is important that confidentiality policies affecting Aboriginal people be ratified by Aboriginal governments, where applicable, and be designed and implemented by members of Aboriginal communities.

Confidentiality and community

Many confidentiality problems for Aboriginal people with HIV/AIDS come down to the difficulty of remaining anonymous in smaller communities. Aboriginal communi-

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

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ties are often small and closely knit. People know each other, even in some Aboriginal communities in urban areas. Confidentiality may be breached through gossip, rumours, discussion between friends, family and others, or through the effects of seemingly innocuous policies – for example, bills for health services may be sent back to the band council of a person being tested for HIV.

Because confidentiality is difficult to ensure in Aboriginal communities, education about HIV/AIDS is essential in reducing HIV/AIDS-related discrimination. With HIV/AIDS education, inappropriate responses to HIV may be replaced by caring, compassion, and community support. In such cases, confidentiality becomes less of an issue.

SUMMARY

1. Education about HIV/AIDS issues is an important component in reducing the impact of loss of confidentiality on people living with or affected

by HIV/AIDS, and in reducing discrimination and improving a community's response to HIV/AIDS.

2. Where they have not already done so, health-care facilities that provide services to Aboriginal people and Aboriginal communities and organizations should develop confidentiality policies.
3. The confidentiality of a person who tests positive for HIV should be protected.
4. Aboriginal people should be involved in and guide the development of solutions to issues raised by partner notification in Aboriginal communities.

For further information on HIV testing and confidentiality, see also *HIV Testing and Confidentiality: Final Report* (Canadian HIV/AIDS Legal Network & Canadian AIDS Society, 1998; the report can be obtained from the Canadian HIV/AIDS Clearinghouse at the address below).

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.

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