

Creating a legal and policy environment for health-care settings free of discrimination:

Litigation & other legal mechanisms

“Zero Discrimination in Health-Care Settings”
UNAIDS Programme Coordinating Board
Geneva, 14 December 2017

Richard Elliott, Canadian HIV/AIDS Legal Network



Canadian
HIV/AIDS
Legal
Network | Réseau
juridique
canadien
VIH/sida

Discrimination undermining equal access to health care

- 1) Direct discrimination in delivery of health services
- 2) Discriminatory law/policy denying or impeding access to specific health services
- 3) *Macro-level discrimination: criminalization*

Direct discrimination in services

- ❑ Sterilisation without consent of women living with HIV

Litigation:

Government of the Republic of Namibia v LM and Others [2014] NASC 19

- Court recognized (some) rights violated
- but found applicants' claims of discrimination not supported by other evidence

Discriminatory law/policy denying or impeding access to specific services

❑ Prohibition of evidence-based treatment

Example 1: blanket prohibition on OST in Russia

Litigation:

Kurmanayevskiy et al. v. Russia, ECtHR

- 3 cases in progress re prohibition of torture, right to respect for private life, prohibition of discrimination (based on health status)

Discriminatory law/policy denying or impeding access to specific services

❑ Prohibition of evidence-based treatment

Example 2: regulations prohibiting prescription of diacetylmorphine in Canada adopted in 2013

Litigation + law reform:

- *Providence Health Care Society v. Canada (Attorney General)*, 2014 BCSC 936: court granted injunction to protect existing patients, but not broader remedies sought
- regulations rescinded 2016

Discriminatory law/policy denying or impeding access to specific services

❑ Denial or undermining of harm reduction services

Example 1: effective prohibition on prison-based needle and syringe programs (PNSPs) in Canada

Litigation:

Simons et al. v. Minister of Public Safety et al,
Ontario Superior Court of Justice (in progress)

- constitutional rights to life & security of the person, equal benefit and protection of the law

Discriminatory law/policy denying or impeding access to specific services

❑ Denial or undermining of harm reduction services

Example 2: legislative hurdles to supervised consumption services (SCS) in Canada

Law reform:

- Contra to 2011 SCC decision, 2015 law created multiple hurdles to obtaining ministerial exemption allowing sites without prosecution
- 2017 bill enacted repealing 2015 law, replacing with simpler, less onerous regime

Conclusions

- ❑ need for:
 - “know your rights” programmes
 - access to legal services and support
 - access to lower-threshold mechanisms for redress for discrimination
 - advocacy capacity for litigation and law reform
- ❑ benefits and limits of litigation and of law reform
- ❑ importance of policy & programmatic guidance and initiatives

Canadian HIV/AIDS Legal Network
1240 Bay Street, Suite 600
Toronto, Ontario, Canada M5R 2A7

Phone: +1 416 595-1666

Fax: +1 416 595-0094

Email: relliott@aidslaw.ca



Canadian
HIV/AIDS
Legal
Network

Réseau
juridique
canadien
VIH/sida

www.aidslaw.ca