



Précis Paper

HIV/AIDS Legal Centre: Access to Justice

Melissa Woodroffe and Vicki Gibb discuss the ongoing stigma and discrimination faced by people with HIV and the importance of the legal support provided by HALC.

Discussion Includes

- Clinic 16 and HALC
- HIV and HIV/AIDS: transmission and risk factors
- HALC: donations and volunteers
- HALC: casework, law reform and education
- HIV: discrimination in employment, the health care system and migration
- HIV and suppression orders

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HIV/AIDS Legal Centre: Access to Justice

1. In this edition of BenchTV, Melissa Woodroffe (Solicitor) and Vicki Gibb (Counseling Manager) discuss the support HALC provides to people with HIV. This includes casework, legal advice, law reform, education and community work.

Introduction

2. Clinic 16 at the Royal North Shore Hospital provides treatment and support for people living with HIV. HALC is a not-for-profit, specialist community HIV/AIDS legal centre. It provides free legal advice and representation for people with HIV and hepatitis type matters. HALC also advocate for the rights of people with HIV, contribute to law reform and provide community legal education. Today in Australia there are around 25000 people living with HIV, 1/3 of which are living below the poverty line in increasing levels of vulnerability.

HIV

3. HIV stands for human immunodeficiency virus. HIV is a blood borne virus that if left untreated, can progress to HIV/AIDS. AIDS stands for acquired immune deficiency syndrome. AIDS is quite rare in Australia because of the availability of effective anti retro-viral medication. Furthermore, people who fall into high-risk groups are encouraged to be tested regularly and if diagnosed can access treatment very early.
4. Transmission occurs through sexual intercourse or blood to blood contact, i.e. sharing injecting equipment. HIV cannot be transmitted through saliva or ordinary day to day contact, i.e. kissing, hugging or sharing crockery.
5. Due to the breakthroughs with HIV medication, it is now considered to be a chronic but manageable condition. A person who is consistently taking medication can achieve an undetectable viral load. If a person, has a sustained, undetectable viral load for at least 6 months they will not transmit the virus.
6. People living with HIV are still detrimentally affected by social stigma and discrimination. The initial diagnosis is particularly challenging for people with HIV due to the misconceptions and stereotypes about HIV, often based off the conditions in the 80's.

7. The most common concerns for people with HIV are around having children, negotiating future sexual relationships, employment and the ability to migrate.
8. Many people with HIV also belong to vulnerable and marginalised groups. The NSW HIV strategy prioritises gay men, Aboriginal and Torres Strait Islanders, drug users, people from culturally and linguistically diverse communities, people with mental health conditions and people already struggling with issues around employment and housing. For people to manage their treatments and overall health effectively they need access to secure housing, healthcare, income, food and a level of social engagement.

Clinic 16 and HALC

9. Clinic 16 works with people with HIV in a multi-disciplinary team of doctors, nurses, health educators and counsellors. HALC plays a vital role in providing further support to many of these individuals through legal advice and challenging the stigma and discrimination that still exists around HIV.
10. HALC is funded by state and federal governments but is increasingly dependent upon donations from the community, fundraising efforts and a dedicated team of volunteers who often almost double the capacity of HALC to provide legal services.
11. HALC employs 4 solicitors and in addition is fortunate to have excellent relations with barristers and private law firms that provide pro bono services and advice.
12. The bulk of HALC's work is direct casework i.e. legal representation and advice to clients with HIV related legal matters. HALC also participates in law reform, such as their contributions to the review of the Public Health Act 2010 (NSW) and the consensus statement on criminal transmission of HIV.
13. HALC also publishes resources that are utilised by people with HIV and health care professionals. An example is the state specific guides around when a person with HIV is required to disclose their HIV status.
14. Clients come to HALC with a huge variety of legal problems. This includes discrimination in:
 - a. the workplace after disclosure
 - b. the health care system, i.e. being denied IVF or insurance
 - c. social security,
 - d. wills, estates

15. In relation to minor criminal matters, following a HIV diagnosis, people can behave in an uncharacteristic manner. HALC aids people in these situations to be redirected to the health care system and receive proper care, particularly in regards to any mental health issues they may have. Often this will involve an application under s32 of the Mental Health (Forensic Provisions) Act 1990 (NSW).
16. HALC continues to pursue test cases in court to clarify the rights of people with HIV. This is particularly relevant for discrimination in insurance services. HALC seeks to highlight the often out-dated actuarial data insurers are using to inspire systemic change and combat the discriminatory nature of many insurance policies.

Migration

17. Migration is a particularly difficult area for people with HIV to navigate. Migration agents themselves are often poorly informed and thus provide incorrect advice about an applicant's prospects. Some visas have health waivers.
18. A health waiver is available for a partner visa. HALC has and continues to assist clients with submissions about the compelling and compassionate factors that exist to support a waiver. A protection visa or refugee visa might also be available for someone with HIV. In many countries people are still persecuted and discriminated against because of their HIV status or their sexuality. Examples include, Iran, Indonesia, Jamaica, Tonga, Philippines, Bangladesh, Zimbabwe, China and South Africa.

In Court

19. It is important to have a special sensitivity when dealing with clients with HIV, particularly HALC is conscious of applying to have hearings held in private and names changed on the publication of decisions. Courts and tribunals are usually very accommodating of the need to maintain the client's anonymity and prevent the exposure of the client's HIV status.

A case study

20. Ms Woodroffe discusses an example of a case HALC has worked on. HALC aided a Thai citizen, Kanchana, who was HIV positive. Her husband, an Australian man called Robert had left the family home with their baby. HALC applied for a recovery order in the family court to locate Robert. The baby was returned to Kanchana. Robert withdrew his sponsorship of a partnership visa. The migration regulations provide for a visa to still be granted where there is a child of the relationship. HALC assisted Kanchana to provide the additional evidence

required, especially in relation to the health waiver. HALC continued to support Kanchana whilst the parenting orders were finalised in the family court, and to obtain an AVO to prevent Robert from sending threatening messages and disclosing her HIV status.

21. This case is important because it demonstrates the complexity and multifaceted nature of the situations many of HALC's clients face and the importance of lawyers working with health workers and counsellors to offer holistic support to clients.

Donations

22. HALC is a registered charity, all donations are tax deductible. HALC operates on a small budget and is incredibly grateful for any support. All donations go towards the continued operation of the centre and the provision of legal advice and representation. Donations can be made via HALC's website www.halc.org.au.

BIOGRAPHY

Melissa Woodroffe

Principal solicitor – HIV/AIDS Legal Centre, Sydney

Melissa joined the HIV/AIDS Legal Centre (HALC) in 2008. Prior to coming to the law, Melissa had a career in science, working in the UK and New Zealand. She is a registered migration agent and a member of the University of Sydney Human Ethics Committee. Melissa has a particular interest in the intersection of HIV, public health, the law and the rights of the individual, and maintains an interest in the ongoing scientific research in relation to HIV and its treatment.

Vicki Gibb

Counselling Manager – Northern Sydney Sexual Health Service, Sydney

Vicki has a degree in Social Work from Sydney University and also tertiary qualifications in frontline management and teaching. Vicki currently manages a small counselling team within a NSW Health Community service. This provides sexual health services, care and support for people with HIV and viral hepatitis. Further, Vicki's social work background is diverse, having worked with children and families, people with disabilities, community age care and for the last 13 years in the HIV/sexual health sector.

BIBLIOGRAPHY

Legislation

Mental Health (Forensic Provisions) Act 1990 (NSW)

Public Health Act 2010 (NSW)