

Harm Reduction Services for Indigenous People Who Use Drugs



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Questions and Answers

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In Canada, Indigenous people experience higher rates of injection drug use and less access to health care than non-Indigenous people.

For many Indigenous people, drug use offers a means of coping with traumatic life circumstances, including those related to their experiences with the residential school and child welfare systems in Canada, legacies of colonialism and racism, and childhood traumas. While government-funded services and supports exist, there remains a lack of culturally appropriate and culturally safe harm reduction programs and funded harm reduction services in Indigenous communities. As the Canadian Aboriginal AIDS Network has noted, harm reduction is about respecting the dignity and value of all human beings, accepting that people who use drugs may continue to use and reducing the harms associated with drug use. Harm reduction is proven to engage Indigenous people who use drugs with care, treatment and support.¹

Yet many Indigenous people who use drugs have little or no contact with the health care system. For many, travelling to harm reduction and other health services requires overcoming barriers such as transportation costs, family responsibilities, work commitments, lack of child care, and stigma around drug use and treatment. The need to seek services outside one's local community may be particularly pronounced for people living on reserves or in remote and rural areas, where anonymity is difficult to preserve and there may be greater concerns about privacy.

As a result, HIV and hepatitis C (HCV) infection through injection drug use is happening rapidly amongst Indigenous communities in Canada. Indigenous women are disproportionately affected, in part because they face a lack of gender-sensitive harm reduction programming and, if they are primary caregivers, the additional risk that social service authorities may learn of their drug use and take custody of their children. **There is an urgent need to improve and increase culturally appropriate harm reduction services for Indigenous people.**

¹ *Harm Reduction Implementation Guide*, Canadian Aboriginal AIDS Network, 2011.



At the same time, Indigenous people who *are* able to access these services may have questions about the services and the laws that apply to them:

- Are harm reduction programs legal?
- Do you risk breaking a law if you are a client of a harm reduction program?
- Can police arrest you if you carry harm reduction equipment?
- Can other people find out if you are using harm reduction services?

This guide provides you with information related to harm reduction services such as needle and syringe programs, safer drug consumption services, opioid substitution therapy (e.g., methadone) and naloxone.

This guide does not provide legal advice about your particular situation. If you want or need legal advice, you should talk to a lawyer.

What services and supplies does a needle and syringe program offer?

Needle and syringe programs — sometimes also called needle exchange programs — exist to reduce the risks of harm people may face when injecting drugs, especially the risks of getting or transmitting infections such as HIV or HCV by using material that is not sterile.

These programs offer free safer injection equipment, including sterile needles and syringes, and a place for people to dispose of their used equipment. They also provide harm reduction education and information about HIV and HCV prevention.



In addition to sterile needles and syringes, many programs offer other items commonly used when injecting drugs, such as alcohol wipes (to clean the skin surface before injecting), tourniquets (or “ties,” so that it is easier to properly and safely inject into a vein without causing additional damage), filters (to remove drug particles or other

debris from the substance being injected), and materials such as sterile water, acidifiers and cookers to prepare drugs for injection.

Some programs may also offer safer smoking equipment such as Pyrex stems, brass screens, chopsticks and mouthpieces that may be used to smoke various substances (e.g., heroin or crack). They may also provide safer sex products such as latex condoms and lube.

Along with safer drug use and safer sex supplies, some needle and syringe programs offer HIV and HCV testing.

Most needle and syringe programs are at a fixed location, but there are also mobile programs that might visit different locations at different times to distribute supplies. Some mobile programs deliver injecting supplies to clients who call the fixed service.

What services and supplies does a safer consumption site offer?

Safer consumption sites also provide sterile equipment but go further by providing a safe space where people can inject their own drugs, usually in the (non-intrusive) presence of nurses or other health care workers, without the risk of violence and other risks

that may often arise when injecting illegal drugs in other environments (particularly outdoors). If operating with a legal authorization from the federal government, they also offer a space where illegal drugs can be used without the risk of criminal charges for possessing those drugs.

Safer consumption sites can also connect people to health care and community services, including drug treatment programs.

At the time of writing, only two safer consumption sites (both in Vancouver) were operating with official legal authorization from the federal government, but a number of other sites across Canada have been proposed. Some are still waiting for approval from the federal government. Others have already been approved by the federal government and are preparing their facilities for the service.



Can I be arrested for using the services of a needle and syringe program or a safer consumption site?

You cannot be arrested for merely being present at a needle and syringe program or a safer consumption site.

While it is against the law to possess or traffic certain drugs in Canada, the federal government can exempt clients and operators of a safer consumption site from criminal prosecution for the possession of illegal drugs while they are on the premises of such a health facility.² In practice, this means that you can inject drugs without the threat of criminal prosecution, *if you do it inside the exempted safer consumption site.*

Outside a needle and syringe program or safer consumption site, you cannot be criminally charged for simply *having* sterile injection equipment or safer smoking equipment that you obtained from the program. We are not aware of anyone ever being charged for merely possessing unused drug use equipment obtained from a harm reduction program.



If you *distribute* that equipment to other people, there is a theoretical risk that you could be charged for distributing “instruments for illicit drug use.”³ But it is possible to argue that possession of safer drug use equipment is legal in Canada because the equipment is

considered a “device” used to prevent or mitigate disease. Any such device is excluded from the definition of illegal “instruments for illicit drug use.”⁴

² *Controlled Drugs and Substances Act* (S.C., 1996, c. 19), s. 56(1).

³ *Criminal Code* (R.S.C., 1985, c. C-46), s. 462.2.

⁴ *Food and Drugs Act* (R.S.C., 1985, c. F-27), s. 2.

What about having used drug equipment?

and syringe program or safer consumption site you *may* be at risk of prosecution for the crime of possession of illegal drugs just by possessing the equipment once it has been used.

Police have confiscated or destroyed drug use equipment they have found on people, threatened to arrest people because of drug residue in their drug use equipment, and charged and convicted people for possessing small amounts of illegal drugs in drug use equipment.⁶ Arrests on these grounds would appear to be legal under the *Criminal Code*.



Police officers can stop you if they suspect that you have committed a crime. If police detain or arrest you for possessing illegal drugs, you should immediately contact a criminal lawyer for help. If you are detained by the police, they must inform you that you can speak to a lawyer and provide you with an opportunity to do so. It is a good idea to not answer questions from the police until you have spoken with a lawyer. Anything you say to the police could be used as evidence against you in court.

The punishment for possessing illegal drugs depends on a number of factors, including the type of drug, and could result in a fine or jail time.

⁵ *The Controlled Drugs and Substances Act* (S.C., 1996, c. 19) prohibits people from possessing, importing, exporting or trafficking not only a controlled substance itself, but also “any thing that contains or has on it a controlled substance and that is used or intended or designed for use ... in introducing the substance into the human body.” See s. 2(2)(b).

⁶ See, for example, *Nova Scotia (Public Safety, Director) v. Cochrane*, [2008] N.S.J., No. 73.

If you are Indigenous and have been charged or convicted of an offence

If you are an Indigenous person convicted of a crime, sentencing judges are required by law to consider the unique circumstances that played a part in bringing you before the court and the most appropriate type of punishment given your Indigenous heritage or connection. (These factors may also be taken into account at the bail hearing, which happens soon after a criminal



charge is first laid and determines whether a person is held in custody until trial or is released, usually subject to various conditions.)

Taking into account the particular factors affecting Indigenous people is required under the *Criminal Code*,⁷ as well as the 1999 Supreme Court of Canada decision in *R. v. Gladue*.⁸ This is true for all people in Canada who self-identify as Indigenous, including status and non-status Indian, Inuit and Métis people, and whether they are living on or off reserve.

While the requirement to consider these factors is meant to respond to the overrepresentation of Indigenous people in prison, it does not mean that Indigenous people automatically qualify for lighter sentences. It is important that you inform your lawyer or duty counsel that you identify as Indigenous and that you work with them to get a strong report at your pre-sentencing hearing or your bail hearing that addresses the particular factors affecting Indigenous people that the courts must take into account.

⁷ *Criminal Code*, s. 718.2(e).

⁸ *R. v. Gladue*, [1999] 1 SCR 688.

What is opioid substitution therapy (e.g., methadone and Suboxone)?

Opioid substitution therapy (OST) is the prescription of medication such as methadone or Suboxone to treat dependence on opioids (such as heroin). While OST is stigmatized in many Indigenous communities, it has been proven to be a very effective means of addressing the harms that can be associated with opioid dependence.

Methadone is typically given dissolved in liquid to patients, who have to either go to a clinic or pharmacy daily or get “carries” to bring a supply home for a certain period of time. Not all doctors can prescribe methadone. Only doctors who have received authorization from the federal government are permitted to prescribe methadone for the treatment of opioid dependence.



Suboxone is the brand name for a prescription drug that combines the drugs buprenorphine and naloxone. Suboxone is taken in pill form that dissolves under your tongue. Burprenorphine produces a milder version of the effects of other opioids (including methadone), so it can stave off withdrawal symptoms and cravings. Naloxone is a drug that, when it gets into the blood stream, blocks and reverses the impact of opioids; this is why it is used in emergency situations of opioid overdose to force rapid withdrawal and prevent the person from dying.

Where can I get methadone?

Methadone is eligible for coverage under Health Canada's Non-Insured Health Benefits (NIHB), the national pharmaceutical program for Indigenous people. In the Atlantic region and Saskatchewan, the NIHB Program includes some restrictions for clients taking methadone, including restrictions on other drugs that clients taking methadone can use if they want to keep receiving methadone. NIHB clients who are taking methadone in Saskatchewan are also required to choose one doctor to write all prescriptions for drugs monitored by NIHB.⁹

All claims for methadone are stored in the NIHB's electronic claims processing system, which is governed by the Privacy Code. Any personal information that the NIHB collects must be done in accordance with its Privacy Code and privacy laws, which require the NIHB to take all reasonable precautions to protect the security and confidentiality of the personal information it collects.¹⁰



Some drug treatment centres, including drug treatment centres for Indigenous people, do not take clients on methadone.¹¹ According to the treatment centre directory of the National Native Alcohol and Drug Abuse Program (NNADAP), which helps set up and operate drug treatment programs in Indigenous communities, 14 NNADAP centres across Canada currently accept clients on methadone, including youth.¹² Please see Figure 1 for more information.

⁹ *Non-Insured Health Benefits Program Update*, First Nations and Inuit Health Branch Health Canada, December 2016. Note Health Canada indicates that “these measures for clients taking methadone will be expanded to other provinces at a later date.”

¹⁰ See *Protecting Personal Privacy*, First Nations and Inuit Health Branch Health Canada, February 2012, and *Non-Insured Health Benefits Program Privacy Code*, First Nations and Inuit Health Branch Health Canada, February 2005.

¹¹ *Honouring Our Strengths: A Renewed Framework to Address Substance Use Issues Among First Nations People in Canada*, Health Canada, 2012, at p. 46.

¹² *Addictions treatment for First Nations and Inuit*, Government of Canada [undated].

Where can I get Suboxone?

Program.¹³ This means that you will be asked to choose a single doctor to write all prescriptions for drugs monitored by NIHB. Once this doctor has agreed to be your sole prescriber for these medications, NIHB will cover the cost of those eligible prescriptions, which can be dispensed at any pharmacy.¹⁴ When you take your prescription to a pharmacist, the pharmacist will be required to call the NIHB Program to provide any additional information required to process your claim.

Suboxone will not be prescribed to you if you are pregnant, although your doctor could contact Health Canada's Special Access Programme to obtain authorization for buprenorphine.¹⁵

Suboxone doses are normally witnessed in a pharmacy for a certain period of time when a person first starts to take this medication. Depending on the situation, NIHB may provide Medical Transportation benefits to individuals who do not have access to Suboxone locally, so that it can be witnessed. However, the NIHB Program does not provide Medical Transportation benefits for people simply to pick up their prescriptions.

According to the NNADAP treatment centre directory, 18 NNADAP centres across Canada currently accept clients (including youth) on Suboxone.¹⁶ Please see Figure 1 for more information.



¹³ *Non-Insured Health Benefits Program Update.*

¹⁴ *The Non-Insured Health Benefits Prescription Monitoring Program (NIHB-PMP), First Nations and Inuit Health Branch Health Canada, November 2014.*

¹⁵ *Suboxone, College of Physicians and Surgeons of British Columbia [undated].*

¹⁶ *Addictions treatment for First Nations and Inuit.*

Figure 1: NNADAP Treatment Centres That Accept Clients on Methadone or Suboxone

Treatment Centre	Accepts clients on methadone	Accepts clients on Suboxone
Anishnawbe Health Toronto (Toronto, ON)	✓	✓
Armand Bekattla (Clearwater River, SK)		✓
Athabasca Health Authority Mental Health and Addictions Outpatient Program (Black Lake, SK)	✓	✓
BTCIH Youth Outreach (North Battleford, SK)	✓	✓
Centre de réadaptation Wapan (La Tuque, QC)	✓	✓
Cree Nations Treatment Haven (Canwood, SK)	✓	✓
Eagles Nest Recovery House (Shubencadie, NS)	✓	✓
Ekweskeet Healing Lodge (Onion Lake, SK)		✓
Gya'Wa' Tlaab Treatment Centre Society (Haisla, BC)	✓	
Kapown Rehabilitation Centre (Grouard, AB)	✓	✓
Leading Thunderbird Lodge (Fort Qu'Appelle, SK)		✓
Mi'kmaw Lodge Treatment (Eskasoni, NS)	✓	✓
Mistahey Musqua Treatment Centre (Loon Lake, SK)		✓
Nimkee Nupigawagan Healing Centre (Muncey, ON)	✓	✓
North Wind Healing Centre Society (Dawson Creek, BC)	✓	
Rising Sun (Eel Ground, NB)	✓	
Round Lake Treatment Centre (Armstrong, BC)	✓	
Sakwatamo Lodge (Prince Albert, SK)		✓
Saulteaux Healing and Wellness Centre (Kamsack, SK)	✓	✓
Tsow - Tun Le Lum Treatment Centre (Lantzville, BC)		✓
Wanaki Centre (Maniwaki, QC)		✓
White Buffalo Youth Inhalant Treatment Centre (Prince Albert, SK)		✓

What is injectable opioid therapy?

Injectable opioid therapy (IOT) is the prescription of medication such as heroin or hydromorphone for opioid dependence. In 2016, Health Canada amended regulations allowing doctors to prescribe heroin for the treatment of chronic, relapsing opioid dependence. This means that doctors can apply under a “special access program” to treat a patient with heroin when other treatments have failed, are unsuitable or are unavailable.

Your doctor is responsible for making a request on your behalf. For more information about heroin treatment for opioid dependence, you should speak with your doctor.

What is naloxone? Where can I get it?

Naloxone is a medication that can temporarily reverse the effects of an opioid overdose. It usually starts working within minutes, but repeated doses may be needed, and the effects only last 30 to 60 minutes. So if there are still opioids in someone’s body, they can overdose again.

Naloxone can be used for cases of opioid overdose outside hospital settings, and provincial or territorial governments can allow the drug to be dispensed without a prescription. At the time of writing, at least seven of the 13 provinces and territories provided take-home naloxone kits through community programs.¹⁷ These programs also offer training to families and friends on how to best respond to an opioid overdose and how to use naloxone most effectively.

Naloxone is also on the list of drugs covered under Health Canada’s NIHB. Where pharmacies provide supplies such as alcohol swabs, syringes, gloves or a breathing mask to support the use of naloxone, a provider can bill the cost of the naloxone and the supplies as a “naloxone kit.”¹⁸

¹⁷ CCENDU Bulletin: *The Availability of Take-Home Naloxone in Canada*, 2016.

¹⁸ *Non-Insured Health Benefits Pharmacy Policy Changes: New Pharmacist Initiated Treatment Policy & Naloxone Coverage*, Health Canada, May 2016.

Can the staff at a harm reduction program tell other people that I use drugs?

Staff at harm reduction programs have a legal and ethical obligation to maintain your confidentiality and take measures to safeguard your health information. Maintaining confidentiality is fundamental to the relationship of trust between a service provider and a client. Generally, health care

providers need your express consent to disclose your health information to someone who is not a health care provider involved in your care.

However, the right to privacy and confidentiality is not absolute. In every province and territory, there may be limited circumstances where the law authorizes or requires your personal health information. For more information about privacy in health care settings, see *Indigenous Communities: HIV, Privacy and Confidentiality* and *Know Your Rights: Privacy and Health Records*.



Resources

For more information on how to access programs run by the National Native Alcohol and Drug Abuse Program or the National Youth Solvent Abuse Program, see *Addictions treatment for First Nations and Inuit* on the Government of Canada website.

For information about alternative harm reduction activities where there are no accessible programs, see *Harm Reduction Implementation Guide* from the Canadian Aboriginal AIDS Network, 2011. As the Guide notes:

Our communities can address gaps in services for the most at-risk people in our communities and reduce the harms associated with problematic substance use including the transmission of HIV and HCV.... Whether a community wants a formal Needle Exchange Program or not, workers can get educated about where to get clean needles (pharmacies); how to discard of them safely (sharps containers); how to educate community for what to do if used needles are found.... Sometimes it's as simple as providing clean water. Sometimes part of reducing harm includes discussing alternative means of using; for example, smoking instead of injecting, or ingesting orally instead of snorting. Sometimes a person who injects drugs needs to be taught to rotate injection sites so infections do not occur so readily. Sometimes it could involve suggesting someone drink home brew instead of mouthwash (or other alternative products containing alcohol) to reduce liver damage. Harm reduction happens when the client is interested in talking about it — high, sober, drunk, needing a fix, experimenting, relapsing, withdrawing, or when they are 'dope sick'. Focusing on the harm is a tool in addressing individuals' substance use; the point where they identify their use as being problematic in their opinion is where the conversation can start.

Canadian Aboriginal AIDS Network, *Walk With Me: Pathways to Health Harm Reduction Service Delivery Model*, June 2007.

Canadian Centre on Substance Abuse, *Harm reduction policies and programs for persons of Aboriginal descent*, June 2007.

Canadian HIV/AIDS Legal Network, *Do Not Cross: Policing and HIV Risk Faced by People Who Use Drugs*, May 2007.

Canadian HIV/AIDS Legal Network, *Know Your Rights: Privacy and Health Records*, 2014.

Canadian HIV/AIDS Legal Network and Canadian Aboriginal AIDS Network, *Indigenous communities: HIV, privacy and confidentiality*, 2017.

DUDES Club
www.dudesclub.ca

The 595 Prevention Team
www.the595.ca

Tracey Prentice, “Visioning Health: Using the Arts to Understand Culture and Gender as Determinants of Health for HIV-Positive Aboriginal Women,” PhD Dissertation, University of Ottawa, 2015. Available at www.ruor.uottawa.ca/bitstream/10393/32956/1/Prentice_Tracey_2015_thesis.pdf.

Visioning Health II
www.uvic.ca/research/centres/circle/research/visioning-health-ii/index.php

Western Aboriginal Harm Reduction Society (WAHRS)
<http://wahrs.ca/>

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