



HALCO – HIV & AIDS Legal Clinic (Ontario)
65 Wellesley Street East, Suite 400
Toronto, Ontario, Canada M4Y 1G7

416-340-7790 / 1-888-705-8889
TTY 416-922-2352 / 1-866-513-9883
E-Mail: talklaw@halco.org
FAX: 416-340-7248

Dignity. Equity. Justice.

Serving People with HIV/AIDS through Legal Advocacy.

HALCO news is back! We are very pleased to provide you with this new edition.

The delay in publication is the result of some big changes at HALCO over the past year, which also resulted in this “extra large” edition [please see “HALCO Update” on page 2 for details].

In this Issue...

- | | |
|---|--------------|
| - HALCO Update | - page 2 |
| - Our services are needed more than ever | - page 4 |
| - Ontario’s New Human Rights Regime | - page 4 |
| - Paralegal Licensing and Community Agencies in Ontario | - page 5 |
| - One Step Closer to Slightly Clearer Privacy Law - A Client’s Story | - page 7 |
| - New “Rapid HIV Tests” and More Anonymous Test Sites | - page 8 |
| - New Ontario Child Benefit | - page 9 |
| - ODSP/OW “Special Diet Allowance” & HIV | - page 10 |
| - Canada Pension Plan Survivor Benefit Class Action Update | - page 11 |
| - <i>Adding Insult to Injury</i> - the Ombudsman’s Report on the Criminal Injuries Compensation Board | - page 12 |
| - Ontario’s <i>Mandatory Blood Testing Act</i> | - page 14 |
| - 2007 Awards for Action on HIV and Human Rights | - page 16 |
| - Rights & Dignity Partners | - page 16 |
| - Chair’s Report at HALCO Annual General Meeting | - page 17 |
| - <i>HALCO Membership Application</i> form | - final page |

HALCO Update

2007 was a year of dramatic change and challenge for HALCO.

Staff Changes

HALCO has a staff of six permanent full-time positions: Executive Director [who must be a lawyer], two Staff Lawyers, a Community Legal Worker, an Office Manager and an Administrative Assistant. We also have an articling student and a summer student each year.



We are very excited to announce that we are advertising to hire a permanent, full-time, bilingual Immigration Specialist staff lawyer. Please contact us or see the *What's New* page of our website for the job posting [application deadline June 13, 2008].

Ruth Carey, who had been our Executive Director since 1996 [we opened in 1995], accepted an appointment to the new Landlord and Tenant Board in late 2006. Ruth devoted her life to the clinic and in many ways was the heart and soul of HALCO. Her incredible contributions are immeasurable.

Rick Lobodzinski, who has been a dedicated staff member at HALCO since the inception of the clinic, moved from Office Manager to the new Administrative Assistant position. We are extremely fortunate that Rick will continue to be a welcoming face and voice for people calling and visiting our office.

Catharine Allan, who was our Community Legal Worker for two years, decided to return to government service. Her commitment to HALCO and her connections to the community were invaluable.

Catherine Benson's two and a half years of service as our Receptionist were much appreciated.

Needless to say, this amount of change in such a short time has led to significant challenges. The unquestioning commitment of our continuing staff, **Renée Lang**, **John Nelson**, **Janet Jin** [our then articling student] and **Rick**, enabled us to continue to deliver effective services during the transition. As well, our dedicated Board addressed the challenges calmly and expeditiously. We were fortunate to secure the services of **Bruce Best** to act as our Interim Executive Director. Bruce ably helped us to avoid any serious disruption to our essential services. We are deeply indebted to him for his effective assistance and to the Clinic Resource Office of Legal Aid Ontario for generously allowing him to take on this role.

In early 2007, we welcomed three new staff:

Jill McNall, Community Legal Worker, came to us from Willowdale Community Legal Services. Jill brings more than 20 years of experience in the legal clinic system. Her warmth and breadth of experience only serve to enhance the services we deliver. Her ability to speak Spanish assists us in providing more effective services to people from the Spanish-speaking community.

Bill Merryweather, our new Office Manager, has an extensive background in health services, the private sector, and AIDS Service Organizations. He is currently the Chair of the Fife House Board of Directors. Fife House provides affordable supportive housing for people living with HIV/AIDS. Bill's knowledge and calm demeanour are helping to ensure the stability of our operations.

Ryan Peck, our new Executive Director, returned to us after a three year absence. Ryan articulated at HALCO and was a contract staff lawyer here for 2 years. He has also worked at other legal clinics and as Criminal Duty Counsel. Ryan's energy and confidence will be great assets to HALCO. His commitment and leadership are invaluable as we generate a fresh vision for HALCO's future.

[continued on page 3]

[HALCO Update - continued from page 2]

HALCO Board Update

At our Annual General Meeting on June 4, 2007, our membership elected two new Board members: **Robert Newman** and **Luc Bourassa**; and re-elected three existing Board members: **Anne Marie Di Censo** [Vice-Chair], **James Kreppner** and **Keith Wong**. Our other four Board members were in the middle of their two year terms: **Mark Blans** [Secretary-Treasurer], **Believe Dhiwayo**, **Martha Mackinnon**, and **Bob Watkin** [Chair]. HALCO is indeed fortunate to have such skilled and committed Board members. We are also fortunate that our former Board member **Gary Salter** is continuing his involvement with our Outreach Committee and assistance with administrative tasks.

Articling and Summer Students

Janet Jin was our articling student extraordinaire from September 2006 through June 2007. Her skill, compassion and unfailing commitment were especially helpful during the rather hectic period of staff changes.

Rob Trager, a first-year law student at Queens University, worked with us for most of the summer of 2007 and did a remarkable amount of intake in a relatively short time. His sense of humour and initiative were very welcome.

In September 2007, we welcomed **Andrew Hwang** as our articling student for the 2007/2008 year. Andrew, who has been called to the bar in New York, brings enthusiasm and a new perspective, as well as a background in immigration law.

Kathryn Carpentier has just started with us for the summer and we already appreciate her sense of humour and easy-going nature.

Law Student Volunteers

HALCO is indeed fortunate to have committed law student volunteers through Pro Bono Students Canada [PBSC]. We benefit from their service, while they gain experience in legal clinic work and knowledge of HIV/AIDS issues. **Jodi Martin** volunteered with us for almost two years, until she started her articling position at a law firm. Her enthusiastic assistance with intake and with orienting new students was most appreciated. In the 2006/07 year, we benefited from the contributions of **David Mitchell**, **Daniel Sheppard**, **Mark Wells** and **Julie Zimmerman**. In the 2007/2008 year, we welcomed the assistance of four PBSC students from Osgoode Hall Law School: **Stephanie Jeronimo**, **Devi Kapoor**, **David Sischy** and **Erin Wallace**.



HALCO is the sum of the contributions of so many people: Board, staff and volunteers. To all of our HALCO 'family' who have moved on to new challenges: please accept our heartfelt appreciation and best wishes for the future!!

Our services are needed more than ever...

In 2007, we experienced significant increases in requests for legal advice and representation, resulting in the highest client service numbers in HALCO's history. In 2006, we handled 2,300 requests, but in 2007, we had 2,759 requests, an increase of almost 20%. Requests for service continue to increase in 2008. At the same time, we are continuing our public legal education, community development and law reform activities.



It is our belief that our client service numbers are rising in part as a result of the increasingly complex legal difficulties facing people living with HIV/AIDS. Clients rarely have one discrete legal issue; rather they face an array of legal difficulties. These difficulties often arise as a result of the profound stigma and discrimination faced by people living with HIV/AIDS.



Ontario's New Human Rights Regime

On June 30, 2008, the *Human Rights Code Amendment Act, 2006* (Bill 107) will come into force. Among the reforms, some of the most significant are:

- **Individuals will make complaints directly to the Human Rights Tribunal of Ontario.** Currently, complaints are made to the Human Rights Commission, which investigates the complaint and decides whether the complaint will be sent to the Tribunal for a hearing. A small percentage of complaints get referred to the Tribunal which means that few complainants have actual hearings. Under the new regime, complainants will have direct access to the Tribunal. For more information about the Tribunal: www.hrto.ca
-Toronto area: 416-326-1312 or TTY 416-326-2027
-toll-free 1-866-598-0322 or TTY 1-866-607-1240
- **Under the new regime, the deadline for filing a complaint has been extended from 6 months to 1 year.**
- **The new Human Rights Legal Support Centre will provide legal assistance to complainants.** The Centre is currently being established and we understand that it will provide legal services for complainants. The Centre will open on June 30, 2008.
- **The Human Rights Commission will no longer receive/investigate complaints under the Ontario Human Rights Code, or decide which cases go to a hearing.** The Commission will continue to play a role in public education, policy development, legislation review, and research and analysis. The Commission will also have the power to conduct public inquiries, initiate applications at the Tribunal, and intervene in certain cases before the Tribunal. For more information about the Commission: www.ohrc.on.ca
-Toronto area: 416-326-9511 or TTY 416-314-6526
-toll-free 1-800-387-9080 or TTY 1-800-308-5561

Please contact us for further information about the changes to Ontario's Human Rights regime.

Paralegal Licensing and Community Agencies in Ontario

In 2007, the Law Society of Upper Canada (“LSUC”) became responsible for regulating the paralegal profession in Ontario.

Anyone providing legal services in Ontario now must:

- **be licensed by the LSUC as a lawyer or paralegal,**
- **be exempt (i.e. can provide legal services without a license), or**
- **have submitted a paralegal license application to the LSUC by October 31, 2007.**



The *Law Society Act* (the “Act”) and LSUC By-Law #4 set out the current exemptions. The following is an overview of the exemptions (found at www.lsuc.on.ca/paralegals/a/exemptions/):

Groups/Individuals not captured by the Law Society Act (who do not require a licence)

- *A person who is acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature, or an Act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation.*
- *An employee or officer of a corporation who selects, drafts, completes or revises a document for the use of the corporation or to which the corporation is a party.*
- *An individual who is acting on his or her own behalf, whether in relation to a document, a proceeding or otherwise.*
- *An employee or a volunteer representative of a trade union who is acting on behalf of the union or a member of the union in connection with a grievance, a labour negotiation, an arbitration proceeding or a proceeding before an administrative tribunal.*
- *A person or a member of a class or persons prescribed by the by-laws, in the circumstances prescribed by the by-laws.*

Groups/Individuals exempt by By-law 4 (who do not require a licence)

- *In-house paralegals employed by a single employer, such as municipal prosecutors*
- *Persons who are not in the business of providing legal services and occasionally provide assistance to a friend or relative for no fee*
- *Articling students*
- *Employees of legal clinics funded by Legal Aid Ontario*
- *Employees of organizations similar to legal clinics that provide free services to low-income clients, provided they meet certain criteria as to their non-profit status and funding*
- *Aboriginal Court Workers*
- *Staff of the Office of the Worker Adviser*
- *Staff of the Office of the Employer Adviser*

[continued on page 6]

[Paralegal Licensing - continued from page 5]

- *Constituency Assistants working in MPP offices*
- *Law students working in student legal aid services' societies, provided they are supervised by a lawyer and covered by the lawyer's insurance*
- *Injured Workers Outreach Services*
- *Ontario Federation of Labour staff and consultants representing union members in workers' compensation matters (under the Occupational Disability Response Team), including their work in representing families of deceased workers*
- *Trade union representatives acting on behalf of retired persons who were formerly members of the trade union and while providing services to another local of the same union*
- *Union representatives assisting families of deceased workers at Coroners' Inquests*
- *Members of the following listed voluntary standard-setting associations, subject to certain restrictions: the Human Resources Professions of Ontario; the Ontario Professional Planners Institute; the Board of Canadian Registered Safety Professionals and the Appraisal Institute of Canada*

It is very important to note that the above list does not include the partial exemption found in section 28(2) of LSUC By-Law #4. This exemption allows persons whose occupation is not the provision of legal services to provide legal services, *excluding* representation before adjudicative bodies, as long as the services are part of the "normal course" of their work.

We are particularly concerned about the implications of the paralegal regulation for the work of community agencies.

Community workers governed by other legislation, such as registered social workers, may be exempt under the new regime. However, the majority of community workers are not governed by any other legislation. The only exemption applicable to the majority is the partial exemption noted above.

Based on the partial exemption, many community agency workers can no longer appear before, or assist clients in preparing documents for, adjudicative bodies such as courts and tribunals. The definition of "adjudicative body" in the *Act* includes adjudicative processes such as Internal Reviews related to Ontario Works/Ontario Disability Support Program benefits or to rent-geared-to-income housing. As a result, unless such workers become licensed, they are unable to provide many of the legal services they may have in the past.

There are penalties for those who breach the *Act* or By-Law.

More information about the new paralegal licensing regime is available from the Law Society of Upper Canada:

www.lsuc.on.ca/paralegals/
Toronto area: 416-947-3315
toll-free: 1-800-668-7380

Please feel free to contact us about the new paralegal regime.

One Step Closer to Slightly Clearer Privacy Law - A Client's Story *

(*Our client has generously agreed to allow us to share the facts of his case)

HALCO receives regular inquiries about what to do if someone is disclosing someone else's HIV status without their permission. Often there is not much that can be done. Privacy legislation usually does not apply. It does not make sense to sue the person if they don't have money or if you don't have enough evidence.

In 2005, we were contacted by a man whose aunt disclosed his HIV status to his parents without his consent. His aunt revealed his HIV status while having an argument with his mother and another aunt. He was not there at the time; he found out about the disclosure a month later. Understandably, he was very upset. After the dust settled, it turned out his parents were very supportive of him. His other aunt who was present during the disclosure was also supportive.



This was a case with a defendant (the "revealing" aunt) who could pay a judgment (if she lost) and several witnesses who were willing to testify. We represented him in suing the defendant for breach of privacy and intentional infliction of mental distress.

Breach of privacy is a relatively new development in Ontario's courts. In the past, other people had won damages for breach of privacy but the cases had not set out clearly what the plaintiff (the person who is doing the suing) would need to prove to win a privacy case. This disclosure case was a great opportunity to try to get a judge to set it all out, perhaps making it easier for future plaintiffs to sue for breach of privacy.

At the trial, both the plaintiff and the defendant gave their legal arguments in writing. On October 4, 2007, the judge released her judgment. Our client lost. We lost the privacy issue because we could not prove that the disclosure to his parents caused him harm. The judge had found that the aunt had actually disclosed his status, but he could not recover damages without making a direct link between the disclosure and the harm that he suffered. The mental distress issue was not successful because we could not prove that his aunt intended to harm *him* and not his mother.

The case was still a victory in one sense. In her decision, the judge set out a framework for future breach of privacy cases. She found that in order to decide a breach of privacy case a court should answer the following questions:

1. Is the information acquired, collected, disclosed or published of a kind that a reasonable person would consider private?
2. Has the plaintiff consented to the acquisition or collection of the information?
3. If not, has the information been acquired or collected for a legal process or public interest reason? If so, what is that reason?
4. Has the plaintiff consented to the disclosure or publication of the information?
5. If not, has the information been disclosed or published for a legal process or public interest reason? If so, what is that reason?
6. Is the legal process or public interest reason put forward for acquisition, collection, disclosure or publication one that a reasonable person would consider outweighs the interest of the individual in keeping the information private?

[continued on page 8]

[A Client's Story - continued from page 7]

In addition, the judge found that a person whose privacy has been breached has to prove that she/he suffered some harm as a result of the privacy breach. This is an interesting point, and one that we may try to fight in the future. Four provinces have legislation that says a person can sue for breach of privacy without having to prove his/her damages. Ontario is not one of the four provinces, but courts in Ontario can look to the legislation in other provinces for guidance in privacy cases. Unfortunately, the judge in our client's case decided that damages had to be demonstrated. We hope to have a chance, in a different case, to make this argument again. In the meantime, we are one step closer to having somewhat clearer privacy law to help people whose HIV status has been disclosed without their permission.

If you have any questions about this issue, please call us. (It's one of our staff lawyer Renée's favourite subjects).



New "Rapid HIV Tests" and More Anonymous Test Sites



In June 2007, Minister of Health & Long-Term Care George Smitherman announced that the Ontario government would be establishing 24 additional anonymous HIV testing sites, bringing the total to 50 sites in the Province. Free rapid "Point of Care" HIV tests, which provide initial results immediately, are available at the anonymous testing sites and at some other locations across the province.

The rapid test process, which includes taking a drop of blood as well as pre/post-test counselling, takes about 20 minutes, eliminating what can be an agonizing two or three-week wait for results for those wondering if they have been exposed to the HIV virus. A positive rapid test result will require further testing for confirmation. Since there is a "window period" of up to three months after infection when someone is infected but still tests negative, repeating the test may be necessary. Anonymous testing does not require any personal identification or OHIP/health insurance.

HIV is reportable under public health legislation in Ontario. Unless testing is done anonymously at an anonymous test site, people who test positive for HIV are reported to the local Public Health office.

For more information about anonymous testing sites, you can contact the AIDS & Sexual Health InfoLine:

www.toronto.ca/health/ai_index.htm

1-800-668-2437 or 416-392-2437

For other questions about testing and privacy, please call us.

New Ontario Child Benefit “OCB”

The Ontario government is in the process of implementing the new Ontario Child Benefit “OCB”. The OCB is for all low-income families with children under 18 years, whether the parent(s) are working or receiving social assistance.

To receive the OCB, parents must:

- live in Ontario,
- have immigration status in Canada,
- be registered for the Canada Child Tax Benefit,
- file their annual income tax returns, and
- meet the low income eligibility.

In July 2007, eligible families received a one-time payment of up to \$250 for each dependent child. Monthly OCB payments will start in July 2008 and are scheduled to increase yearly from a maximum of \$50 per month per child now to \$92 per month per child by 2011. If you already receive the Ontario Child Care Supplement for Working Families, that supplement may be reduced or replaced by the OCB.

OCB and Social Assistance

The OCB means significant changes for families receiving social assistance. Social assistance means Ontario Works “OW” and Ontario Disability Support Program “ODSP”.

As of July, 2008, the federal National Child Benefit Supplement “NCBS” will no longer be deducted monthly from the OW/ODSP benefits of families. OW/ODSP basic allowance rates for families with dependent children under 18 will be reduced.

While families on OW and ODSP will benefit from the OCB, the net income increase will be significantly less than the \$50 per month OCB cheque. For example, a single parent on ODSP with one child *under* 13 will only receive an additional \$25 per month beginning in July 2008, which will increase annually. As well, families will no longer receive the separate Winter Clothing Allowance and Back-to-School Allowance (see below). The government has stated that no family on social assistance should receive less money in total after the changes. There is a new OW/ODSP “Transition Child Benefit” for families on OW/ODSP who receive less than the maximum OCB.

For more information about the Ontario Child Benefit:

-Ministry of Children and Youth Services:
toll-free telephone 1-866-821-7770; TTY 1-800-387-5559
www.gov.on.ca/children/english/programs/ocb/index.html

-Income Security Advocacy Centre: www.incomesecurity.org



Changes to “Back-to-School” and “Winter Clothing” Allowances

Families on social assistance will no longer receive the Back-to-School and Winter Clothing allowances in August and November as they have in past years. Starting in July 2008, these allowances for families on “OW” and “ODSP” are to be part of the new monthly Ontario Child Benefit payment.

ODSP/OW “Special Diet Allowance” & HIV

The Ontario Disability Support Program “ODSP” and Ontario Works “OW” provide for a Special Diet Allowance to a maximum of \$250 per month per recipient. For many years, the allowance was based on the types of diet required, for example: low sodium, yeast free, high calorie, etc. Many ODSP recipients living with HIV/AIDS were receiving those types of Special Diet Allowances, and many were receiving the maximum. Some ODSP recipients were not, and still are not, aware of this allowance.

In December 2005, the Special Diet allowance was revised and is now based on medical condition[s], for example: hypertension, cardiovascular disease, etc. As a result, everyone receiving a Special Diet Allowance was subject to review and assessment based on the new requirements. The new Special Diet Allowance for HIV/AIDS ranges from \$75 to \$240 per month and relates to the amount or potential wasting/weight loss experienced by the person.

The Ministry acknowledged that people with specific conditions which can cause wasting/weight loss and who had been maintaining their weight, should not have their Special Diet Allowances reduced. Special Policy Bulletins were issued in December 2005 and April 2006 to provide clarification and direction to ODSP and OW staff regarding wasting/weight loss conditions and the Special Diet Allowance.

It is our experience that there is still some confusion about the wasting/weight loss Special Diet Allowance policy. Many of our clients have had their Special Diet Allowances improperly reduced. As a proper diet is essential for anyone with a compromised immune system, these reductions have serious repercussions.

To raise awareness, we sent a bulletin to AIDS Service Organizations in July 2007. We also created a small poster which we distribute widely. We routinely inform our clients not only about the existence of the Special Diet Allowance, but also about the changes.

As a result, we have attracted a large Special Diet Allowance caseload throughout the province. Many of our cases involve decisions made more than one year ago. We have successfully resolved almost all cases to date.



Anyone receiving ODSP/OW who is HIV+ and whose Special Diet Allowance has been reduced in the last two years, or who started to receive ODSP recently but is not receiving at least \$75 in Special Diet Allowance, should call us for advice.

Canada Pension Plan Survivor Benefit Class Action Update

Any person whose same-sex partner passed away between April 17, 1985, and December 31, 1997, may be a "Class Member" in this proceeding.

The deadline for filing an application in the CPP Survivor Benefit Class Action is September 30, 2008.

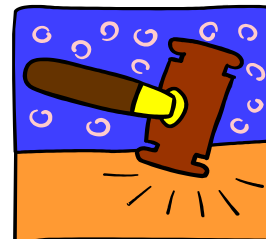
Any Class Member who misses the September 30, 2008, deadline will need permission from the Court to make their claim.

As many of our readers will know, a Class Action lawsuit was launched by George Hislop and others in 2001. The lawsuit challenged the federal legislation which limited the eligibility of same-sex couples to receive Canada Pension Plan (CPP) survivor pension benefits. The legislation imposed an arbitrary cut-off date of January 1, 1998 – if a same-sex partner had died before that date their surviving partner would not be eligible for the survivor pension. Opposite-sex partners did not face this cut-off date.

The Class Action case challenged the constitutionality of this arbitrary limit. Hislop and others argued that the CPP benefits should be paid to survivors whose partners died before January 1, 1998, and specifically, retroactively to April 17, 1985 – the date that equality rights under Section 15 of the *Charter of Rights and Freedoms* came into effect.

Class Members were largely successful after a trial in the Ontario Superior Court of Justice. However, the government appealed this ruling to the Ontario Court of Appeal. The Court of Appeal upheld the ruling that Class Members should receive an ongoing pension but, overturned part of the ruling concerning arrears.

Subsequently, both Class Members and the government appealed parts of the Appeal Court judgment to the Supreme Court of Canada. The Supreme Court released its judgment on March 1, 2007. The Court upheld the lower courts' decision that the cut-off date of January 1, 1998, is unconstitutional. As a result, anyone whose same-sex partner died on or after April 17, 1985, can apply for the CPP survivor pension (assuming all other requirements are satisfied).



According to the Supreme Court's ruling, all Class Members are entitled to be paid their Survivor Pension on an ongoing basis and arrears back to December 2000, 11 months prior to the filing of the law suit, even if they have not yet made their application for the Survivors Pension. However, they must make their application by September 30, 2008, to be eligible for this extended retroactive payment (see above).

The precise amount of arrears that each Class Member is going to receive is being determined as part of the administration of this Class proceeding under the supervision of the Honourable Justice Ellen Macdonald.

In some circumstances, where a Class Member died after October 2, 2003, (the closing date of the trial) their estate may be eligible for a retroactive payment. If you think this might apply to you, please contact Class lawyers for advice (see below).

Motions regarding the administration of the Court's judgment were heard last fall and certain decisions were made. However, there were still some outstanding issues which prevented the release of retroactive payments to Class Members.

[continued on page 12]

[*CPP Class Action Update - continued from page11*]

On February 29, 2008, further decisions were released including the interest rate to be paid on the pension arrears. We thought that this would be the final barrier and pension arrears could be calculated and would start being paid out shortly after this ruling was made.

Unfortunately, a new issue arose regarding the payment of fees to the Class lawyers. In an arrangement approved by the court in December 2003, one half of all pension arrears owing prior to the date the judgment was made were to be held for payment of legal fees. On February 29, 2008, the court ruled that Class lawyer fees cannot be paid directly out of the CPP benefits owing to the Class Members.

The Class lawyers are appealing this ruling. Until all legal issues have been resolved, CPP is not paying out any of the money owing.

We hope that these matters are settled quickly.

If you have questions, please contact HALCO or Class counsel Douglas Elliott / Sean Grayson at Roy Elliott Kim O'Connor LLP - REKO, Tel.: 416-362-1989, Toll-free: 1-866-877-0109, www.reko.ca

[This article contains information that has been published on the website of the firm Roy Elliott Kim O'Connor LLP (REKO) - Class Counsel for the CPP Class Action in Ontario. REKO generously gave us permission.]

Please note that:

- Canada Pension Plan benefits are taxable.**
- the receipt of CPP and retroactive payments will affect your entitlement to social assistance and Ontario Disability Support Program benefits.**
- CPP benefits are also generally considered income for other purposes, including private disability benefits.**

For more information, please call HALCO.



----- 🏳️‍🌈 ----- 🏳️‍🌈 ----- 🏳️‍🌈 -----

Adding Insult to Injury **- Ombudsman's Report on the Criminal Injuries Compensation Board**

In our Fall & Winter 2006 *HALCO news*, we reported that the Ombudsman was conducting a systemic investigation into the Criminal Injuries Compensation Board "CICB". The investigation was completed and the Ombudsman released a comprehensive report entitled *Adding Insult to Injury*.

The full *Adding Insult to Injury* report, press release and backgrounders are available on the Ombudsman's website: www.ombudsman.on.ca

[*continued on page13*]

[Ombudsman's Report on the CICB - continued from page 12]

The report was quite critical of both the Criminal Injuries Compensation Board and the Ontario government. The Ombudsman made 17 recommendations for immediate action and the key recommendation was *"that the Ministry of the Attorney General immediately provide the Criminal Injuries Compensation Board with the funds it needs to fulfill its promise to Ontarians"*. The Ombudsman noted that the multi-million dollar Victim Justice Fund *"sits largely unused while Ontario victims of violent crime are being harmed by the Criminal Injuries Compensation Board because of budget shortfalls."* The Ministry, and eventually the Criminal Injuries Compensation Board, both agreed with the Ombudsman's recommendations.

The Attorney General has announced a variety of actions to address the Ombudsman's report, including:

- the creation of the Victim Quick Response Program [more below]
- the appointment of Chief Justice Roy McMurtry to conduct a review of Ontario's victim compensation, and to "forge a new framework for victim support and compensation". The report is expected later this year www.mcmurtryvictimcompensationreview.ca
- \$14.75 million to the Criminal Injuries Compensation Board to hire staff and speed up the process
- \$100 million to the CICB in one-time funding for compensation awards over the next 2 to 3 years

In addition, the Attorney General has announced other increases in funding for programs for victims of violence, including:

- a new \$1.7 million Early Victim Contact initiative to provide same-day help for victims as part of Ontario's specialized court program for domestic violence cases
- a 20% increase in the annual base funding for the Victim Crisis Assistance and Referral Services program in 2008-09
- twenty-three new staff for the Victim/Witness Assistance Program
- \$2 million more for the Partner Assault Response Program
- doubling the funding of the Supervised Access Program (additional \$4 million) to facilitate child custody exchanges and visits when there are safety concerns
- \$500,000 for the Bail Safety Program to enable integrated teams to improve victim safety in domestic violence bail hearings

Victim Quick Response Program

In July 2007, the Ministry of the Attorney General announced the establishment of the Victim Quick Response Program to offer financial assistance for immediate access to three services for victims of violent crime who cannot afford services to address their immediate needs (for crimes reported on or after June 30, 2007):

- Emergency Expenses – to secure premises for victim safety, provide emergency accommodation and meals, care for dependents, transportation costs or specialized crime scene cleanup after violent crime
- Funeral Expenses – to assist eligible families of homicide victims
- Counselling Expenses – to help victims of serious crimes recover from their experience.

Information about the Victim Quick Response Program is available on-line at:

<http://www.attorneygeneral.jus.gov.on.ca/english/news/2007/20070713-vqr-bo.asp>

The program has provided assistance to about 600 people since the fall of 2007. Referrals to designated victim services agencies are available by calling the Victim Support Line toll-free at 1-888-579-2888.

Mandatory Blood Testing Act 2006: An Overview

The *Mandatory Blood Testing Act 2006 (Bill 28)* became effective August 10, 2007. It replaces section 22.1 of the *Health Protection and Promotion Act, 1990*.



The purpose of both section 22.1 and the new *Act* is to allow individuals who may have been exposed to HIV, hepatitis B and hepatitis C to force a “source person” to be tested in certain circumstances. Other diseases may be added in the future.

While both section 22.1 and the new *Act* have the same purpose, the two are quite different. The new *Act* adds eligible applicants, and substantially changes the application process.

Under the new *Act*, the following persons who come into contact with a bodily substance of another person may apply to have a blood sample of that “source person” tested:

- victims of crime who were exposed to a bodily substance as a result of the crime;
- persons who were exposed to a bodily substance while providing emergency health care or emergency first aid to a person who is ill, injured or unconscious as a result of an accident or other emergency; and
- persons prescribed by regulation.

To date, the following are the persons prescribed by the legislation:

- Persons who are employed in a correctional institution, place of open custody or place of secure custody
- Police officers, civilian employees of a police service, First Nations constables and auxiliary members of a police service
- Firefighters
- Paramedics and emergency medical attendants
- Paramedic students engaged in field training
- Members of the College of Nurses of Ontario

Under the new *Act*, applications will be considered by the Consent and Capacity Board, whereas previously under section 22.1, applications were made to the local medical officer of health. Under the new *Act*, the application is first filed with the medical officer of health, who must try to contact the source person to request a voluntary blood sample or other evidence from the source person about whether the source person has any of the diseases covered by the *Act*. If, within two days of the application being received by the medical officer of health, the source person does not provide a sample or other evidence, or the source person cannot be located, the medical officer of health refers the application to the Consent and Capacity Board, which must hear the application within seven days. The Board must make its decision within one day after the hearing.

There are no appeals of the Board’s decision. The only option is to file a judicial review at the Superior Court of Justice.

Anyone who fails to obey an order of the Board is guilty of an offence and the penalty is a fine of not more than \$5,000 for every day or part of a day on which the offence occurs or continues.

[continued on page 15]

[Mandatory Blood Testing Act - continued from page 14]

The current application, and all other relevant forms, can be obtained from the Ministry of Community Safety & Correctional Services website:

www.mcscs.jus.gov.on.ca/english/about_min/blood_testing.html

www.mcscs.jus.gov.on.ca/english/about_min/blood_testing.html

If you become aware of any applications under this new *Act*, please contact us.

Some issues with forced testing legislation

Forced testing laws, such as the *Mandatory Blood Testing Act*, raise many serious practical, ethical and legal issues. Practically speaking, the utility of this type of mandatory testing legislation is limited and may create an illusion of protection.

Here is an example to highlight some of the practical issues:

A “Good Samaritan” stops to help at an accident scene and is exposed while assisting an accident victim. The accident victim refuses to disclose any health information or to consent to testing. The Good Samaritan then applies for an order to compel the victim to be tested. In the meantime, the Good Samaritan’s post-exposure prophylaxis “PEP” course of treatment should be started as soon as possible and at most within 72 hours of the exposure. Even if the order is obtained quickly, it is unlikely that the test and result would be obtained within the 72 hours. Even if the results were known immediately, the results of the forced HIV test could be inaccurate because of the “window period” of up to three months in which the HIV virus may be in the body but cannot be detected. This means that the victim still might be HIV+ even with a negative test result. The Good Samaritan might use this negative test result as a reason to stop PEP or to not even start PEP.



While potential exposures to HIV are a serious concern, forced testing for HIV is not a solution. We suggest that the focus should instead be:

- improved safety measures to prevent exposure, for example: use of safety-engineered needles
- access to informed physicians to assist in assessing the level of risk from the exposure
- access to fully covered post-exposure prophylaxis

The Canadian HIV/AIDS Legal Network has addressed forced testing in depth in several publications, including *Undue Force: An Overview of Provincial Legislation on Forced Testing for HIV and Forced HIV Testing: Questions and Answers*, which may be found at www.aidslaw.ca/testing

[The Legal Network graciously gave us permission to draw on the **Undue Force** publication for this article.]

2007 Award for Action on HIV/AIDS and Human Rights



In June 2007, **Ruth Carey** and HALCO received the *2007 Awards for Action on HIV/AIDS and Human Rights* from the Canadian HIV/AIDS Legal Network and Human Rights Watch. We are particularly honoured to receive this award because these charitable, not-for-profit organizations do such vital work promoting human rights in Canada and internationally. The Legal Network is the only national organization working exclusively or primarily on AIDS-related legal issues in Canada, and one of the world's leading organizations in the field, with an extensive body of legal and policy research and analysis on a range of issues. Human Rights Watch works "to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice". The Legal Network's website is www.aidslaw.ca. The website for Human Rights Watch is www.hrw.org



HALCO's Rights and Dignity Partners

The HIV & AIDS Legal Clinic (Ontario) would like to thank the following Foundations for their generous support of the work that we do to provide our clients with access to both immediate and long-term assistance:

**T O S K A N
C A S A L E
F O U N D A T I O N**

Executive Partner - \$5,000



**RBC
Foundation**

Executive Partner - \$3,500

Partners - \$1,000:

Elementary Teachers Federation of Ontario

IBM Employees Charitable Fund

The John C. and Sally Horsfall Eaton Foundation

Snowy Owl Foundation

Other Generous Corporate Contributor:

Ontario English Catholic Teachers Foundation

HALCO Chair Robert Watkin **- Report to 2007 HALCO Annual General Meeting**

This year has been a period of significant change for HALCO. As set out in the communication you received with the Notice of this meeting, the most important change for HALCO has been all of the people who have newly joined HALCO in accomplishing its mission. It is my pleasure to introduce to you everyone who now make HALCO thrive:

- **Ryan Peck**, Executive Director
- **Renée Lang**, Staff Lawyer
- **John Nelson**, Staff Lawyer
- **Jill McNall**, Community Legal Worker
- **Bill Merryweather**, Office Manager
- **Rick Lobodzinski**, Receptionist
- **Janet Jin**, Articling Student
- **Robert Trager**, Summer Student
- **Andrew Hwang**, Articling Student

Accomplishing the significant staff changes that occurred this year required a great deal of hard work by this year's Directors. They read hundreds of resumes, conducted numerous interviews, and made difficult decisions. It was a stellar performance for a volunteer Board and they are to be congratulated. They are:

- **Martha Mckinnon**, Vice-Chair
- **Believe Dhiwayo**
- **Anne Marie Di Censo**
- **Keith Wong**
- **Mark Blans**, Secretary-Treasurer
- **James Kreppner**
- **Gary Salter**
- **Jayson Poirier**

The opportunity must also be taken to once again thank **Ruth Carey** for her years of service. She cannot be thanked enough for everything she has done and been for HALCO. Her incredible contribution has been recognized with the Award for Action on HIV/AIDS and Human Rights by the Canadian HIV/AIDS Legal Network which she will receive later this week. The same award has also been given to HALCO.

For the last six months HALCO has been largely occupied with accomplishing the transition of integrating all of its new personnel into its working life. This transition has been made all the more difficult by a surge in the demand for services provided by HALCO. This change, in the form of a major increase in demand, is both reassuring and troubling. It is reassuring in that it tells us the transition we have undergone appears to be seamless to our clients as they seek out our services in ever greater numbers. It is troubling in that there are so many more people that need to seek out our services.

There is one significant outcome of the work done by HALCO this year that must be noted. HALCO was in the forefront of the genesis of and in supporting the fundamental changes that are occurring presently in the Human Rights regime in Ontario. We are confident that these changes will finally allow our clients to have complete access to the means of having their rights addressed.

As always we remain deeply appreciative for the funding provided to us by the AIDS Bureau of the Ministry of Health and Long-term Care of Ontario and Legal Aid Ontario.

In particular we are extremely grateful to the AIDS Bureau for some extra funding. This additional funding enabled us to eliminate some long-standing uncertainties caused by our funding structure. It has allowed us to stabilize the financial platform on which we base the delivery of our services.

[continued on page 18]

[Chair's Report - continued from page17]

There are also changes underway in the method and administration of the funding we receive from Legal Aid Ontario. We remain confident that the form these changes may take will not severely impact the services we deliver to our clients. We will remain vigilant to ensure that we have a direct voice in the process that is underway to ensure our client services are not adversely affected.

Blame. There must be somebody to blame. Unlike any other disease, HIV disease seems to require the attribution of blame. Something about this disease is viewed as being so heinous that an unquestioned prejudice is not only being applied but is becoming institutionalized legislatively, judicially, culturally and socially. As a result of that prejudice, infected and affected persons live in fear of the maltreatment that prejudice will cause them. The general tacit acceptance of that prejudice is rapidly casting them as outsiders. The unthinking application of that prejudice is creating a new underclass for whom more and more barriers are coming into existence to hinder them in the most fundamental aspects of their daily lives. We at HALCO deal with the consequences of that maltreatment and those barriers every day.

No prejudice can be said to be logical. Actions and attitudes based on fear and ignorance are necessarily illogical. Yet any kind of focus on the core of that prejudice is deflected. Sanctions and censure are hinged on certain realities of the disease, i.e. some means of its transmission and some groups it affects, masking the underlying reality that the prejudice itself is more far-reaching and based on a more deeply ingrained abhorrence.

In the earlier years of the course of HIV disease, threats of quarantine and exclusion on a mass scale were eventually rejected as too overtly discriminatory. Yet, what could not be accomplished in a direct manner is now being achieved in a creeping, indirect, insidious manner.

Legislation in Ontario was created and recently enhanced to "protect" certain public workers (e.g. police, correctional officers, paramedics) and the elusive creature known as the Good Samaritan from transmission by requiring involuntary testing of persons suspected of having HIV disease. As a practical matter, the legislation achieves nothing in terms of protection. It only serves to address the hysteria of certain individuals and the political power of the organizations to which those persons belong.

For no valid medical reason, persons with HIV disease and co-infected with Hepatitis C are excluded from receiving the transplants they so desperately need.

The press broadcast warnings of the potential for infection arising from improperly sterilized medical equipment while in reality this potential for infection from this source is so negligible it is nearly non-existent.

Major television programmes base storylines on forms of transmission for which there is similarly negligible risk. The alarmist aspect of this media focus not only reinforces but inculcates the negative aura of the stigma associated with HIV disease.

Despite the availability of scientifically proven means of testing, gay men as a group are excluded from giving blood and, by a recent Ontario court decision, from donating semen to a sperm bank.

[continued on page 19]

[Chair's Report - continued from page18]

The offence of aggravated sexual assault was sanctioned by the Courts through the conceit of the concept of "vitiating consent". This development was hailed initially as a victory for feminism in overcoming the economic domination of men over women. Then women were charged and convicted.

More recently an editorial in a major national newspaper, taking note of the fact that a large number of the so called offenders were male, persons of colour and/or recent immigrants, tried to justify the existence of the offence on the basis of a third world version of the argument used to justify the original feminist argument. The offence remains solely a heterosexual crime. *(This speech was given in June 2007 and reflective of the situation at that time. The criminalization of HIV/AIDS has now extended to gay men. This is indicative of how pervasive the stigma has become.)*

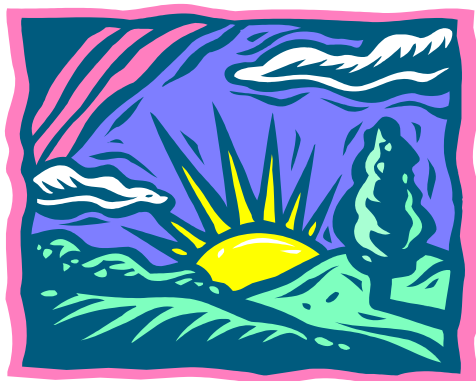
Even the HIV disease infected and affected community itself contributes to reinforcing the negative aura of the disease. Prevention campaigns are premised on fear or suggest deceit as the operative cause for the act of transmission. Groups within the community seek to position themselves to be seen as being different from other groups. Inherent in that positioning, although unspoken, is the suggestion that they are "better than" those other groups.

Listed together, the sanctions, and censures, in which the prejudice has been manifested to date, defy logical explanation. The impetus for those sanctions and censures is, however, clear. Uniformly underlying all of them is the abhorrence for HIV disease. Until that abhorrence is itself addressed, more illogical forms of sanctions and censures will continue to come into existence.

Until the day the stigma of HIV/AIDS is directly addressed, the limitations and exclusions faced by people infected or affected by it will continue to expand. It does not matter how anyone was infected - their race, their sex, the group to which they belong or their sexuality - they will commonly experience its impact on their employment, income, housing, familial and social relationships, and access to health care and medications.

The scope of the abhorrence that is the stigma will gravely affect their quality of life far beyond the impact of the disease itself. Its spectre will continue to cause people to avoid being tested. Until the day comes that HIV disease ceases to require blame and is treated solely as the disease it is, the demand for the services provided by HALCO will inevitably continue to grow.

Chair Robert Watkin, HALCO Annual General Meeting - June 4, 2007



HALCO news is published by the HIV & AIDS Legal Clinic (Ontario) and is distributed free to its membership, agencies and other members of the HIV/AIDS community in Ontario.

HALCO news contains general information only and is not legal advice. If you have a legal question, please contact HALCO, your local legal clinic or a lawyer.

The views expressed in **HALCO news** may not reflect HALCO Board and/or staff views.



free Legal
help For
PEOPLE living
with hiv/Aids
in Ontario



65 Wellesley Street East, Suite 400
 Toronto, Ontario M4Y 1G7
 telephone 416-340-7790 / 1-888-705-8889
 TTY 416-922-2352 / 1-866-513-9883
 FAX 416-340-7248 www.halco.org

HALCO Membership Application

The primary goal of the HIV & AIDS Legal Clinic Ontario is to provide legal services to persons living with HIV/AIDS in Ontario that are relevant to their well-being and that enable them to participate fully in the communities in which they live. To assist us in fulfilling our goal, we need the participation of members of communities affected by HIV and AIDS.

Please offer your support by becoming a member of the HIV & AIDS Legal Clinic Ontario "HALCO". As a member of HALCO, you will be invited to join us at our Annual General Meeting, where you can participate in the business that helps to guide the clinic, including the election of our Board of Directors. *Membership takes effect when it is approved by the Board of Directors. Only members in good standing who have been members for at least 30 days before the meeting may vote at a membership meeting.*

There is no fee for HALCO membership and membership is renewed annually. To become a member, you must be a resident of Ontario who is 16 years of age or older and you must agree with our Statement of Principles [on the other side of this application]. Please complete this form and return it to our office. We regret that our budget cannot provide for return postage.

Your membership information will be kept confidential and will be used to inform you of our Annual General Meeting and to give you the opportunity to renew your membership annually. We never share our membership list. You can also choose to receive other HALCO information, including our Newsletter, by checking the box below.

Declaration of my wish to join the HIV & AIDS Legal Clinic Ontario (HALCO):

I agree with the Statement of Principles of the HIV & AIDS Legal Clinic Ontario (HALCO), I am a resident of Ontario, I am 16 years of age or older, and I would like to become a member of HALCO.

Signature: _____ Date: _____

Name: _____

(please print)

Address: _____

Apartment: _____ City/Town: _____

Province: _____ Postal Code: _____

Home Phone: _____ Other Phone: _____

May we leave phone messages? Yes _____ No _____ E-mail Address: _____

Please tell us how you found out about HALCO: _____

Would you like to be on our mailing list to receive our newsletter, etc.? No _____ Yes _____

May we send newsletters, etc., to you by E-Mail? No _____ Yes _____

Thank you for applying to be a member of HALCO!

Statement of Principles of the HIV & AIDS Legal Clinic Ontario

Adopted January 30, 2006 by the Board of Directors
of the HIV & AIDS Legal Clinic Ontario.

It is agreed that:

1. People living with HIV and AIDS are confronted with unique legal problems of enormous proportions and complexity;
2. Those best equipped to make choices regarding HIV and AIDS issues and problems, are those individuals who are HIV positive themselves;
3. People living with HIV and AIDS must have control over their own lives.
4. The HIV and AIDS affected communities are very diverse and are confronted by overwhelming challenges derived from both their diversity and from their common experience as people living with HIV and AIDS.
5. It is necessary to create and foster a climate of understanding and mutual respect for the dignity and worth of people living with HIV and AIDS; and
6. The confidentiality, bodily security, autonomy and privacy of people living with AIDS and HIV must be respected, which includes but is not limited to:
 - a) the right of individuals to exercise control over their own medical treatment;
 - b) the right of individuals to exercise control over decisions concerning their own socio-economic position;
 - c) the right of all persons living with HIV or AIDS to be fully informed of all process and procedures in which their interests are in any way involved; and
 - d) the right of all persons living with HIV or AIDS to consent, or withhold their consent, in all matters affecting them.