

# HIV & AIDS legal clinic ONTARIO HALCO NEWS

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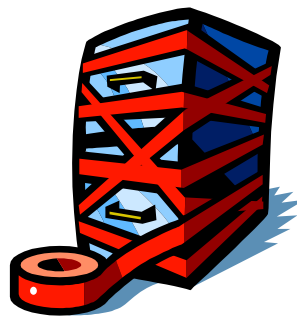
*Dignity. Equity. Justice.*  
*Serving People with HIV/AIDS through Legal Advocacy*

## CURRENT & FORMER ODSP RECIPIENTS TO GET \$25 MILLION IN RETROACTIVE BENEFITS - OMBUDSMAN'S REPORT

In our last newsletter, we reported that more than 70 people had complained to the Ombudsman of Ontario about the lengthy delays in processing Ontario Disability Support Program (ODSP) applications. Because of their complaints, the Ombudsman of Ontario, Andre Marin, started an official investigation into this issue. ODSP recipients said that they lost benefits when the Ministry's delay in deciding their cases (in some cases, it took over 12 months) was combined with the ODSP legislation. This is because the ODSP legislation only permits retroactive benefits to be paid for a maximum of a four-month period before the Ministry's decision. There is no time requirement for the Ministry in deciding cases. This means that recipients lose a month of benefits for every month beyond four that the Ministry takes to decide an application for benefits.

We are pleased to let you know that the Ombudsman, Andre Marin, agreed with the complainants. In May 2006, Marin issued a report called *Losing the Waiting Game* (go

to [www.ombudsman.on.ca](http://www.ombudsman.on.ca) for a copy of the report) in which he slammed the Ministry for the problem. In a May 31, 2006 press release, the Ombudsman cited the retroactivity limits and administrative delays as "**cruelly insensitive**" and "**shameful.**" He noted that the operation of ODSP was causing financial hardship to many, and that ODSP was failing in its mission to assist the vulnerable



members of our society requiring assistance. Accordingly, the Ombudsman recommended a complete legislative overhaul with removal of the four-month cap, as well as more timely consideration of ODSP applications.

Immediately after the report was released, the Ministry announced

changes to the legislation that fixed the problem for new applicants but did not help recipients who had lost benefits in the past. The Ministry has now announced that it will follow the Ombudsman's recommendation and pay up to ▶

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19,000 ODSP recipients and former recipients the benefits that they would have received if the application system had not been flawed. The Ministry calculates that \$25 million is outstanding. In some cases this will amount to retroactive payments of several thousand dollars. In October 2006, the Ministry will start calculating the amounts that are owed and cheques will be sent out. The Ministry hopes to complete the payout by May 2007.

*receiving benefits, contact HALCO for help getting your retroactive ODSP benefits.*

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## 2% SOCIAL ASSISTANCE INCREASE

(The following information comes from the Income Security Advocacy Centre's Fact Sheet. Please visit their website at [www.incomesecurity.org](http://www.incomesecurity.org).)

Social Assistance rates for Ontario Works (OW) and the Ontario Disability Support Program (ODSP) will increase by 2%. If you are in receipt of ODSP, you will see this increase on the cheque you receive at the end of November, 2006. If you are in receipt of OW, you will see the increase on the cheque you receive at the beginning of December, 2006.



### Will both the basic needs and the shelter allowance increase?

The basic needs portion of the cheque will increase for all OW/ODSP recipients. The shelter allowance portion of the cheque will increase for everyone whose shelter

costs are higher than the current maximum shelter amount. Anyone whose rent is less than the current maximum amount will not get the shelter increase.

### Will other benefits increase by 2%?

The following benefits will also be increased by 2%:

- 1) The double-disabled rate maximum and additional amount for shelter
  - This increase applies to families where both the recipient and their spouse are both disabled and in receipt of ODSP.
- 2) Assistance for Children with Severe Disabilities (ACSD)
  - The maximum amount payable to a parent with a child with a severe disability will increase from \$400 to \$410 per month.
- 3) Board and Lodging Allowance
  - This increase applies to recipients living in a room and board situation.
- 4) Special Boarder Allowance
  - The allowance will increase from \$52 to \$54.
- 5) Northern Allowance
  - This increase applies to recipients who live north of the 50<sup>th</sup> parallel and do not have year-round road access.
- 6) Personal Needs Allowance
  - This benefit applies to recipients living in an institution (such as a shelter, care home or group home)
- 7) Guide Dog Benefit
  - This benefit will increase from \$64 to \$66
- 8) Back to School and Winter Clothing Allowances



If a person who is eligible for the retroactive payment has an overpayment owing to the Ministry, the money will be applied against the overpayment amount. While the Ministry is entitled to direct the retroactive funds to overpayment recovery, people in this situation may wish to contact HALCO for advice about appealing the decision to recover the overpayment. The balance of the retroactive amount will be paid as a lump sum, and will not be considered as either income or an asset. This means that receiving the payment will have no effect on ongoing entitlement to ODSP. Some of the money is owed to families who are no longer receiving ODSP benefits. In these cases, the Ministry will send letters to the last known address in the Ministry's file.

*\*If you applied for ODSP after June 1, 1998 and you are no longer*

- The Back to School Allowance has already increased from \$69 to \$71 for children between the ages of 4 and 13 in school and from \$128 to \$131 for children over 13 in school. The increase was implemented in July 2006.
- The Winter Clothing Allowance will increase from \$105 to \$108 for each child. The increase will be added to ODSP cheques in October and OW cheques in November.

The 2% increase also applies to OW/ODSP recipients who have been sponsored and are living with their sponsors; living in nursing homes and other institutions, including group homes for people with developmental disabilities; or living in interval and transition housing. Please contact your OW/ODSP worker to find out how the changes will impact you. The increase will not affect how income is calculated.

### ODSP Monthly Benefit Levels – 2% Increase Examples:

-A **single, disabled** person currently receiving \$959 per month (\$532 basic needs plus \$427 maximum shelter) will now receive \$979 (\$543 basic needs plus \$436 maximum shelter).

-A **single, disabled parent + one child (12 or under)** currently receiving \$1468 (\$796 basic needs plus \$672 maximum shelter) will now receive \$1498 (\$812 basic needs plus \$686 maximum shelter)

-A **single, disabled parent + two children (one child over 12, one**

**child under 12)** currently receiving \$1690 per month (\$961 basic needs plus \$729 maximum shelter) will now receive \$1725 (\$981 basic needs plus \$744 maximum shelter)

-A **single, disabled person + spouse** currently receiving \$1460 (\$788 basic needs plus \$672 maximum shelter) will now receive \$1490 (\$804 basic needs plus \$686 maximum shelter)

-A **single, disabled person + spouse + one child (12 or under)** currently receiving \$1631 (\$902 basic needs plus \$729 maximum shelter) will now receive \$1665 (\$921 basic needs plus \$744 maximum shelter)

For more information, contact the Ministry of Community and Social Services' client services unit toll-free at 1-888-789-4199 or 416-325-5666 (Toronto) or Teletypewriter (TTY): 1-800-387-5559. Additional information is also available on the ministry's website at [www.mcscs.gov.on.ca](http://www.mcscs.gov.on.ca).



## ODSP OFFICE CHANGES - DO YOU KNOW WHO YOUR CASEWORKER IS?

The Ministry of Community and Social Services has made changes to its service delivery at the ODSP offices. Each ODSP client has now

been assigned two people – a Client Services Representative (CSR) and an Income Support Specialist (ISS). ODSP clients are to receive the direct phone number for their CSR and their ISS, so that they know who to call with any problems or questions. If you do not know who your CSR or ISS is, we encourage you to call your local ODSP office and ask for this information.



## LANDLORD & TENANT LAW CHANGES

The provincial government has replaced the *Tenant Protection Act* with new legislation called the *Residential Tenancies Act*. The new law does not come into effect until some time next year, but here are some of the changes you should be aware of:

- The “Ontario Rental Housing Tribunal” will change its name to the “Landlord & Tenant Board” (LTB).
- Landlords will need to provide new tenants with an information

package on landlord/tenant rights and responsibilities.



- If a landlord is responsible for paying the utility bills and doesn't, the landlord will be legally liable for "withholding the utility".
- The LTB may order rent freezes (i.e. no more rent increases) if there are maintenance and repair problems. New tenants must be notified of a rent freeze and they can apply to the LTB to get rent back if they paid more than the frozen rent amount.
- Tenants will have 72 hours to remove their goods after an eviction takes place (currently it is 48 hours). They can apply to the LTB if the landlord does not allow them to do this.
- If the LTB orders that a tenant has to move out because they owe rent, the tenant is allowed to stay if they pay all the rent they owe (and any costs ordered) by the date set out in the order. If a tenant does not pay by this date, the landlord can request that the sheriff remove the tenant from the property. (The Sheriff normally comes in about 10

days.) The new law gives tenants a one time chance to pay what they owe (i.e. all the rent to date and any costs ordered) after the date in the order, but before the Sheriff comes. Tenants can only do this once during any tenancy.

- Tenants will now be able to dispute arrears and eviction for arrears by raising issues of non-repair or landlord misconduct.
- Landlords will now have to pay tenants annual interest on their last month's rent based on the LTB's guideline.
- The LTB will notify tenants if the landlord has made an application against them.
- All eviction applications will be scheduled for a hearing and there will be no more automatic eviction orders if tenants do not file a dispute form (i.e. no more default evictions).
- If a tenant has filed an application against the landlord, the LTB may permit the tenant to pay rent to the LTB instead of the landlord.

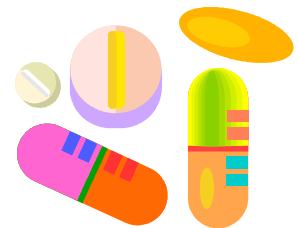
*Richard Ferriss, Clinic Lawyer  
(Thanks to Kenn Hale, South  
Etobicoke, CLS and Paul Rapsey,  
CRO, LAO)*

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## TRILLIUM DRUG PROGRAM – AUTOMATIC RENEWAL PROCESS UPDATE

As many of you may know, the Trillium Drug Program's new process is designed to automatically renew people for the program each year. People who have given Trillium consent to talk to the Canada Revenue Agency regarding proof of income, haven't moved, are single, and file their taxes on time, should simply have received a letter from Trillium stating that they are confirming a person's renewal for the program. If, however, there have been any changes, Trillium then directs people to fill out a "change form".



This year, the automatic renewal for the benefit year 2006-07 did not happen for everyone. In May 2006, Trillium sent out change forms with a covering letter to all households that: 1) had a child turning 16 in the benefit unit (whose signature would now be required on the form as a household member), 2) all recipients who have access to private insurance, 3) all recipients who had not given consent for Trillium to contact the Canada Revenue Agency (CRA) regarding proof of income, 4) all recipients where there was

income information missing on the CRA database (household member did not complete tax return) and 5) all recipients where there was inconsistent information on household membership between Trillium and CRA. HALCO was told by Trillium staff that letters were sent to approximately 24,000 households who had not submitted the necessary forms.

HALCO understood that clients receiving these letters with a request to fill out a change form, were told by Trillium that their eligibility for the program would be terminated August 1<sup>st</sup>. Trillium has since indicated that to ensure benefits are not cancelled while completing this renewal process, Trillium has extended clients' eligibility for three months - until November 1, 2006 - to give clients a chance to get their necessary forms into Trillium. However, to do this, Trillium staff have had to enter \$1 as the income level for clients, which means the deductible charged in August 2006 will be the lowest level possible, so some clients may have to make catch up payments on their deductible in the second quarter, beginning November 1<sup>st</sup>. Trillium has stated that any household that has not been enrolled by November 1<sup>st</sup>, will be required to pay for their drugs up front and out-of-pocket, and then get reimbursement once their change forms have been completed and submitted and the application has been processed.

In September, Trillium sent a final notice to everyone who was not through the approval process yet.

Clients who have completed the renewal process by providing the required information will be informed by mail once the renewal process is complete. If you need to contact Trillium, phone them at (416) 642-3038 or 1-800-575-5386. If you have any questions about this process, please do not hesitate to contact HALCO



In February 2006, HALCO became part of a group of community agencies that met with the Associate Director of the Ministry of Health and Long-Term Care, Drug Programs Branch, and advocated for a meeting with Trillium staff to review the application form and guidebook along with written correspondence sent out by the Ministry with respect to Trillium applicants and recipients. HALCO staff, along with other community agencies, recently attended the first meeting with Trillium staff to begin revising the application form. We are pleased to be able to attend these meetings and to advocate on behalf of our clients.



## HIV, DISCLOSURE & THE LAW 101

We have had a number of requests to outline the “basics” concerning HIV, the law and disclosure. We hope you find the following information helpful:

There are three areas of law to consider when talking about disclosure: the criminal law; civil law (“can I be sued?”); and public health law. This article primarily talks about the criminal law, and it is important to remember that there are these three distinct areas of law, and what is true in the criminal law context may not be true in civil law, or in public health law.

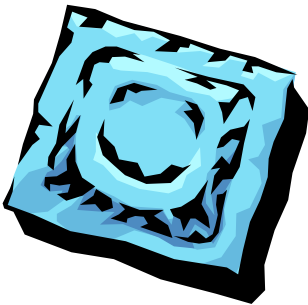
In Canada, there is no HIV-specific criminal law or offence that applies to the act of transmitting HIV or putting someone at risk of HIV infection.

It is not a crime to transmit HIV. However, failure to disclose your HIV+ status where there is a “significant risk” of transmitting HIV (for example, through unprotected sex), may result in criminal charges regardless of whether or not the other person becomes infected.

As it stands now, if you don't know that you are HIV+, you have no risk of criminal or civil liability.

Two key words we have mentioned so far are “**disclosure**” and “**risk**”:

- Legally speaking, the **BEST OPTION** is to always **disclose** your HIV+ status to your partner(s) before engaging in sex. This is the only way to be absolutely sure that there are no legal repercussions in criminal law, or in civil law. If you wish to avoid all potential legal repercussions entirely, including public health orders, then the **BEST OPTION** is to always disclose and always use condoms as well. (It is important to understand that public health wants both to happen – disclosure and condom use – and has the power to issue orders saying so.)



- As for **risk**, it's generally accepted that **using condoms** reduces the risk of transmission. Sex with a condom arguably does not create a "significant risk" and therefore, if there is no significant risk, there may be no **criminal** liability for failure to disclose. (See *Cuerrier* case explanation below regarding use of condoms). We also know of no civil cases where someone has successfully been sued for non-disclosure where condoms were used. This doesn't necessarily mean you won't find yourself charged or sued, but it might very well provide a defense.

Let's look at the two Supreme Court of Canada Decisions Regarding HIV & Disclosure - *Cuerrier* and *Williams*. Both of these cases were about unprotected sex:

### **Cuerrier**

- The *Cuerrier* decision basically said that if you are HIV+ and you have unprotected sex with an HIV- partner and you don't tell your partner you are HIV+, then your partner's consent to have sex is not valid consent. You can be charged criminally for this...**UNLESS** it can be established that the HIV- partner would have consented anyway to the unprotected sex if he/she had known in advance of the risk.
- The *Cuerrier* decision also stated that... "To have intercourse with a person who is HIV+ will always present risks. Absolutely safe sex may be impossible. Yet the careful **use of condoms** might be found to so reduce the risk of harm that it could no longer be considered significant so that there might not be either deprivation or risk of deprivation [i.e., harm or risk of harm]."



### **Williams**

- The *Williams* decision basically said that even if the person you're having sex with is also

positive, non-disclosure and unprotected sex can result in criminal charges.

- Like *Cuerrier*, the *Williams* case was about an HIV+ man who was charged under the Criminal Code with aggravated assault for having unprotected sexual intercourse with a woman and not disclosing his HIV+ status.
- **HOWEVER**, the *Williams* case was different because the man had unprotected sex with the woman both **before and after** he knew that he was HIV positive.
- In addition, she sero-converted and became HIV+ herself, and it was **unknown if she was already positive when he learned of his own status** and failed to disclose it. (So it was likely that she became HIV+ when he still thought he was HIV- - when he didn't have a duty to disclose because he had no knowledge of his HIV+ status.)
- In the end, the Crown could not prove beyond a reasonable doubt that he endangered her life after he knew that he was HIV positive, because she was very likely to have already been infected at that point (e.g. after he had a legal obligation to disclose). So when he knew he was positive, he still had an obligation to disclose to her because they were having unprotected sex, and so the Supreme Court found him guilty of **attempted** aggravated assault.

\*In *Williams*, the Court also made a statement “*in obiter*” – which means an opinion that is not legally binding (not yet the law):

“Once an individual becomes aware of a **risk** that he or she has contracted HIV, and hence that his or her partner’s consent has become an issue, but nevertheless persists in unprotected sex that creates a risk of further HIV transmission without disclosure to his or her partner, recklessness is established.”

It remains to be seen how this statement by the Supreme Court will be interpreted by Crown Attorneys and courts in future cases. Cases such as these are still relatively new in the Canadian courts and so it is difficult to know exactly how the law will be applied in future court cases. The only way to be absolutely sure that there are no criminal legal repercussions is to disclose your HIV+ status to your partner before having sex.

To sum up, in both the *Cuerrier* and *Williams* cases, the Supreme Court ruled that HIV infection is a serious bodily harm, and that a single act of unprotected sexual intercourse carries a significant risk of HIV transmission. This is why we use the phrase “**significant risk of serious bodily harm**” when talking with people about this issue. Although this phrase is not specifically defined in the *Cuerrier* or *Williams* decisions or the Criminal Code, it was central to the Supreme Court’s reasoning in both these cases as to whether an

HIV+ person had a duty to disclose his HIV+ status before sexual intercourse. As such, where there is a “significant risk of serious bodily harm” (for example, unprotected sex), there is a duty on the HIV+ person to disclose his or her HIV status. We can also safely assume that this also means disclosing one’s HIV+ status when sharing an injecting needle or syringe that has HIV-infected blood in or on it as this is the most efficient route of HIV transmission and carries a **greater** risk of infection than unprotected sex. Therefore, we can say that this activity carries a “significant risk of serious bodily harm.”



As other cases arise, judges will have to decide what other activities can lead to a conviction because the activity carries a “significant risk of serious bodily harm”. A useful guide is **The Canadian AIDS Society’s “HIV Transmission Guidelines for Assessing Risk” (3rd edition, January 1999)**. This is the primary community resource in Canada regarding levels of risk of HIV transmission.

The Transmission Guidelines rate the degree of risk involved in sexual, injection and piercing activities,

breast-feeding and certain medical procedures (artificial insemination, blood transfusions and childbirth). The Transmission Guidelines rate activities on a scale — from no risk, to negligible risk, to low risk, and finally to high risk. This rating scale is based on the likelihood of transmission (based on the principles of transmission and laboratory evidence like viral load) and the evidence of transmission associated with each activity (based on documented evidence of HIV transmission from studies and reports). The Transmission Guidelines also identify barriers that can reduce risk (such as condoms), and biological and other factors that can increase risk (such as damage to the lining of the vagina or sexually transmitted infections).

According to the Transmission Guidelines, the following activities carry a high risk of HIV transmission:

- Insertive or receptive penile-vaginal intercourse without a condom.
- Insertive or receptive penile-anal intercourse without a condom.
- Sharing a needle or syringe.
- Inserting a sex toy into the anus or vagina after a sexual partner has inserted it in her vagina or anus, or his anus.

We can therefore assume that a court would decide that the above high risk activities carry a “significant risk of serious bodily harm.”

If you have any questions about this information, please do not hesitate to call us at HALCO.

## Legal Definitions



**Consent** (Criminal Code 265(3)(c)): “For the purposes of this section, no consent [to physical contact] is obtained where the complainant submits or does not resist by reason of ... *fraud*.”

In the *Cuerrier* case, the court held that **fraud** (in Criminal Code 265(3)(c)) means:

- There must be deceit or dishonesty (e.g. not disclosing HIV status);
- Deprivation or harm, or a risk of harm (trivial risks will not satisfy this element of the test - there must be “a significant risk of serious bodily harm”);
- And the dishonesty must have induced the risk of harm.

**Assault** (Criminal Code 265(1)): “A person commits an assault when ... *without the consent* of another person, he/she applies force intentionally to that other person, directly or indirectly”.  
(Maximum sentence of 5 years)

**Aggravated assault** (Criminal Code 268): “Everyone commits an aggravated assault who wounds, maims, disfigures or *endangers the life* of the complainant.”  
(Maximum sentence of 14 years)

**Sexual Assault** (Criminal Code 271(1)): (An assault that is sexual in nature)  
“Every one who commits a sexual assault is guilty of (a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.”

**Aggravated Sexual Assault** (Criminal Code 273(1)): (An aggravated assault that is sexual in nature) “Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or *endangers the life* of the complainant.”

**Attempt** (Criminal Code 24): “Every one who, having an intent to commit an offence, does or omits to do anything for the purpose of carrying out the intention is guilty of an attempt to commit the offence, whether or not it was possible under the circumstances to commit the offence.”



## HIV, DISCLOSURE & THE LAW - QUESTIONS & ANSWERS

#1

**Q. I’m HIV-positive. I’ve been in a sexual relationship for 2 years and we always practice safe sex. I only disclosed my status to my**

**HIV-negative partner 1 year ago. What might my liability be if my partner was really mad and decided to use this against me?**

**A.** Look to the *Cuerrier* case - if your partner doesn't know the risk (because they didn't know you were HIV+) then their consent may not be legally valid, but this depends on the level of risk. You say you always practiced totally safe sex. The *Cuerrier* decision said that the “careful use of condoms might be found to so reduce the risk of harm that it could no longer be considered significant [so there might not be either deprivation or risk of deprivation (i.e., harm or risk of harm)].”

However, this doesn't stop someone from going to the cops to press charges. If they did, it would then be up to the police and then the Crown (a lawyer acting on behalf of the government) as to whether they lay or pursue a charge. If they did you would have a defense - practicing safe sex through the careful use of condoms. As such, the likelihood of you being charged seems pretty low in the circumstances.

In terms of civil liability, the partner may try to sue you using the intentional tort of “battery” (non-consensual touching) even though your partner may not have become infected, or could try to sue using the unintentional tort of “negligence”, however in this case, you would have to show proof of harm or some type of damage to recover for, and as your partner did not contract HIV, this is unlikely. As for the torts of



“intentional” or “negligent” infliction of mental distress, this may be a possibility, but it would have to be pretty serious mental distress – for example, the person had to get treatment for emotional distress.

Let’s say there was an incident of a broken condom but that was after you disclosed – your partner then took the post-exposure prophylactic HIV meds, which was very unpleasant, but didn’t sero-convert. Since your partner knew the risk at that point, your partner’s consent from that point forward would be considered valid and you would not be held liable, either civilly or criminally, from that point forward.

#2

**Q. I am HIV+ and am wondering if it would be legal for me to work as a babysitter. Do I have to disclose my status? I have kids of my own and I’m very careful.**



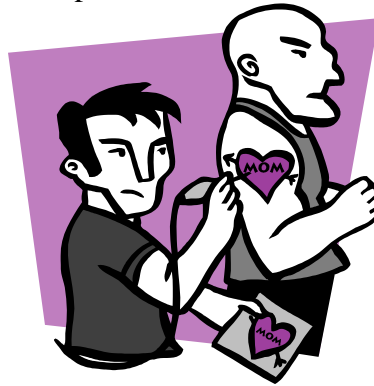
**A.** No, you can only be criminally liable for not disclosing your HIV-positive status when there is a *significant risk* of causing *serious bodily harm*. There is no risk in babysitting itself. The only other advice is to take usual precautions. While there are a few exceptions with respect to some health professions where an employee “can not have AIDS” - as is the case for

paramedics, this isn't true for nannies/babysitters. So again, there's no obligation to disclose unless there's a serious risk of bodily harm.

#3

**Q. If I am HIV+ and want to get a tattoo, do I have to disclose my status to the tattoo parlour employee?**

**A.** No. An HIV+ person does not have to disclose their status if/when wanting to get a tattoo as there would be no *significant risk of serious bodily harm*. The tattoo parlour on the other hand, should be utilizing universal precautions in their practice.



#4

**Q. A friend of mine disclosed my HIV+ status to my son, who did not know I was positive. What can I do about it?**

**A.** Unfortunately, privacy laws in statutes in Canada only govern professional relationships (like doctor/patient relationships) or governments. As the friend did not say anything false about you, there are no libel (written) or slander (spoken) issues involved. As a result, these situations are difficult

legally. If the disclosure caused serious harm to you (a nervous break down for example), and your friend knew (or should have known) you did not want your status disclosed to your son, then you might be able to sue in negligent or intentional infliction of mental distress. HALCO can assist by writing a letter to a friend or relative asking them to “cease and desist” disclosing your status, which sometimes helps.

#5

**Q. A registered nurse at the hospital made a comment about my HIV+ status in front of my daughter, who did not know my status. What can I do about it?**

**A.**

1. You could make a complaint to the Information and Privacy Commissioner of Ontario for disclosing your personal health information, under the *Personal Health Information Protection Act* (PHIPA). Under this Act, if the Commissioner finds that your information has been shared incorrectly, you would then be entitled to file a claim for damages for actual harm in Superior Court. There is a provision for “mental anguish” up to \$10,000 but if your harm was simply emotional upset, proving the damages could be difficult.

2. You could try civil liability. In this case, it would probably be framed as a “breach of confidence” and again establishing damages would be difficult unless something more has happened as a result of the disclosure – i.e. treatment was required.

3. You could make a complaint to the College of Nurses of Ontario.
4. You could also try to make a Human Rights complaint with the Ontario Human Rights Commission. This would be framed as “adverse affects discrimination”. The argument would be that the disclosure affects you much more severely and negatively than someone who has a less stigmatizing illness than HIV.

#6

**Q. I live in rural Ontario. I had a follow-up appointment with a doctor at the only clinic in town. While I was there, the doctor, who was about to administer an HIV test to me, blurted out: “Why are we doing this test? She's already positive”. The doctor disclosed this in front of other staff, and clients in the waiting room heard as well. Since then, people I know in the community have been hassling me and I feel that the doctor put me at risk. What can I do?**



**A.**

1. The *Medicine Act* states that “misconduct” is defined by regulation, and the regulation says that disclosing patient information

without consent is misconduct, so you could file a complaint about this particular doctor with the College of Physicians and Surgeons of Ontario. At best, the doctor will be disciplined.

2. You may also consider suing the doctor for “breach of confidence.” However, you would need to assess damages to determine whether it would be worthwhile. HALCO can help you to assess.

3. You could file a complaint under the *Personal Health Information Protection Act* (PHIPA). See above Q & A #5 for details.

4. You could file a Human Rights Complaint with the Ontario Human Rights Commission.

#7

**Q. I’m a Children’s Aid Society caseworker and a client has admitted that they are HIV+, are sexually active and not using protection. What should I do? Protect client confidentiality? Or protect the person who may be infected by telling that person?**

A. In Ontario, there is no "positive legal obligation" (requirement) in any statute to inform authorities about the behaviour of clients/patients who are putting others at risk of HIV infection, with one exception:

The exception is found in the *Child and Family Services Act* which imposes a requirement on everyone to call the Children's Aid Society

where a child's health is at risk. (This includes the situation where a parent fails to give a child medication, or an HIV+ mom continues to breast feed.)

So in this scenario, presumably the client is having sex with an adult, so there is no positive duty to disclose. Rather, you may have a legal discretion – in other words a choice. In a case involving solicitor client privilege, called *Smith v. Jones*, the Supreme Court of Canada stated that there is a public interest discretion: privilege may be breached and confidential information disclosed, where there is a substantial risk of serious and imminent harm to a known third party or group of persons. As a result, you should consult with your employer to see if your employer has established policies around the limits of confidentiality.



## OMBUDSMAN ANNOUNCES SYSTEMIC INVESTIGATION INTO THE CRIMINAL INJURIES COMPENSATION BOARD (CICB)

The Ombudsman of Ontario has assigned the Special Ombudsman Response Team (SORT) to conduct a systemic investigation into the

Criminal Injuries Compensation Board (CICB). The Board, whose chair reports to the Ministry of the Attorney General of Ontario, is a provincially run government agency with a mandate to award compensation to victims of violent crime in Ontario.



Over the last several months, the Ombudsman's office has received a number of complaints from both individuals and community groups about the treatment of victims of crime by the CICB, including lengthy administrative delays (in some cases it can take up to several years before a decision or award is received) and the re-victimization of victims of crime as they go through the process of seeking compensation through the CICB and are unable to obtain closure due to the long drawn out procedure. Concerns have also been raised about heavy bureaucratic burdens and demands for complex and voluminous paperwork, which are placed on victims who are applying to the CICB for compensation for injuries

Anyone who currently has a CICB claim, or had a claim in the past, may contact the Ombudsman's office directly to lodge a complaint at:

Office of the Ombudsman of Ontario  
483 Bay Street, 10<sup>th</sup> Floor, South Tower  
Toronto ON M5G 2C9  
1-800-263-1830

[www.ombudsman.on.ca](http://www.ombudsman.on.ca)

The Special Ombudsman Response Team's investigation is scheduled to be completed by December 31, 2006.



*The following article has been reprinted with permission of the ARCH Disability Law Centre*

## FEDERAL GOVERNMENT CANCELS COURT CHALLENGES PROGRAM

*By Laurie Letheren, Staff Lawyer*

On September 26, 2006, the Federal Government announced that it would be canceling the Court Challenges Program. This is an important program that has provided financial assistance for court cases that have advanced equality rights and language rights guaranteed under Canada's Constitution. The Court Challenges Program has provided funding for individuals and equality seeking groups to use to ensure that the rights of marginalized and vulnerable groups, including persons with disabilities, are protected under the Charter of Rights and Freedoms and the rest of the Constitution. Many individuals and groups would not be able to access the courts to

enforce their constitutional rights without financial assistance.



The Court Challenges Program has been acclaimed outside Canada. The United Nations has previously commended Canada on having developed the Court Challenges Program and has praised the Program as a vital means of implementing international human rights treaties.

If you wish to voice your concern about the loss of this program, learn how through the following link:  
<http://www.savecourtchallenges.ca>.



## HALCO AND AIDS2006



Over the summer, Toronto took the spotlight as host of the XVI International AIDS Conference – “AIDS2006” – during the week of August 13-18<sup>th</sup> at the Metro Toronto Convention Centre. HALCO was a proud participant of AIDS2006 and was given the opportunity to operate a booth in the “Global Village”.

Initially introduced at the 2004 International AIDS Conference in Thailand, the Global Village was open to both Conference delegates and the general public to enable greater civil society involvement and exchange. It was very exciting to be a part of the Global Village and we were able to witness first-hand how diverse and marginalized communities affected by HIV/AIDS were able to interact, learn from and network with each other, and share all facets of the human experience in the response to HIV/AIDS.



We here at HALCO believe that our booth WAS THE BUSIEST BOOTH OF THEM ALL. We talked with lots of people, from many different backgrounds, and from many different countries around the world. This included PHAs, lawyers, legal workers, community agency staff, public health nurses, outreach workers, members of government, media, and even some community agencies in Toronto and Ontario who didn't know about our services, but were very glad to meet us and to make future referrals to our clinic. We answered lots of questions about HIV, the law and disclosure in Canada, along with immigration and refugee questions. During the week,

we were able to make effective referrals for many different people, make some fabulous contacts, and speak to the media about who we are and what we do.

Ruth Carey, Executive Director, and Catharine Allan, Community Legal Worker, were extremely fortunate to have Dana Mclean – our summer student extraordinaire! – assisting us all week at the booth. As well, our new articling student, Janet Jin, spent her very first week at HALCO at the Booth on shift duty! A big thanks as well to our Board Chair, Bob Watkin, for working shifts, and to John Nelson, staff lawyer, for his expertise with velcro and duct tape – John was instrumental in assisting Catharine with the set up of our large and colourful booth! Last but not least, none of this would have been possible without Tyler King, Web Editor, and Kristian Justesen, Communications Advisor, both with Legal Aid Ontario.



## ANNOUNCING HALCO “RIGHTS AND DIGNITY” PARTNERS!

HALCO would like to thank the following Foundations for their generous support and contribution. Our work provides clients with access to both immediate and long term relief that would not otherwise be available to them, without the help of the following organizations that believe in the work that we do.

***Rights and Dignity Executive Partner at \$3,500:***



**RBC  
Foundation**

***Rights and Dignity Partner at \$1,000:***

The John C. and Sally Horsfall Eaton Foundation

***Other Generous Corporate Contributors:***

Ontario English Catholic Teachers Foundation

## BECOME A HALCO MEMBER!

A primary goal of the HIV & AIDS Legal Clinic Ontario (HALCO) is to provide legal services to persons living with HIV & AIDS that are relevant to their well being and that enable them to participate fully in the communities in which they live. In order to fulfill this goal, we need the participation of members of the HIV and AIDS affected communities. Please offer your support by becoming a HALCO member. By becoming a member, you will be invited to join us in our annual general meeting where you can participate in the business that will help guide the clinic and help elect the majority of the board of directors. You will also receive our newsletter along with being given special consideration for any other HALCO events.

No fee is required and your membership is valid for one year from the date you sign on. All we require is that you are a resident of Ontario who is 16 years of age or older and that you agree with the following Statement of Principles:

“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.



halco news is published by the HIV & AIDS Legal Clinic (Ontario) and distributed free to its membership and other members of the HIV/AIDS community in Ontario. Written by: Catharine Allan & Ruth Carey.



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## Membership Application

A primary goal of the HIV & AIDS Legal Clinic Ontario is to provide legal services to persons living with HIV & AIDS that are relevant to their well being and that enable them to participate fully in the communities in which they live. In order to fulfill this goal, we need the participation of members of the HIV and AIDS affected communities. Please offer your support by becoming a member of the HIV & AIDS Legal Clinic Ontario (HALCO).

By becoming a member of the HALCO you will be invited to join us in our annual general meeting. At this meeting you can participate in the business that will help guide the clinic and you can help elect the majority of the board of directors. You will also be given special consideration for any other HALCO events.

No fee is required for membership in the HIV & AIDS Legal Clinic and membership is valid for one year from the date you signed on. All we require is that you are a resident of Ontario who is 16 years of age or older and that you agree with the Statement of Principles as they appear on the other side of this application. Simply provide us with a mailing address, then sign, date, and return this form. We regret that our budget cannot provide for return postage.

All information is held in the strictest confidence and will be used only to inform you of our annual general meeting and to give you the opportunity to renew your membership. You may, however, indicate to us that you wish to be contacted about other activities of HALCO by checking the appropriate place below.

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

I \_\_\_\_\_ agree with the Statement of Principles of the HIV  
(signature of applicant)

& AIDS Legal Clinic Ontario (HALCO), I am a resident of Ontario, 16 years of age or older and wish to become a member of HALCO.

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Address: \_\_\_\_\_  
 \_\_\_\_\_

City: \_\_\_\_\_

Postal Code: \_\_\_\_\_

Please tell us how you found out about HALCO. \_\_\_\_\_

Daytime Phone: \_\_\_\_\_ Other Phone: \_\_\_\_\_

Leave Messages?: Yes \_\_\_\_\_ No \_\_\_\_\_

Would you like to be on our mailing list for more than just the notification of our Annual General meetings and membership renewal (such as occasional newsletters, announcements of HALCO events, updates on Clinic activities, etc.)?

Yes \_\_\_\_\_ No \_\_\_\_\_

Thank you for applying to be a member of HALCO!