

**CPP Same Sex Survivors Benefits:
Class Action Successful - Judgement Upheld!**

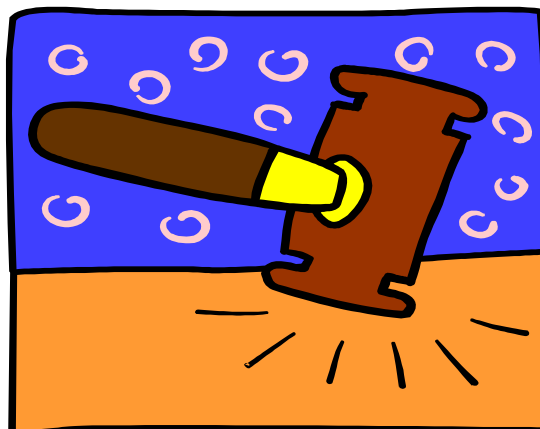
On November 26, 2004, the Ontario Court of Appeal released its judgement regarding *Hislop* and upheld the Ontario Superior Court of Justice's ruling that the federal government violated equality rights for same-sex surviving spouses by denying them retroactive Canada Pension Plan (CPP) benefits. Not giving same-sex survivors "equal access to such a fundamental social institution constituted a complete non-recognition of these same-sex survivors as full members of Canadian society," Justices Louise Charron, Kathryn Feldman and Susan Lang said in their decision.

The following is a brief summary of the historical highlights regarding this long fought legal battle: (Following the summary is a description of the action you are required to take if you believe this case applies to you)

* 1965 - Creation of the CPP - a contributory, earnings-related social insurance program that provides financial payments to family members to protect against loss of income due

to retirement, disability and death. Survivor benefits paid to opposite-sex spouses.

* 1987 - Opposite-sex common law partners recognized under the CPP, however same-sex couples expressly excluded.



* July 31, 2000 - Following a 1999 Supreme Court of Canada ruling that extended alimony to same-sex couples in a case known as *M. v. H.*, the federal Modernization of Benefits and Obligations Act (MOBA) - Bill C-23, came into effect which amended the CPP to provide same-sex common-law couples with survivor's benefits. (The MOBA amended more than 60 laws to put same-sex common-law couples on the same legal footing as opposite-sex common-law couples.)

However, as part of this amendment, the federal government imposed a limit on pension eligibility to survivors whose same-sex partners had died **on or after Jan. 1, 1998**, and made pension payments payable starting July 1, 2000 (when Bill C-23 came into force.) Survivors of opposite-sex couples were unaffected by the amendments and continued to receive benefits whether their spouses died before or after Jan. 1, 1998. As a result, the CPP amendments disqualified people whose partners passed away **before** January 1, 1998 - people like 77-year-old George Hislop, despite the fact that his late partner of 27 years, Ron Shearer, had paid into the CPP.

*2001 - George Hislop and others launch a class-action lawsuit challenging the federal government and the artificial cut off date of January 1, 1998. The plaintiffs (Hislop and others) and their lawyers argued that benefits should be paid to same-sex survivors whose partners had died **before** January 1, 1998, and specifically since **April 17, 1985** - the date the Charter of Rights and Freedoms became law, enshrining equality rights.

* December 19, 2003 - The Ontario Superior Court of Justice (Justice Ellen Macdonald) awarded survivor pension benefits to same-sex partners who lost their loved ones between 1985 and

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1998. Justice Macdonald found the cut off date to be unconstitutional because it denied same-sex survivors equal benefit of the law.

- * January 19, 2004 - The federal government appeals the December 19, 2003 decision of the Ontario Superior Court of Justice.
- * November 26, 2004 – The Ontario Court of Appeal releases its judgment, and upholds the Ontario Superior Court of Justice’s ruling that the federal government violated equality rights for same-sex surviving spouses by denying them Canada Pension Plan (CPP) benefits.

The federal government is now studying the new ruling to decide whether to appeal the case to the Supreme Court of Canada. They have 60 days to appeal.

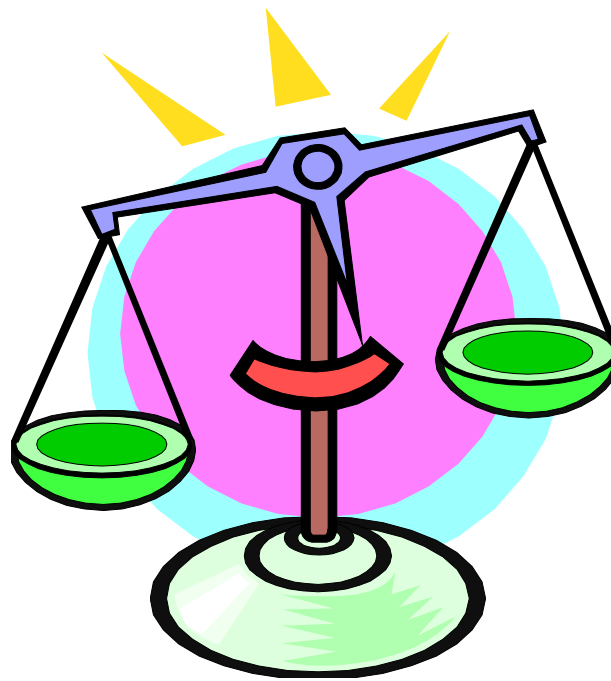
It is important to note that as part of its decision, the Ontario Court of Appeal set aside a “constitutional exemption” granted last December (2003) by Justice Ellen Macdonald, which would have exempted the plaintiffs from the general CPP provisions limiting the payment of arrears to one year prior to the date of a benefits application, and would have given retroactive benefits to the estates of claimants who have since died. The Ontario Court of Appeal has decided to send the case back to Justice Macdonald to determine exactly how much Hislop and other survivors will get.

ACTION REQUIRED:

Important arguments are still going on as to exactly how much retroactive benefits people should receive. HALCO has been

informed that the federal government is taking the position that retroactive benefits should be limited to **one year** before the date of any survivor’s **application** to the federal government for a survivor’s pension benefit instead of back to when the partner died.

The federal government may lose this argument, but just in case it wins, everyone in the class should make sure they apply to Human Resources and Skills Development Canada (HRDC) for their survivor’s pension benefits **as soon as possible** in order to protect your rights to such ben-



efits. Simply being registered as a member of the class is not enough. If you know someone in this class of individuals who has not filed an application for benefits, please bring this information to their attention.

Applications are available on-line at: www100.hrdc.gc.ca/ispcppn1e.shtml, or from HRDC offices, or from HALCO.

Furthermore, anyone who did apply, but whose application was denied, **and who did not appeal**, should also reapply **as soon as possible**, in order to protect his/

her right to the maximum amount of retroactive pension benefits.

***To be eligible for survivor benefits**, you must be an individual who lived with a same-sex partner from more than one year, and whose partner has died. The individual must have been at least 35 years old at the time of the partner’s death OR disabled, and their partner must have made sufficient CPP contributions while alive.

***To register for the class:** If you, or anyone you know, had a same-sex partner who passed away between April 17, 1985 and December 31, 1997, please contact the law firm of Roy Elliott Kim O’Connor Barristers - lead counsel for the class action - as soon as possible to register for the class. The registration form, along with additional information about the class action, is available on-line through the firm’s website – www.reko.ca. (You may also obtain the form from HALCO.) The law firm’s contact information is:
 Roy Elliott Kim O’Connor Barristers
 10 Bay Street, Suite 1400
 Toronto, ON M5J 2R8
 Email - asd@reko.ca
 Telephone - (416) 362-6204

An estimated 1,500 gay and lesbian surviving spouses across Canada are eligible for benefits. The amount of the retroactive pension benefit payments has been estimated at \$80 million.

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 website: www.halco.org

AGM 2004: Report from the Chair

Mark Blans is the current Chair of the HALCO Board of Directors. The following is the text of his Report from the Chair to the members at the 2004 Annual General Meeting held December 1, 2004.

First off, let me thank everyone for attending this year's AGM. I'd like to recognize that representatives of our funders, in particular Legal Aid Ontario, are in attendance tonight. We welcome and appreciate their presence.

Let me introduce myself to those of you who may not know me. My name is Mark Blans and I have had the pleasure of being the Chair of the HALCO Board of Directors for this year.

When I was first appointed to this position, I'd envisioned a rather calm year based on my years of observations of the clinic as a Board member. Quite to the contrary, it has proved to be anything but.

Starting out early in the year with an Anthrax threat that shocked an unsuspecting temp we had working at the reception desk - on her very first day! This coupled with a somewhat bewildering response by EMS workers as they tried to determine what the strange white powder was, proved to be a harbinger of what was to come! I'm pleased to say it wasn't a terrorist act.

This year saw the clinic experience the largest turnover of staff in its history! This caused quite a bit of turmoil for both the remaining staff and clients. I'm pleased to report that our house is now back in order and on solid footing with experienced, professional and committed staff.

This year, the clinic suffered the unthinkable loss of one of the pillars of the clinic in the departure of Matthew Perry. Matthew recently left the clinic in order to further his education and take up a new career in teaching. We can only hope his new students will appreciate the extraordinary com-

mitment and dedication he applies himself with, to any task he takes on. He will be fondly remembered by clients, staff, Board members and many agencies alike. Myself, and the rest of the Board wish Matthew a long, happy and rewarding future in his new profession.

On a sad note, I'd like to inform you of the passing away of Gary Weagle, one of our Board members. Gary remained active and involved with the Board up until the last weeks of his life. I'd like to acknowledge Gary's long-standing contribution to the PHA community and note that his dedication will be sorely missed in the future.

On a brighter note, I'm pleased to inform you that our past out-going Chair, who once said "I may return in four or five years," has returned mere months after leaving! Bob Watkin, a fixture here at the clinic, and a force to be reckoned with, has returned for more punishment. Oops, I meant to say, serve the community again. Bob has been involved with HALCO for many years and we are extremely pleased to see him back at our Board table again. Welcome back Bob!

We're also pleased to welcome back John Nelson, who articulated with us and now is a practicing lawyer at the clinic.

These examples demonstrate that commitment and dedication is something HALCO has in abundance.

The clinic is entering its tenth year of operation. While we've experienced our share of growing pains, there has been a substantial amount of work completed. I'm very pleased to announce that our new "HIV & The Law" Manual is complete and currently being printed and distributed. This comprehensive manual, designed for service providers, care providers and lay people, will guide and advise readers through complex legal issues in an easy to

read format. HALCO is proud of this accomplishment and would like to thank all of the people involved in its development.

For more information, or to obtain a copy of the manual, you can contact Catharine Allan, our new Community Legal Worker. We welcome Catharine, who replaces Matthew, and we are confident that she will shortly fill the "big shoes" left behind.

With the recent changes in government, at all three levels, HALCO is uniquely positioned to do some serious law reform work. Issues that we can take on, will be identified at our upcoming "Planning & Priorities" meeting to take place in mid-December. We intend on taking advantage of this opportunity and hope to effect some real change during this time.

In closing, I'd like to say that it has been a pleasure to serve as your Chair during this past year. Even though trumpets never sounded and I've never walked on the red carpet (things I've constantly asked Rick for), I've come to realize that this is for good reason. I don't do the blood and guts work! It's our amazing staff that digs the trenches and fights the battles. Without them there wouldn't be any victories. I'd personally like to thank all of our staff for their unrelenting voracity in tackling the wide-ranging issues faced by PHAs all across Ontario. Everyone at the clinic from the Executive Director down to our temps have made a huge difference for PHAs across the province this year. The red carpet should be rolled out, and the trumpets sounded for them! They are the heroes of this past year and I'm eternally grateful to them for all their hard work and commitment to PHA's in the province. I'd like to thank them for all their incredible efforts.

In the future, I look forward to representing the membership, in any capacity I can, for years to come and I thank you for the opportunity to do so.

Proposed Amendments to the Marihuana Medical Access Regulations

On October 23, 2004, Health Canada's proposed regulatory amendments to the Marihuana Medical Access Regulations (MMAR) were pre-published for comment in the Canada Gazette. These are the regulations for the program that provides for the legal use of marihuana for medical purposes. The proposed regulatory amendments are based on commentary received by the Minister of Health since the legislation came into force and from recent stakeholder consultations held earlier this year in January and February.

The amendments introduce four key changes to the regulations:

1. The process for obtaining authorization to possess marihuana for medical purposes will be restructured by:
 - Reducing the number of categories of eligibility from three to two, under which a person may apply for authorization to possess. Eligibility depends on medical conditions and symptoms. Category 1 covers anyone being treated within the context of compassionate end-of-life care (palliative care), or, anyone with a medical condition recognized by the Ministry (like HIV). Category 2 includes anyone with debilitating symptoms associated with any other kind of medical condition.
 - The need for a specialist to sign the medical declaration for the symptoms set out in Category 1 has been eliminated. Category 2 applicants will still need to be assessed by a specialist, but their

physician can sign the medical declaration.

- Revising the Applicant's Declaration to acknowledge acceptance of risks associated with the use of marihuana for medical purposes.
- Revising the physician's Medical Declaration to include only those elements essential to confirm that the applicant suffers from a serious medical condition and that conventional treatments are inappropriate or ineffective.



- Requiring authorized persons to submit a new photograph for identification purposes with every fifth renewal, rather than every second.
2. The application processes for amending and renewing an authorization to possess will supposedly be simplified.
 3. The Minister of Health will be provided with explicit authority to release limited authorization and license information to Canadian police in response to a request from the police in the context of an investigation under the

Controlled Drugs and Substances Act or the MMAR.

4. Limited authority will be provided for pharmacy-based distribution of dried marihuana, produced by a licensed dealer on contract with the Government, to authorized persons without a prescription from a physician. This will allow the conduct of a pilot project to assess the feasibility of distributing marihuana for medical purposes through the conventional pharmacy-based drug distribution system.

HALCO's comments on the amendments:

We have identified three areas of concern with the proposed amendments:

The first area of concern is that the amendments still do not address the problems with provisions that have been declared unconstitutional. Under the current regulations, a person who grows marihuana for people with exemptions can legally only be named as the supplier for one person. In *R. v. Hitzig*, the Ontario Court of Appeal stated that this limit was contrary to the Charter. This means that the Compassion Clubs are still not recognised suppliers under the regulations. Presumably, the proposal to pilot studies where supply is through local pharmacies is a step to addressing this problem, but in the meantime people will continue to have supply problems unless they purchase their marihuana directly from the federal government.

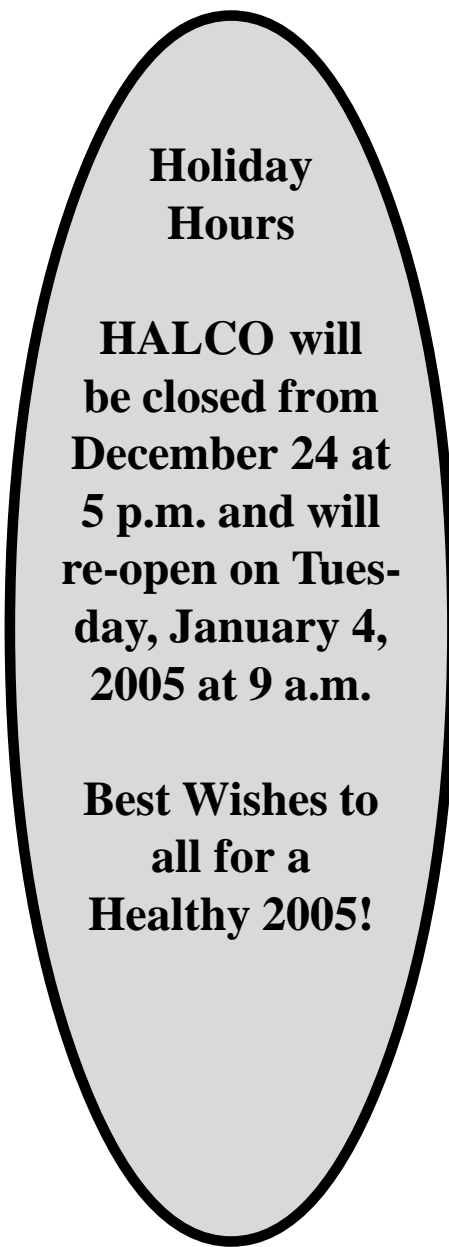
The second area of concern is that Health Canada will be given the explicit authority to disclose the personal information of exemption holders to Canadian police, without consent. Health Canada has made it clear that it will not release any details about the person's medical history or illness. Nonetheless, if the fact that you are an exemption holder is in the possession of the police, that information will probably be available on CPIC, the police computer. CPIC files are available to others - like the American immigration authorities. As possessing marijuana is illegal in the United States, and being HIV+ is already a bar to entry into the US, it remains to be seen if exemption holders will encounter additional problems crossing at the border. Perhaps more importantly, the fact that an exemption holder may be HIV+ will be known to the police as many exemption holders are.

The third area of concern is with the continued requirement of a specialist's endorsement for individuals in Category 2. Although this requirement does not directly affect HIV+ applicants (as PHAs will be considered Category 1 applicants), the specialist requirement fails to recognize the problems people have finding specialists. Many individuals in rural areas have to travel quite a distance and incur significant

costs to see a specialist. It is often simply impossible. Even in urban centers there can be lengthy wait times to see a relevant specialist. The argument could be made that the requirement of a specialist's assessment for Category 2, and not Category 1 applicants, discriminates on the basis of disability. Establishing an obligation for some applicants while exempting other applicants based on what disease they have is unfair treatment based on disability. Although people living with HIV are not directly affected by this issue, the community may be very concerned about the idea that disabled people should be treated differently based on what disease they have.

Overall, the proposed amendments to the MMAR are "housekeeping" in nature. They may make it easier for people to apply, and they may result in more individuals being able to benefit from the medicinal use of marijuana. But the amendments also raise concerns, and fail to address outstanding legal issues.

To access a copy of the regulations, visit the Canada Gazette web site at: <http://canadagazette.gc.ca/partI/2004/20041023/html/regle2-e.html> . The Canada Gazette is also available at most public libraries, or you can call HALCO and ask for a hard copy.



Holiday Hours

HALCO will be closed from December 24 at 5 p.m. and will re-open on Tuesday, January 4, 2005 at 9 a.m.

Best Wishes to all for a Healthy 2005!

HIV & AIDS Legal Clinic (Ontario) Donation Form

Yes! I want to make a charitable donation to help HALCO continue helping low-income PHAs in Ontario.

Please accept my donation of: \$25 \$50 \$100 Other \$ _____

I enclose cheque/money order payable to the HIV & AIDS Legal Clinic (Ontario).

I will donate online through HALCO's website at www.halco.org by clicking on "Help us Help"

Name _____ **Title** _____

Address _____ **Postal Code** _____

Phone (day) _____ **Phone (evening)** _____

Fax _____ **Email** _____

The HIV & AIDS LEGAL CLINIC (ONTARIO) is a registered charity. Our Charitable Registration Number is 891026957 RR0001.

YOU ASKED US!

Q. I work for an insurance company and am HIV+. My company provides us with drug benefits, which it pays for itself. I submit drug reimbursement claims to the human resources departments and get repaid 80% of my drug costs. As a result of the kinds of drugs I submit receipts for, the people in HR know I am HIV+ but I do not believe they have told anyone else so I don't think my supervisor knows. Part of the reason I believe that my supervisor doesn't know is because he is very homophobic and if he knew I was positive, he would assume I was gay and I think he would make my life a living hell. The problem is that my supervisor is about to be promoted and will become the manager of the HR department and have access to my drug reimbursement records. I want to know what privacy protections I have under the new privacy legislation.



A. Unfortunately, the privacy legislation passed in 2004 does not apply to your situation and does not give you any new protections or rights. The federal privacy legislation, the *Personal Information and Protection of Electronic Documents Act* ["PIPEDA"] now applies to provincial businesses like the insurance company you work for, BUT, PIPEDA does not protect EMPLOYEE information in provincial businesses - it only protects customer information. The only time that employee information is covered by PIPEDA is when the employer is in a federally regulated industry like banking or telecommunications. For more information see the Fact Sheets produced by the federal Privacy Commissioner at http://www.privcom.gc.ca/information/02_06_01_e.asp.

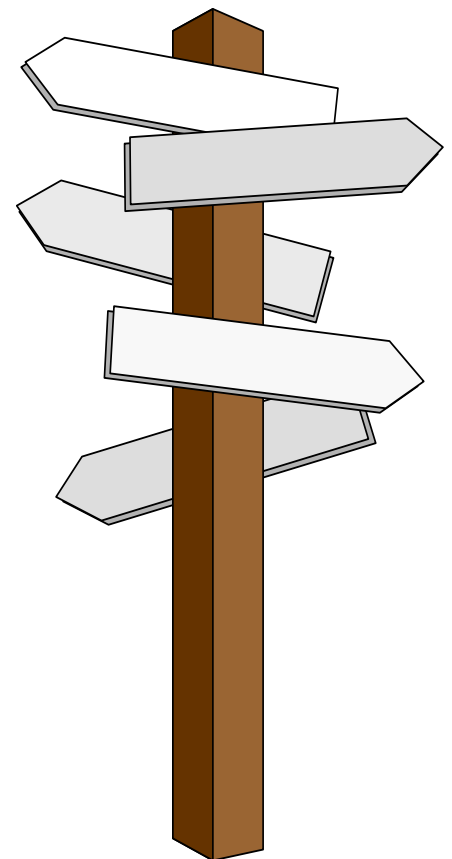
The second new piece of privacy legislation in 2004 was provincial - the *Personal Health Information Protection Act* ["PHIPA"]. PHIPA mostly regulates organisations called "health information custodians". Custodians are mostly traditional health care providers and an insurance company like your employer would not be considered a custodian under PHIPA. That being said, there is some additional protection for health information in PHIPA even where the holder of the information is not a custodian like in your case. If your employer obtains health information directly from a health information custodian, PHIPA contains some rules about that information. But here - you are providing the information directly to the employer. Where you provide the information to your employer yourself, none of the rules protecting that information from further disclosure or misuse that are contained in PHIPA apply. You can find out more about the new PHIPA on-line at <http://www.ipc.on.ca/>.

So at the moment there is still a major hole in the statutory legal protections concerning confidential information. If the supervisor finds out you are HIV positive and then does something bad to you, the legal remedy is to file a human rights complaint to the Ontario Human Rights Commission. If the supervisor tells other people about your HIV status behind your back, you MIGHT have a cause of action in the tort of breach of confidence and be able to sue in court, but you will not be able to turn to one of the privacy commissions for help. Sorry.

How to get to HALCO

HALCO is located at 65 Wellesley Street East, Suite 400, Toronto. We are in the building at the southwest corner of Church Street and Wellesley Street.

We are just down the street from the Wellesley subway station. To find us, exit the subway station onto Wellesley Street East, turn left, and walk east along Wellesley towards Church Street. (Pharma Plus and the TD Bank are located on the main floor of our building.) Take the elevator to the fourth floor and HALCO's door is right in front of you when you get off the elevator.



HALCO CHANGES...

There is nothing permanent except change
— Heraclitus

2004 has been a whirlwind of change here at HALCO. As many of you may know by now, there is a sea of new faces roaming about our hallowed halls.

In January 2004, Darrell Kloeze left HALCO to accept a position with the Ministry of the Attorney General. Ryan Peck, one of our former articling students, was with us until January 2004 on contract replacing staff lawyer Glenn Betteridge who was off on a leave working at the Canadian HIV/AIDS Legal Network. Once Ryan fulfilled his obligation to us, he ventured off to the Advocacy Centre for the Elderly. At the same time, Glenn, having enjoyed his time at the Network, decided to accept a full-time position with them. The clinic is very grateful for their time and efforts and wish the gentlemen good luck and happiness in their future endeavours.

In January, the clinic hired John Nelson, another former student of ours, as one of our staff lawyers. Then in March, the clinic welcomed Renée Lang, formerly of the law firm of Iler Campbell, to be the clinic's civil litigator. John and Renée both bring with them skills, intelligence, and enthusiasm and the clinic is thrilled to have them on board!

Robert Harvey, our part-time receptionist, left HALCO in March and the clinic wished him much joy and comfort. The clinic had decided it needed a full-time receptionist, so we hired Catherine Benson in April, 2004. Catherine brings

with her a wealth of experience from her time with Voices of Positive Women and the clinic is the better for it.

At the end of August, Matthew Perry, our Community Legal Worker, left the clinic to become a high school teacher. During Matthew's seven years with us, he made many friends throughout the clinic and ASO system. Matthew will be sorely missed by everyone, but he leaves behind an enduring legacy of his work - the new HIV & The Law Manual. Replacing Matthew is Catharine Allan, our new Community Legal Worker. Catharine came to us in September, 2004 from the Ministry of Community and Social Services and Children and Youth Services. Her background includes community, non-profit and government work. If you haven't met her, you soon will - and what a person! Smart, bubbly and approachable - it will be just a matter of time before Catharine's name becomes synonymous with HALCO's (just like Matthew's!).

In September, our new articling student, Ruth Williams, joined us. As the clinic now has two Ruths, we have taken to calling Ms. Williams "Ruth Junior." (I won't say what this means we now call Ruth Senior - oops!) Ruth is a law student from the University of Ottawa, and in addition to her wonderful sense of humour, she brings with her a commitment to social justice and human rights. The clinic is very pleased to have Ruth on board.

On a sad note, Gary Weagle, a long-time board member of HALCO, passed away in the Spring of this year. Gary had participated in HALCO meetings for many years. He had a successful career in taxa-

tion counselling and investment management. Gary had also been involved in the implementation and development of a Canada Works Project designed to assist the underprivileged in the downtown Toronto core, and was active in community charitable works. FAB Magazine named him as "one of the persons who makes being Gay in Toronto fabulous," principally because of his unpaid work with Gay, Lesbian, Transsexual and Transgendered youth. Gary's volunteer experience in the HIV/AIDS community is noteworthy, and he had the reputation of being a down-to-earth individual who enjoyed working with groups and on a one-to-one basis with individuals. Gary had served on the Board of Directors of an international private charitable organization in the past (Fraternal Order of Eagles).

In addition to losing Gary, Paul Peterson and Jim Lister resigned as board members. Both gentlemen had personal commitments to attend to, and HALCO thanks them for their generosity of time, wisdom, spirit and commitment. We wish them good luck and happiness in their future endeavours.

During 2004, the HALCO Board of Directors acquired three new members. The first, Gary Salter, had been a volunteer with HALCO for many years, assisting Matthew in outreach activities such as our newsletter. Gary enjoyed his volunteer activity so much that a commitment to volunteer as a board member was a logical next step for him, and for us. We very much enjoy Gary's relaxed approach and

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clever wit. Glad to have you aboard Gary!

In the summer, Bob Watkin returned to the clinic as a board member, much to our delight and relief! Bob is a retired lawyer and former partner of several downtown law firms. He served on HALCO's Board from February 1995 to September 2003, and as a former Acting Chair, Chair, Vice-Chair and Treasurer. Bob is also past President, Director, and volunteer at the Teresa Group, an AIDS organization dedicated to assisting Ontario families affected by HIV. Bob brings with him a generous wealth of knowledge and experience of the complexities of non-profits, funders, and personalities. Bob is another individual whose name is synonymous with HALCO's, due to the incredible contribution he has made over the years.

In addition, the Board welcomed a new member by the name of Dermot Muir. Dermot is a lawyer who works for the Ontario Municipal Economic Infrastructure Financing Authority. He heard about our agency and its community efforts and was pleasantly surprised by the good work that HALCO performs. Dermot took it upon himself to become actively involved by becoming a member first and then welcomed by the board to join as a Director. Relaxed and personable, we're sure that Dermot too will leave an indelible mark with our clinic.

And that's our wrap-up! Five new staff, and three new board members!!! All in 2004! What a trip!

HIV & The Law Advocate's Manual: Update

As you have read in our Chair's Report, we are very pleased to be able to report that the HIV & The Law Advocate's Manual has at long last been printed and is currently being mailed out across the province. Electronic versions of each of the chapters will be posted to HALCO's website shortly. Please check in to www.halco.org/manual regularly for updates.

The manual currently consists of seven chapters covering a number of areas of law relevant to PHAs and their advocates. Issues covered include prisons and prisoners, immigration, landlord and tenant, employment, human rights, disability insurance and powers of attorney.

The manual has been distributed to all community health centres, legal clinics, AIDS Service Organizations, and immigrant serving organizations across the province.

If you are interested in receiving a copy of the manual or finding out more information, please contact Catharine Allan, at HALCO. Catharine can be reached at the coordinates below.



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