



halco news

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Medical Marijuana: Stuff you need to know

In recent months, medical marijuana has been in the news quite a bit. In many respects, this is because of the success of a couple of individuals in being granted an exemption from criminal prosecution for the cultivation, possession and use of marijuana for medical purposes. One of these people is Jim Wakeford, a Toronto man living with AIDS.

Back in February of 1998, Jim Wakeford filed a civil suit against the federal government, seeking safe, clean affordable marijuana for medical purposes, while at the same time asking for an exemption from criminal sanctions for his caregivers, who may be required to assist him in accessing such marijuana. As a result of

his suit, it was decided that because the Controlled Drugs and Substances ACT (CDSA) contained provisions for an exemption, covered under Section 56 of the CDSA, Mr. Wakeford's motion would be dismissed, and he should follow that avenue in order to secure the freedom from criminal sanctions. No decision was made with regard to the provision of safe, clean and affordable marijuana from the government.

Section 56 of the Controlled Drugs & Substances Act reads as follows: *The Minister may, on such terms and conditions as the Minister deems necessary, exempt any person or class of persons or any controlled substance or precursor or any class thereof from the application of all or any of the provisions of this Act or the regulations if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.*

Basically what this means is that the Minister of Health has the discretion to allow any individual to be exempt from the provisions of the Act with regard to any substance regulated by the Act. Marijuana is one of those substances, and in Jim Wakeford's case, he was a person who claimed that the exemption was necessary for a medical purpose.

However, when Mr. Wakeford then turned to the Minister of Health in an attempt to apply for a Section 56 exemption, he discovered that there was no real process in place by which to ask for the exemption. After requesting the exemption in writing, through his lawyer, in September of 1998, Mr. Wakeford heard nothing from the government until November of 1998, at which time the Minister of Health notified him that they were considering his "extraordinary request". By March of 1999, Mr. Wakeford had still no response, and so applied to have his case go back before the judge who had dismissed his arguments earlier. This request was made on the basis that the Section 56 exemption had not been, in reality, a viable option.

In May of 1999, after successfully arguing to have the case heard again, Mr. Wakeford was granted an interim Section 56 exemption by the judge hearing his case, and a few days later, the Minister of Health announced that he would not appeal the ruling. Within a month of the judge's decision, Mr. Wakeford was granted a Section 56 exemption, one of the first two granted to Canadians. This exemption protects Mr. Wakeford, and only Mr. Wakeford, from arrest and prosecution for the possession, use and cultivation of medical marijuana. The exemption does not provide Mr. Wakeford

with legal access to marijuana (i.e. he has to produce it himself), nor is there any protection from prosecution for any of his caregivers who might provide him with marijuana during illness, or who might procure seeds for him to cultivate, or who may provide assistance and expertise in the cultivation of marijuana.

So, you may ask, how can you make your very own application for a Section 56 exemption? Read on and you shall find out.

In order to start the application, you do not need a lawyer. You **will** need a doctor who is supportive of your application and will cooperate in the completion of the "interim guidance document" which provides details about what information is required in your application. You will also need to get yourself a copy of the Interim Guidance Document itself. It is available from the Health Canada website. The direct link to the document itself is:

http://www.hc-sc.gc.ca/hpb-dgps/therapeut/zfiles/english/cds/guides/interim_e.html

Click on the link below to get a PDF application document:

http://www.hc-sc.gc.ca/hpb-dgps/therapeut/zfiles/english/cds/guides/hc9130_e.pdf

NOTE: You must have the Adobe Reader to view and print the above mentioned document. If you don't have it, click on the link below to download and install it yourself.



Printing Tips: Use a min. 24-pin printer. Bubble-Jet & Laser printers offer much better results. Set the Adobe software to 'fit to page' mode if you do not have legal paper to print on. Photo-Copy your BLANK form, then fill it out. Bubble-Jet pages can easily be destroyed by even a small amount of water and, thus delay your application. If you have ANY questions, call our offices for assistance. Sign your document with a PEN! Blue ink is preferred.

If you do not have access to the Internet, you can request a copy of the Interim Guidance Document by writing to Dan M. Nichols, Director General, Therapeutic Products Directorate, Room 216, Health Protection Building, Tunney's Pasture, Address Locator 0702A, Ottawa, ON K1A 0L2 and requesting

a copy. You can also request a copy by phone at: (613) 957-0369 or by fax at (613) 952-7756.

Based on the information you file, an evaluation of your request will be made and a decision reached regarding whether or not you will be granted a Section 56 exemption. Your physician must supply information about: the drug you want an exemption for; your diagnosis; the reasons why the marijuana is necessary for a medical purpose; dosage form and amount; any risks and benefits associated with the use of the substance; all therapies that have been tried and explanations regarding why they have failed; information about any other therapies that have been reasonably considered and an explanation for why they were not used; and relevant medical information about your medical diagnosis.

Once the information is submitted to Health Canada, you are supposed to get an acknowledgment of receipt of the application within 10 business days. There is no specific time limit for them to make a decision regarding your application. Applications are considered on a case by case basis, and once a decision is made, you will be notified. If you are granted an exemption, then you will receive a copy of your exemption, in writing, which will set out the terms and conditions of the exemption. There is no indication in the Health Canada literature that there is a right to appeal a denial of an application for a Section 56 exemption.

The most recent information regarding Section 56 exemptions comes from a October 6, 1999 Health Canada news release, which states to date, a total of 16 individuals have been granted Section 56 exemptions, and another 8 applications are in the final stages of review. As well, 80 inquiries have been made regarding applications for exemptions and these individuals have all been sent copies of the Interim Guidance Document. In the same news release, Health Canada indicated that their target is to review each application on a case-by-case basis, within 15 working days of receipt of all the required information.

Other developments on the medical marijuana front include the announcement of the development of a protocol for clinical trials of marijuana for medical purposes. Currently this is likely to involve 250 participants in a randomized, double-blind design. Participants will receive either marijuana in a smoked form, a pharmaceutical containing synthetic THC (the active ingredient in marijuana) or a placebo. If the protocol is approved, the trials are expected to be established and begin in 2000.

For more information regarding Health Canada's plans regarding medical marijuana, visit the Health Canada website at:

<http://www.hc-sc.gc.ca>

and search for the keyword "marijuana".

Thank you to [Jim Wakeford](#) for sharing this information, and his experiences at HALCO's AGM.

Province Cuts Travel Money for ODSP Recipients

Effective September 1st, 1999, the Ministry of Community and Social Services has changed its policy on covering costs for transportation to medical appointments for people on ODSP. In the past, under both the Family Benefits Act and the Ontario Disability Support Program, recipients of benefits have been able to receive funding in order to attend medically necessary appointments as well as treatment services and support groups like Alcoholics Anonymous, Narcotics Anonymous and other support groups. The funding is provided as a benefit by the regulations under the Ontario Disability Support Program Act. Commonly referred to as Mandatory Special Necessities, funding is available for diabetic supplies, surgical supplies and dressings, and transportation for medical appointments, provided no funding for any of these services is available from any other source.

Under the changes effective September 1st, 1999 the **only** transportation which will be covered under Mandatory Special Necessities is appointments with professionals who are covered under the Regulated Health Professionals Act, 1991. Basically this means that you can only get transportation costs covered for appointments with a: physician, optometrist, occupational therapist, physiotherapist, massage therapist, midwife, nurse, pharmacist, speech language pathologist, audiologist, psychologist, chiropractor, chiropodist or pediatricist. Individuals will no longer be eligible to receive funding for visits to their support group or counsellor at the AIDS Committee, for example, or for support/treatment with any professional who is not registered under the RHPA. This means funds will no longer be provided for transportation to AA and NA meetings.

The ODSP assumed responsibility for the payment of mandatory special necessities in June of 1998., when the ODSP came into effect. However, due to a technical limitation, the actual payment of the benefits was carried out by Ontario Works offices until September of 1999. The announcement of these changes comes at the same time as the shift from Ontario Works delivery to ODSP delivery of this benefit.

In order to get approved, your worker has to complete a Mandatory Special Necessities Approval form and attach the verification that you have provided. It is possible for a one time emergency payment to be made. You must be notified in writing of a decision not to approve medical transportation and you have the right to request an internal review and appeal that decision.

No one is eligible for funds for medical travel and transportation unless their eligible travel costs are more than \$15.00 in a month. You will need to provide documentation to verify all your medical appointments on a monthly basis, all receipts for purchase of transportation (from purchasing transit tickets, gas money, parking, taxi receipts, etc.) If you live in Northern Ontario, you will be required to apply for the Northern Health Travel Grant, and to sign an agreement to reimburse ODSP if you are ineligible for the grant.

Under the new system, you will have to keep a medical Transportation Log. This log will list all the appointments you said you have in a given month and for which you have been provided with funds for travel. At each visit, you will be required to have someone at the office of the practitioner initial your log to confirm that you actually showed up for the appointment. You will be required to submit your transportation log to your worker after three months, and each six months, there will be a full review of your log.

Out For Blood

On March 10, 1999, Bill C-483 received first reading in the House of Commons. Bill C-483 is called "An Act to provide for the taking of samples of blood to detect the presence of certain viruses" and is a private member's bill sponsored by Reform member, Keith Martin, of British Columbia. For short, it's called the "Blood Samples Act".

Bill C-483, if passed, would allow for the taking of blood samples for the purposes of testing for HIV, and hepatitis B or C, without the patient's consent. The Blood Sample Act would allow emergency workers like police, firefighters, paramedics and health workers, or anyone who comes to your rescue in an emergency situation, the right to go to a justice of the peace and apply for a warrant requiring you to submit to giving a blood sample for the purposes of testing for HIV or hepatitis A or B, if, in the course of treating you or helping you they come in contact with your "bodily substance".

The bill basically justifies this intrusion on basic human freedoms by pointing to the potentially long incubation period of these viruses, and the fact that testing the person who may have been exposed does not necessarily show if they have been infected for some time. Therefore, presumably, time is lost which could have been used for treatment.

There have been press reports which have been brought to our attention which basically state that the police are in favour of this legislation and are writing to the Minister en masse to ask the government to support the bill.

Although Bill C-483 has received first reading, it is highly unlikely that it will be passed and become law. But if you would like to tell the federal government what you think of this proposal, please feel free to write to the Minister of Justice Canada, Anne McLellan, 284 Wellington Street, Justice Building, 4th Floor, Ottawa, On. K1A 08H, or you can e-mail her at: Mclellan.A@parl.gc.ca

You can get a copy of the bill from the Internet through:

<http://www.parl.gc.ca>

or you can call us and we will send you one.

Report from the Chair

The following is the text of a speech given Septmeber 14, 1999, at HALCO's Annual General Meeting by Mr. Bob Watkin, Chair of HALCO's Board of Directors.

This has been a year of ups and downs for both HALCO and the legal rights of PHA's -- a year of very good things and very bad things. As predicted the Supreme Court of Canada decision in the Cuerrier case begun to cause severe problems for PHAs. Calls to the clinic indicate that the consequence of this decision has been the further encroachment of what little right to privacy and confidentiality previously existed for PHAs. On the other hand, thanks in large part to Jim Wakeford, PHAs are a few steps closer to the legalization of marijuana for medical use.

Last year we reported to you that the demand for HALCO's services had increased from an average of 100 requests for information, services and advice per month to 150 per month. In the current calendar year we are averaging 170 requests for services each month. The bulk of the clinic's legal work continues to be basic bread and shelter issues: keeping fed and keeping housed - a depressing reality in the country's wealthiest province.

The report given last year by Alan Stewart, the past clinic chair, warned that this increasing demand threatened to undermine the services we could make available. Alan sounded the alarm that this increasing demand could overwhelm our ability to provide the same level of service to all possible clients. Alan's prediction was not a false alarm. Recently we were to limit our intake of service requests to all day Mondays & Wednesdays and half days on Tuesdays and Thursdays. We could no longer both answer the calls and responsibly service them.

In the face of this increasing demand we have also suffered a reduction in our staff. The one time sources of funding, a combination of private donations and government funding - that permitted us to have an articling student for the past two years has been exhausted.

This combination of increased demand and reduced staff has also forced us to delay production of our major project - The HIV and the Law Manual.

There have been a number of welcome developments this year. Thanks to board member Mark Blans, HALCO now has a website which features most of our current publications. The restructuring of Legal Aid in Ontario has so far proven to be an encouraging experience for HALCO. Our staff have received salary increases for the first time since the clinic opened.

There is a chance that additional staff positions may be allocated to us as Legal Aid continues to restructure itself.

Legal Aid Ontario has been beneficial for the clinic in improving its physical plant. HALCO has been provided with a new computer system which is networked across the province connecting us with all legal aid providers and clinics in Ontario. This is an incredible advantage for the clinic in fulfilling its province-wide mandate. Money has been made available for office furniture. We have a new phone system. It still has a few bugs which need to be worked out, but it is a vast improvement over our old one.

Thanks to both Legal Aid Ontario and the AIDS Committee of Toronto Community Partners Fund, we also have additional money available to us this year for client disbursements. This means that for people who have legal problems beyond our expertise or mandate, HALCO may have some funds available to cover a portion of their legal costs despite the fact we can't represent them.

As it has been my personal project for the past two and one half years, it gives me great pleasure to advise you that, despite what at times seemed to be insurmountable odds, Revenue Canada has very recently indicated to us that if we make a minor adjustment to our By-Laws and Letters Patent, HALCO will be approved for charitable status. This is perhaps the best financial news of all for HALCO as it gives us a fund raising capacity we have never had before. We will need your help to make this important development a reality. Later, hopefully this year, we will ask you to attend a further members meeting to give your required consent to these minor necessary changes.

If the board of an entity like HALCO can be considered its mind then its heart, soul, flesh and blood is its staff. On behalf of the clients, members and the board of HALCO I would like to express our sincere appreciation for the creativity, ability, dedication and hard work of Rick Lobodzinski, the Administrative Assistant, Matthew Perry, the Community Legal Worker, and Ruth Carey, the Executive Director. Thank you to all of you.

This past year has been a series of turning points for HALCO. HALCO continues to evolve from a young uncertain organization into a much more stable and mature one. If HALCO is going to better serve the legal needs of PHAs we need to use that growing maturity and stability to advocate for sufficient resources to meet

those needs. HALCO needs to continue to grow in size and sophistication. With luck and hard work the coming year could see us expanding services instead of decreasing them. Thank you for your continuing support.

1999-2000 Board of Directors

Mark Blans (Secretary-Treasurer) was appointed to the PWA board in November of 1997 and subsequently appointed to the HALCO board as a PWA representative. Most recently, Mark served as Secretary-Treasurer on the Executive Committee of the 1998-99 HALCO Board of Directors, and has been a member of the Personnel, Outreach and Finance Committees. Mark has researched HIV and AIDS issues for 11 years and has been active with both PWA and ACT during that period. Mark was instrumental in the development and implementation of HALCO's website and continues to manage the site. Mark looks forward to working with the membership, staff and Board colleagues to ensure HALCO continues to offer both high quality and timely services. Mark has thoroughly enjoyed sitting on HALCO's board and looks forward to anticipating and addressing new challenges during a new term.

Helen Daley has been practicing for 11 years as litigation counsel. Helen is a member of The AIDS Committee of Toronto and served as an ACT Board member from 1992 through 1995. In 1995 ACT appointed Helen as one of its two representatives to the founding board of HALCO. Helen returned to the board in 1998-99 as an elected community member serving as Chair of the Board, and has been re-elected as a community member for the 1999-2000 year.

James Kreppner has been involved with the HIV & AIDS Legal Clinic since its beginning, and is one of the two members of the board appointed by the Toronto People With AIDS Foundation. James' other activities include being a board member of the Toronto PWA Foundation, the Toronto-Central Ontario Regional Hemophilia Society, the Canadian Hemophilia Society. In addition, James' memberships include the National Advisory Committee of HIV/AIDS Treatment Information Network (CATIE), the HIV/AIDS Clinical Trial Network (CTN) Community Advisory Committee, and its Steering Committee, and he is a council member of the Canadian Treatment Advocates Council (CTAC). Currently, James is also a Vice-President of Hemophilia Ontario.

Alan Stewart has been on HALCO's Board of Directors for three years. Alan served as Chair of the Board for the 1997-98 Board year. He was on the Board of the AIDS Committee of Toronto from 1990 to 1994. During his time at ACT Alan served as Secretary and Vice-Chair, sat on the Policy and Advocacy Committee and the Community Relations Committee, and acted as liaison with Dancers for Life. He is currently serving as a member of the Board of Casey House Hospice. Alan works as a teacher at the University of Toronto. This year, Alan is one of the AIDS Committee of Toronto's appointees to HALCO's Board of Directors.

Connie Vernon (Vice-Chair) is a graduate of Queen's University Law School and has recently completed her articles at Virgilio, MacDonald in Richmond Hill, Ontario. Before attending Queen's, Connie worked for ten years at Seneca College. While at the College, she worked in the areas of athletics and student leadership development. During the 1998-99 year, Connie served as a member of the Outreach Committee of the Board. Connie has been re-elected to the HALCO board as a community member for the 1999-2000 year.

Andy Visser-deVries has been the executive director of the Canadian Science Writers' Association (CSWA) since 1991, and is an administration consultant with the Community Research Initiative of Toronto (CRIT), an organization dedicated to community based HIV/AIDS research. Andy serves as Treasurer on the Board of Directors of the Toronto PWA Foundation, and is a former board member of the AIDS Committee of Toronto and the Canadian Lesbian and Gay Archives. He holds undergraduate degrees in theology and commerce from the University of Saskatchewan and Queen's University. Andy has been living with HIV since 1992.

Bob Watkin (chair) is a retired lawyer and former partner of several downtown law firms. He has served on HALCO's Board since February of 1995 and is a former Acting Chair, Vice-Chair and Treasurer. Bob is also immediate past President, Director and a volunteer at the Teresa Group. Bob has been a delegate to the Ontario AIDS Network (OAN), the Canadian AIDS Society and is past Coordinator of the Gay Men's Caucus of the OAN. Bob also sits on the Advisory Committee for Positive Youth Outreach.

Gary Weagle has a Bachelor of Commerce degree and has had a successful career in taxation counselling and investment management. He has been involved in the implementation and development of a Canada Works Project designed to assist the underprivileged in the downtown Toronto core, and is active in

community charitable works. FAB Magazine has named him as one of the persons who makes being Gay in Toronto fabulous, principally because of his unpaid work with Gay, Lesbian, Transexual and Transgendered youth. He has participated in HALCO meetings for many years . Gary's volunteer experience in the HIV/AIDS community is noteworthy, and he has the reputation of being a "down-to-earth" individual who enjoys working with groups and on a "one-to-one" basis with individuals. Gary has served on the Board of Directors of a private charitable organization in the past.

Lee Zaslofsky is one of our AIDS Committee of Toronto appointees, and replaced Joan Anderson on the HALCO Board in March of 1999. Lee works at ACT as Advocacy and Media Relations Coordinator. Prior to his arrival at ACT, Lee was a Community Health Worker at the Queen West Community Health Centre. Lee has also served on the former City of Toronto Board of Health, and was most recently appointed to the Board of Health for the new MegaCity.

You Asked Us

Q. I am on Ontario Disability Support Plan benefits (ODSP - formerly FBA) and my lover just passed away. His will names me as both the executor and beneficiary of the estate. After paying off all his debts, there will be about \$10,000.00 left. Will this get me in trouble with ODSP? Will I lose my drug card?

A. The fact that you are an executor may affect your benefits if you take executor's compensation from the estate. When you act as the executor of an estate, you are entitled to be paid out of the estate a percentage of its value in exchange for the work you do settling the estate. This amount is called executor's compensation. The general yard stick is the executor can take 2 1/2 per cent of the value of the estate in compensation. As the executor, you can choose to decline to take this compensation. But the ODSP regulations say you must avail yourself of any income available to you, so if ODSP finds out about you acting as an executor, they may consider you to be in receipt of this income whether or not you elect to take it. That being said, I have never heard of ODSP doing that. If you take the compensation, you should report it as income to ODSP and it will affect your entitlement. But if you elect to not take compensation, hopefully ODSP will do nothing about it. The way to solve this problem for sure, is to make sure that if you

are named as an executor in a will, the will stipulates that you are not entitled to executor's compensation.

The fact that you will inherit about \$10,000.00 as the beneficiary is a little more complicated. The general rule is that an inheritance is treated as income. If the inheritance is less than \$4,000.00 you could make the argument that it is a gift as gifts under \$4,000.00 received in a twelve month period, are exempt. However, in this case ODSP will treat the inheritance as income in the month received and you will be cut off and lose your drug card. You will not be able to get back on ODSP until the inheritance is spent down to the approved asset level (which is \$5000 for a single person). However, there are some ways of sheltering the \$10,000 so ODSP will not consider it as income. For example, you can ask ODSP's approval to spend it on "disability related expenses" or a disability related "training program". As disability related expense is not defined, as long as your worker approves it, you can keep the \$10,000 by spending it on an approved disability related item or training program. You can place the \$10,000 in an exempt trust.

If you are not a grandparented person (ie/you were not transferred from the old FBA program to ODSP on June 1, 1998), this problem with the \$10,000 is less difficult than it seems. You get the \$10,000 and it is income in the month received, so you lose the drug card and your ODSP for that month. But if you then invest the \$10,000 in an exempt asset (like a principal residence, or a car, or a trust), the next month you do not have income or assets in excess and are eligible to go right back on ODSP through rapid reinstatement. You do not have to resubmit medicals, you just have to provide financial information.

This is not true if you are a grandparented person. For grandparented people, unless you can convince ODSP to let you invest it or spend it in an approved way, you will be cut off, have to live off the \$10,000, and then have to re-apply. You will not be eligible for rapid reinstatement and you will have to prove you are medically disabled under the ODSP definition. And you should be careful to keep receipts for whatever you spend the \$10,000 on as if you spend it frivolously, or give it away, you may find yourself being denied assistance for disposal of assets with inadequate consideration.

General Members Meeting

All HALCO members should have received a notice of a General Members Meeting which is being held on **Monday, November 8th, at 6p.m.** in the Board Room of the AIDS Committee of Toronto at 399 Church Street, 4th Floor, Toronto. The purpose of this meeting is to consider a special resolution to apply for supplementary letters patent which would enable HALCO to obtain a charitable registration number from Revenue Canada. In addition, amendments to our By-law No. 1 will be reviewed for your approval. You should have received copies of the proposed special resolution and amendments to By-law No. 1 with the notice. If you have a valid membership, but did not receive the notice or these materials, please contact Matthew Perry at (416) 340-7790 or 1-888-705-8889, or e-mail us at: talklaw@halco.org

Students, Students, Everywhere!

HALCO has been lucky enough to host two law students and one Bar Admissions Course student. For the next few months, we are pleased to welcome Allison Foord, Dera Nevin and Michele Hamilton. Allison, Dera and Michele will be helping us out on Wednesdays and Thursdays. They will be assisting us with research and summary advice during their time with us. Their energy is a welcome addition to our busy office!

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