

**Immigration and Refugee Protection Act  
 New rules will have an impact on HIV positive immigrants**

On June 28, 2002, the new Immigration and Refugee Protection Act (IRPA) came into effect, along with a final version of the Immigration and Refugee Protection Regulations (IRPR). The regulations were made official through publication in the Canada Gazette on June 14, 2002.

In the last issue of **halco news**, we reported that Citizenship and Immigration Canada had made screening for HIV mandatory for all immigrants 15 years of age or older, effective January 15, 2002. Before then, an HIV screening test was part of the immigration medical only where it was medically indicated. The decision to screen for HIV was based on a number of factors, including whether the country of origin had high rates of HIV infection, whether the individual had a history of high risk activities and whether the individual's parent was HIV positive themselves.

Under the new mandatory HIV screening rules, those under 15 years of age will have to undergo an HIV screening test as part of their medical examination if they have received blood or blood products, have an

HIV positive parent, or are potential adoptees.

Under the old system, individuals who were sponsored under the family class and who were found to be HIV positive, were usually refused permanent resident



status because they were considered "medically inadmissible" to Canada. Someone was medically inadmissible if they were considered to be a threat to public health or safety, or if their condition was expected to place an "excessive demand" on the health and social services in Canada. There was no clear definition of "excessive demand" in the old act. Most people with HIV or AIDS (PHAs) were not considered a threat to public health and safety, but were caught by the excessive demand rules.

In these situations, the person's sponsor could appeal the sponsorship refusal. If the appeal was successful the sponsored person could be granted permanent resident status. Some HIV positive

individuals were also able to enter and remain in Canada on a Minister's Permit, usually by establishing humanitarian and compasionate reasons why they should be allowed to remain, despite being inadmissible. The Minister's Permit could be cancelled at any time; could not be valid for more than three years (and was usually only valid for one year at a time); and did not permit the sponsored person to be eligible for the Ontario Health Insurance Program (OHIP) or the Trillium Drug Program. This left many HIV positive immigrants with the legal right to be in Canada, but without any access to insured health care, or access to medications to treat their HIV infection. Onlyafter successfully hoding a Minister's Permit for 5 years could a person request that the Minister consider granting them permanent residentstatus.

The new Act and regulations have addressed some of these issues for some HIV positive immigrants and refugees. A number of these changes are positive, but some may have a negative effect.

**New definition of 'excessive demand'**

One major change in the new Act is the creation of a definition of "excessive demand". The IRPA defines "excessive demand" as a demand on health or social services, which would be more than the cost for the average Canadian over a five-year period. Where there is evidence that the health or social services costs would be

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significant for longer than five years, a 10-year window would be used. The other consideration for excessive demand is whether the person would cause a demand on services that would add to waiting lists for services, and increase the rate of 'mortality or morbidity' for people who were already Canadian citizens or permanent residents. There is real concern that Citizenship and Immigration will routinely use a 10 year time frame for PHAs. Such a the time frame has no way to account for changes and advances in treatment which might have a significant impact on the health and social services costs for that person. As well, this new definition of excessive demand does not take into account the economic and social contributions that will be made by that person in Canada. It will remain to be seen how HIV and AIDS are considered in light of the new definition.

**Exemptions from medical inadmissibility**

On the brighter side is the fact that the new Act creates some exceptions to the rules about medical inadmissibility, and excessive demand in particular. Under the IRPA, sponsored spouses, common-law and conjugal partners and dependent children will be exempt from the rules about medical inadmissibility based on excessive demand. This means that if you are HIV positive and sponsored by your spouse, common-law partner or parent to come to Canada, the fact that you are HIV positive and likely to cause excessive demand on the health or social services will not prevent you from becoming a permanent resident. This is a major improvement over the old system, where a Canadian sponsor was forced to go through an appeal process in the hopes they might succeed on humanitarian and compassionate grounds.

The new act also specifically sets out definitions for common-law partners and conjugal partners. A 'common-law partner' is someone of the same or opposite

sex you live with in a conjugal relationship for at least one year. You can still be considered common-law partners if you don't live together because of persecution or penal law. When talking about sponsorships, a conjugal partner is someone of the same or opposite sex who lives outside of Canada and who is in a conjugal relationship with their sponsor, and has been in that relationship for at least a year. To be sponsored under the Act, dependent children must be under 22 years of age, and not a spouse, common-law or conjugal partner of someone else.

These new definitions make it very clear that same-sex couples are recognized under the new legislation. There is also a recognition that two people who are a couple and who can't live together in the same place might still be considered a couple for the purposes of immigration. For PHAs, it means that Canadian citizens or permanent residents will be able to sponsor their same or opposite sex partners to come and join them in Canada, even if they are a same sex couple, and even if their partner is HIV positive. Successfully sponsored spouses, partners and dependent children will enter as permanent residents of Canada and will be able to access health care services once they arrive in Canada.

As well, the new law makes it possible to sponsor your spouse or common-law partner even if they are already here in Canada. To qualify, they must be in Canada with legal status (for example, as a student with a valid temporary resident visa), and be otherwise eligible to be sponsored by you as your spouse or common-law partner.

The new exemptions to the medical inadmissibility rules do not apply to every sponsored relative, however. Parents, grandparents, brothers and sisters who qualify for the family class are not exempt from the medical inadmissibility rules.

**Temporary Resident Permits**

Some individuals might be able to enter or remain in Canada even if they are inadmissible by applying for and getting a

Temporary Resident Permit, or TRP (like the old "Minister's Permit"). Like Minister's Permits, these can be cancelled at any time, and can't be valid for longer than 3 years. TRPs usually don't let you leave and return to Canada. Unlike Minister's Permits, however TRPs can now lead more directly to permanent resident status. If you are on a TRP because you are *medically inadmissible* you will become a permanent resident after three years, as long as you apply for it and you have not become inadmissible for another reason. Similarly, if you are on a TRP because you were inadmissible for other reasons, you can become a permanent resident after 5 years.

**Changes to the length of sponsorship agreement**

Another significant change under the new immigration law is a shorter sponsorship term for sponsored spouses, common-law and conjugal partners. Under the old legislation, every sponsorship agreement was for a period of 10 years. This meant that the sponsor agreed to be financially responsible for the relative they were sponsoring for 10 years from the time their relative arrived in Canada. Under the new law, sponsorship agreements for spouses, common-law and conjugal partners are for three years. Sponsorship agreements for dependent children (under 22 and not married or the partner of someone else) last until the child is 25 years old, or 10 years, whichever is shorter. Other than these exemptions, sponsorship agreements will continue to be for a period of 10 years. It is important to note that where someone is sponsored to come to Canada and they access social assistance during the term of the sponsorship, their sponsor will be expected to repay the social assistance amount to the government that provided the support.

**Changes to the refugee rules**

The new legislation also creates changes for refugees coming to Canada. First, there

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is now a broad category of “protected persons”. Protected persons includes both Convention refugees, and “persons in need of protection”. Persons in need of protection are people who are in Canada but are not Convention refugees who are able to show that if they went back to their country of origin they would face a risk of torture, a risk to their life or to cruel or unusual punishment. The fact that their country of origin is unable to provide adequate health or medical care is **not** considered a risk to a person’s life.

Protected persons are not subject to the medical inadmissibility rules about excessive demand. This means that HIV positive Convention refugees and persons in need of protection can become permanent residents of Canada. It is important to note that an application for a permanent resident visa must be made within 180 days of becoming a protected person.

### What happens during the transition?

The old Immigration Act was replaced by the new IRPA and regulations on June 28, 2002. The general rule is that if you had an application pending before the change to the new Act, but no decision had been made yet, your application would be considered under the new rules. For HIV positive immigrants, this will probably be an advantage. Seek legal advice to discuss your particular situation.

### Where can I get more information?

The Citizenship and Immigration Canada website ([www.cic.gc.ca](http://www.cic.gc.ca)) has lots of information about the new legislation, as well as all the information sheets, guides and application forms for immigration. In addition, the site currently has a number of Frequently Asked Questions (FAQ) sheets, which deal with the transition from the old act to the new one. You can also read a report on HIV & Immigration by the Canadian HIV/AIDS Legal Network at [www.aidslaw.ca](http://www.aidslaw.ca).

## Update: HIV & The Law Advocates Manual

**W**e continue to develop chapters for the HIV & the Law Advocates Manual. The very first chapter of the manual, with information on Powers of Attorney and Living Wills and Planning for Incapacity, can currently be found on our website at [www.halco.org](http://www.halco.org). Look under the HIV & the Law Advocate’s Manual button in the menu on the left side of the screen.

The HIV & the Law Advocate’s Manual is designed to provide a comprehensive, easy to understand, plain language reference in many of the areas of law in

which people living with HIV/AIDS (PHAs) face legal problems. The manual is intended to help front line workers in AIDS Service Organizations, Community Health Centres, Immigrant Serving Organizations, and PHAs themselves, with some of the information they need to understand the legal issues they are faced with, and to develop the skills to address these problems. We hope that the manual will also help individuals to identify potential problems earlier and to prevent them from occurring in the future.

Two more chapters are nearly completed. These are chapters on HIV & Prisons; and HIV & Immigration. The development of these two chapters has been made possible through the generosity of GlaxoSmithKline in partnership with Shire BioChem.

Four additional chapters in the manual are in the development stage, with the assistance of the AIDS Community Action Program Regional Project funding. Over the next year, chapters on HIV & Landlord and Tenant Law; HIV & Human Rights; HIV & Private Disability, Life and Sickness Insurance; and HIV & Employment will be written, reviewed and published in the manual. A call for writers has already been

issued and by the time you read this, the chapters will already be under way.

In the fall, HALCO will be looking for service providers and service users to review the draft

chapters. If you are interested in being a reviewer, please contact Matthew Perry by telephone at 416-340-7790 or 1-888-705-8889, or by email at [perrym@lao.on.ca](mailto:perrym@lao.on.ca). Reviewers will be compensated.

In the spring of 2003, it is anticipated that a number of regional orientation sessions will take place across the province to coincide with the distribution of the finished manual and to provide workshops on how to use it effectively. The manual will be published in hard paper format as well as being posted to our website. We will keep a database of who has the manual in order to provide updates and corrections as required.



## HALCO's Annual General Meeting Why should you care?

As a community-based organization, HALCO depends on the community it serves to guide the work that it does. Every year, non-profit organizations hold Annual General Meetings to conduct the business of the organization, including the election of their Boards of Directors for the coming year. Why should you care about these events? More importantly, why should you be there?

First, agencies like HALCO exist in order to address a need. In our case, HALCO exists to provide legal services to low income PHAs across Ontario for free in certain areas of law. The legal services we provide range from legal representation to basic legal advice, community development, law reform and public legal education.

The Board of Directors of the clinic is ultimately responsible for ensuring that the clinic carries out its work responsibly, effectively and efficiently. The board, in conjunction with the staff of the organization, also sets the priorities and plans for the clinic on a yearly basis.

### Why should you get involved?

Because your input is essential. As a community based organization, we are driven by the needs identified by the community. One of the ways in which these needs are identified is through community participation on the board, and through consultation with other organizations doing work in the HIV/AIDS field, as well as the people who use HALCO's services.

### By-law changes

When HALCO was established in 1995 our board structure was set up to ensure that we would have input and support from our community partners. The board has 9 members. Four of these members are appointed: two by the AIDS Committee of Toronto and two by the Toronto People with AIDS Foundation. The reason for

having appointed members of the board was to help provide stability to HALCO as it developed, relying on strong partnerships with established service providers. The five remaining board positions are elected from among the membership of the clinic. Our By-laws require that a majority of the Board members must be HIV positive.

As HALCO has grown over the last seven years, however, we have begun to look at our structures to determine whether or not this system of appointments still makes sense.

Last year, we surveyed our membership and asked if we should keep the board structure as it is, or whether we should move to a fully elected board of directors. The overwhelming response from members was that all nine positions on the board of directors should be elected from the membership, by the membership. If you are interested in becoming involved, we want to hear from you!

Membership in HALCO is free and valid for a year. If you have been a member for at least 30 days prior to the Annual General Meeting, you can vote on the business of the clinic at the AGM, including electing the board for the coming year. New members and the public are also warmly welcomed at the AGM. If you are interested in becoming a member or standing for election to the Board of Directors, please contact Matthew Perry, at 416-340-7790 or 1-888-705-8889.

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## Comings & Goings

In early June 2002, John Nelson finished his articling term with HALCO. John joined HALCO's staff in July 2001 and worked hard to provide the best service possible to our clients over his articling term. John's term marked the first articling student to work with HALCO under the revised terms of articles which run for 10 months instead of 12. Through an arrangement with the Canadian HIV/AIDS Legal Network, John was able to spend an additional month working with the Network in a research capacity. John is greatly missed at HALCO, and we wish him all the best in the future.

In September 2002, we will be joined Stephanie Gibson, our articling student for the 2002-03 term. Stephanie is a graduate of the University of Toronto law school and is currently working in Boston, Massachusetts. Welcome aboard Stephanie.

### Annual General Meeting

September 17, 2002  
7 - 9 p.m.

HALCO - 65 Wellesley  
St. E.

Suite 400

Speaker: Louise Binder  
HIV/AIDS &  
The Romanow Commis-  
sion on the

Future of Health Care  
All are welcome

All valid members are entitled to vote. Any member may stand for election to the Board of Directors. Contact Matthew Perry at 416-340-7790 or 1-888-705-8889 if you have any questions about your membership.



# Update on Bill 118 & Bill 122: ODSP Rate Increases

Many of you may have seen recent stories about a piece of legislation introduced by MPP Tony Martin late in 2001. Bill 118 was a private members bill designed to amend the Ontario Disability Support Program Act (ODSP) to include an annual cost of living adjustment each year in April. In June of 2002, this bill was scheduled for debate and a vote on whether to proceed to second reading in the Ontario legislature.

The ODSP rates have not been adjusted since the current government took office in 1995. In that time, the cost of living has increased by 12.8% and the cost of shelter has increased significantly in a number of areas across the province. This has meant that the real dollars in the pockets of disabled Ontarians has been steadily decreasing over the last 7 years. In contrast, disability benefits from the Canada Pension Plan are increased each year in January to match increases in the cost of living.

The bill was debated in the house on June 13 2002. Many individuals were present in the visitors galleries to hear the debate

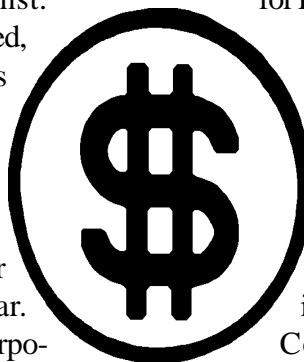
in person. After an hour of debate, a vote was held on whether to send the bill through second reading. The results were 30 in favour and 38 against. Though the bill did not proceed, a number of important issues were raised. Among them was the fact that a separate piece of legislation is not required in order to create a cost of living increase for ODSP recipients each year. This provision could be incorporated into the current legislation through a change in the regulations. If you are interested in reading the debate about this issue, you can find it on the website of the Ontario Legislative Assembly at the following link: [http://www.ontla.on.ca/hansard/house\\_debates/37\\_parl/Session3/L020A.htm#P206\\_57622](http://www.ontla.on.ca/hansard/house_debates/37_parl/Session3/L020A.htm#P206_57622).

One week later, the Minister of Community, Family and Children's Services, which is responsible for the administration of the ODSP, was reported to have announced that there would be a review of the program generally, including the rates paid to ODSP recipients. There has

been no further word on that review.

On June 24, 2002, Ernie Parsons, MPP for Prince Edward-Hastings, introduced another private member's bill. Parsons is the Liberal disability critic. Bill 122, An Act to amend the Ontario Disability Support Program Act, 1997, is slightly different from Bill 118 in that it is intended to give the Integrity Commissioner to power to change the ODSP rates. The bill is based on a piece of legislation that named as the Integrity Commissioner as the individual responsible for determining the level of pay for MPPs during the most recent round of decisions about salaries.

Bill 122 passed first reading on June 24, 2002. The bill will not come up for second reading until after the legislature sits again after the summer break. The house is expected to resume sitting on September 23, 2002. You can find the text of the bill on the website of the Ontario Legislature at <http://www.ontla.on.ca/library/bills/122373.htm>



## 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 \$ \_\_\_\_\_

**Please charge my VISA or AMEX: Card # \_\_\_\_\_ Expiry Date \_\_\_\_\_**  
Name on card: \_\_\_\_\_ Signature \_\_\_\_\_

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

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

## Pride & Remembrance Run 2002

**Q:** A collection agency keeps calling me because I owe some money to Canadian Tire. I can't pay the money because all I get is Ontario Disability Support Program (ODSP) benefits and Canada Pension Plan- Disability (CPP-D) benefits which total only \$900 a month. After I pay my rent of \$650 and buy my food and supplements, I have no money left to pay them. The collection agency says they're going to sue me for the money and take it out of my bank account. What can I do?

**A:** If you have a debt, you have an obligation to pay it. The person you owe money to is called a creditor. Not paying a debt will affect your credit rating. A creditor could take action against you through a collection agency, or even sue you in Small Claims Court. However, depending on your source of income, your money cannot be seized to repay the debt. This is called being 'judgement proof'.

Ontario Works (OW), ODSP and CPP-D benefits can not be 'garnished' (taken from your account). But any money in your account which is not from OW or ODSP or CPP can be seized and garnished under a judgement.

One important exception is that OW and ODSP funds can be recovered at source by OW and ODSP to collect overpayments. The same is true of CPP benefits recovered by CPP. These benefits can also be reduced to cover court-ordered family support payments.

If you owe money and you can't pay it, you'll start getting calls from collection agencies. They are not allowed to harass you and there are laws about their conduct.

If you are facing a debt situation, you have some options.

You could write to the creditor, set out your circumstances and ask them to write off the debt, or ask if they would accept repayment of a portion of the debt. A letter from your physician confirming a serious health condition and that you're unable to work and not likely to work in the future can help agencies to decide to write off a debt. You can also suggest some kind of payment plan that you can afford. It helps if you're able to show a basic budget outlining your income and expenses to explain why your repayment might be limited.

You also have the option of doing nothing. The agency may take legal action in court and sue you. Even if they do and win, they will not be able to collect ODSP, OW or CPP-Disability benefits from your bank account (but can collect any other money from other sources). You should advise your bank if you are facing such a situation. If a creditor is trying to collect judgement-proof money from your account, you should close your existing bank account and open another. Be sure to notify OW or ODSP or CPP-D about the new account in order to ensure that your benefits are deposited correctly in the future.

You can also get help with debt problems through a local credit counselling agency. You can find the one nearest you by contacting the Ontario Association of Credit Counselling Services at 1-888-746-3328 or [www.indebt.org](http://www.indebt.org). Information about dealing with collection agencies is available through Community Legal Education Ontario's website at [www.cleo.on.ca](http://www.cleo.on.ca). Look for "online publications" and the subject heading "consumer".

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

**A**s regular readers of *halco news* are aware, this year HALCO was one of the three beneficiaries of proceeds from the seventh annual Pride and Remembrance Run 2002, organized by the Pride and Remembrance Association (PRA). HALCO will share equally in the proceeds of the run with Fife House and the Lesbian Gay Bi Youth Line. HALCO is extremely grateful to have been selected as a beneficiary by the Pride & Remembrance Association.

This year the run drew over 600 runners on the morning of June 29. This dedicated crew braved sweltering conditions to complete the 5 km course starting at Church and Wellesley, and circling around Queen's Park Circle before returning to the finish at Church and Wellesley.

The PRA has estimated that each of the beneficiaries will receive approximately \$14,000 to help them with their programs. HALCO intends to use the funds from the run to help fund our articling student position, to cover gaps in funding for our staff lawyer position, and in the continued development of the HIV & the Law Advocates Manual, as well as some of the costs associated with our new poster.

Each of the beneficiaries contributes to the effort by ensuring volunteers are on hand in the weeks leading up to, and the day of, the run. I'm very thankful to be able to say that 36 enthusiastic and dedicated volunteers offered their time and energy to help HALCO meet this task, along with volunteers from Fife House and the Lesbian Gay Bi Youth Line. Thanks to all of you for a great job well done, and many thanks to the Pride & Remembrance Association for their wonderful support.

The Pride and Remembrance Association can be reached at 55 Bloor Street West P.O. Box 19604 Toronto, ON, Canada M4W 3T9 Tel: (416) 944-9449