

CPP Survivor's Benefit - Class Action

When a contributor to the Canada Pension Plan dies, the survivor may be eligible for a survivor's pension from CPP. However, if the common-law partnership is same-sex, in which one partner died before January 1, 1998, the current law does not provide for a pension to be paid.

A group of surviving same-sex, common-law partners are challenging this situation in the courts. Their action is a class action, on behalf of every person in Canada denied a Survivor's Pension on the basis that their same-sex common-law partner died before January 1, 1998. The trial is scheduled to take place in Toronto beginning on September 3, 2003, and scheduled to run for 4 weeks. If you are a lesbian or a gay man whose same-sex common-law partner died between April 17, 1985 and January 1, 1998, and was a contributor to the CPP, this lawsuit will impact on you.

A number of individuals are suing the At-

torney General of Canada for damages and other relief because they have been denied a CPP survivor's pension. These individuals, who will represent the class,



claim that the Federal government has discriminated against them contrary to the Charter of Rights and Freedoms, by denying them a CPP survivor's pension because their respective same-sex common law partners died before January 1, 1998. They are asking for payment of their CPP survivor's pensions back to the date his or her same-sex common law partner died, plus ongoing CPP survivor's pensions.

Does this case apply to you?

For the purposes of this case, class members are defined as every person, and the estate of every deceased person:

- who was the same-sex common-law partner of a contributor to the Canada Pension Plan at the date of the contributor's death;
- whose same-sex common-law partner died between April 17, 1985 and January 1, 1998; and
- who has not received a Canada Pension Plan survivor's pension, in respect of the contributor's death.

If you are described above, then you are

automatically included in the class as a class member. You do not have to do anything. However, you should know that if you want to opt out of the class, you have to do so before July 31, 2003.

Stay in or opt out?

Basically, if the class action is successful and you stay in (i.e. do nothing, or register with the law firm), you will gain the benefit of that win and be entitled to receive whatever damages and other benefits all members of the class win.

If the class action is not successful and you stay in you will be bound by the result. In other words, the Tribunal will probably dismiss any appeal you make to the denial of a survivor's pension on the grounds that the court has already decided the issue in the appeal and you do not get to litigate the same issue twice.

Opting Out

If the class action is successful and you opt out, you will not be entitled to benefit from any damages awarded in that law suit. You could however, continue with your own appeal and the Review Tribunal will probably follow the result in the Court and you will probably get the survivor's benefit. However, the class action is seeking more for you than just the basic survivor's benefits. They are also asking for additional money damages. If you opt out, you might

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What's going on? Legislation Updates

Have you been quarantined because of SARS?

On April 4, 2003, the federal government announced amendments to the Employment Insurance Regulations related to Severe Acute Respiratory Syndrome (SARS). The amendments mean that anyone who is off work due to SARS and has no income as a result, can apply for EI sick benefits. The normal two week waiting period for EI sick benefits has been waived so people will be eligible for benefits from the beginning of their claims. The amendments are specifically intended to include people who do not actually have SARS, but are off work due to a quarantine order. You do not need medical documentation to apply, you just have to have been ordered into quarantine by someone in authority (i.e./by the employer or a doctor, or public health). You also do not need to apply in person. HRDC recommends that people in this situation use the Internet to apply (www.hrdc-drhc.gc.ca). They can also call 1 800 206-7218 (English), 1 800 808-6352 (French), 1 866 255-4786 (TTY/TTD devices), or in the Toronto area 1 800 263-8364 or 1 (416) 952-4473 for an EI application form or to receive further information.

The provincial government has also gotten into the act. Normally, under Ontario law there is no right to take sick leave unless you work for an employer with 50 or more employees. (Big surprise, huh? Check it out for yourself - it's in s. 50 of the *Employment Standards Act*.) On April 30, 2003, the province introduced and passed Bill 1, which came into force on May 5th. That bill says that if you had to take emergency leave from work because you were

in quarantine due to SARS, you're entitled to unpaid leave even if your employer has less than 50 employees. But if your employer has less than 50 employees, it



doesn't have to give you your job back at the end of the quarantine.

Health Protection and Promotion Act amended to Permit Orders Directed at a "Class" of Persons

As a result of the SARS scare the province has also amended the HPPA, the general public health legislation for the province. Under section 22 of the HPPA, the local medical officer of health has the power to issue certain orders. An example might be helpful here. Let's say a PHA is having unsafe sex and contracts gonorrhoea. Because gonorrhoea is a reportable disease, it comes to the attention of public health that this person may be having unsafe sex. Normally, public health would ask this person to come in for counseling, but they may also issue a section 22 order that says he has to practice safe sex, and inform his partners he is HIV positive. Although s. 22 orders like the one in this example can be appealed, a breach of a s. 22 order can lead to a provincial offenses prosecution, or even

to more serious criminal charges.

Bill 1, the provincial SARS legislation, also amended s. 22 of the HPPA. Now, instead of simply issuing an order directed at an individual, public health can also issue orders against a group, or class of individuals. Furthermore, in some circumstances, such a group order can be "served" on members of the group through notice in the newspaper. Although the amendments were prompted by SARS, there is nothing to stop public health from issuing group orders to deal with other kinds of communicable diseases.

The test in the legislation for when such an order can be made is: does the local medical officer of health believe that there are reasonable and probable grounds that the order is necessary to decrease or eliminate the risk presented by the communicable disease? If the answer is yes, then such an order may be issued.

If you find out about a class s. 22 order, we would be very interested to hear about it. Call us at 1-888-705-8889.

May 1, 2003 Implementation Date for Bill 105 - Ontario's Mandatory Testing Legislation

Late in 2001, Bill 105 was introduced in the provincial legislature. Known as the *Health Protection and Promotion Amendment Act, 2001*, Bill 105 was designed to amend the HPPA to permit emergency workers and victims of crime to get mandatory HIV (and other) testing orders from public health. Bill 105 was very controversial, but was passed despite the controversy, on December 14, 2001.

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(For more about how Bill 105 was passed, see HALCO News, Volume 7, Number 1.)

However, Bill 105 was not “proclaimed”. Although it was “the law”, it was not actually in force because it hadn’t been proclaimed. As a result, no one could apply for a mandatory testing order in Ontario. That changed on May 1, 2003, when Bill 105 was proclaimed as being in force. It is now section 22.1 of the HPPA.

There are three classes of people who can apply for mandatory testing orders if they have come into contact with the “bodily substance” of another person. The first class of potential applicants includes victims of crime. So, if someone is assaulted, and as a result of the assault has come into contact with the assailant’s blood or other bodily fluids, he or she can apply for an order. (In Ontario, this has already happened at least once. One of the rape victims of Paul Bernardo - the “Scarborough Rapist” - successfully applied to a court for an order for HIV testing of Bernardo. The order was granted even though the application was brought 7 years after the women were attacked. See: *D.C. v. 371148 Ontario Ltd. (c.o.b. Forest Manor)*, [1997] O.J. No. 2367.)

The second class of applicants includes people performing first aid or emergency health care who have come into contact with the bodily fluids of someone who is sick, injured or unconscious.

The third class of potential applicants is anyone who is performing a “prescribed function”. What this means is that for there to be anyone included in the third class of applicants, there must be an additional regulation passed. At the time Bill 105 was debated, it was assumed that “prescribed

functions” would include police, fire fighters, and possibly jail guards. In the absence of any regulations, none of these people can apply for an order unless they also belong to the second class of applicants (meaning they were exposed to someone’s bodily fluids because they were delivering emergency first aid).

Before an order can be issued, the local medical officer of health (MOH) must determine that there are reasonable and probable grounds to believe that the applicant may have become infected as a result of the exposure. Although the MOH can hold a hearing, he or she doesn’t have to, and can make a decision just based on the application alone. The applicant has to apply within seven days of the exposure and submit a physician’s report in support of the application. The doctor who completes the physician’s report has to assess the applicant’s risk of exposure, and has the power to order the applicant to be tested for a baseline result and go for counselling. Finally, the MOH can only issue an order if he or she believes it is “necessary to decrease or eliminate the risk to the health of the applicant”. If an order is issued under s. 22.1, the person who is being ordered to undergo testing has the right to appeal the order within fifteen days. Someone appealing such an order can ask for the order to be stayed while the appeal is going on. If an order is issued and the person is tested, the results of the test are supposed to be forwarded to the applicant’s physician who is then supposed to explain the results to the applicant. If the MOH refuses to issue the order, then the applicant can appeal that refusal to the Chief Medical Officer of Health for the Province.

HALCO would be very interested to hear about any applications for mandatory testing orders under s. 22.1, so if you hear of any, please call us at 1-888-705-8889.

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get the survivor’s benefit from the Review Tribunal process but you will not get any of these other damages if awarded.

If the class action is unsuccessful and you opt out, you would still be able to proceed with the CPP Review Tribunal hearing, but it is likely the Review Tribunal will follow the court’s ruling and find against you.

There is no cost involved with being a member of the class (staying in or doing nothing). If the lawsuit fails, you will not be charged. If the lawsuit is successful, the court will set up a process for determining the amount of back pension class members are entitled to and a system for applying for that money. The court may also award a percentage of the settlement to the law firms working on your behalf, to cover their costs.

The law firm which is organizing and conducting the lawsuit is McGowan Elliott & Kim. You have an option of registering with MEK as a class member so that you can be kept updated about the result, but it is not necessary for you to do so in order to remain a member of the class. If you want to opt out, however, you must notify MEK prior to July 31, 2003.

In order to opt out, you must contact Gabrielle Pop-Lazic at McGowan Elliott & Kim LLP, 10 Bay St., Ste. 1400, Toronto, Ontario, M5J 2R8. Ph: 416-362-1989 or toll free at 1-866-877-0109 Fax: 416-362-6204. You can reach them by email as well at cpp@mek.ca

HIV & AIDS Legal Clinic (Ontario)
65 Wellesley St. E., Ste. 400
Toronto, ON M4Y 1G7
phone: 416-340-7790/1-888-705-8889
email: talklaw@halco.org
website: www.halco.org

Mark Blans (secretary/treasurer), PHA was appointed to the PWA board in 1997 and subsequently appointed to the HALCO board as a PWA representative. Most recently Mark served as HALCO's secretary/treasurer and has been active on the finance, personnel, outreach, executive fund-raising committees. Mark has researched HIV & AIDS issues and has been involved in community events for well over 10 years, including involvement with PWA and ACT. Mark brings years of management & computer skills to the clinic and was instrumental in the development of the HALCO website, acting as a web-master & site developer. Mark also sits on the David Kelley HIV/AIDS Community Advisory Committee. Mark regularly participates in HIV/AIDS conferences and smaller events to present input on issues key to everyone living with HIV. Mark is aggressively promoting fund raising initiatives using technology based solutions, sourcing and securing funding. Mark is extremely committed to both the clients and membership of the clinic. *(2 year term)*

Maryanne Kaay has an MA in English from the University of Guelph and has worked with the AIDS Committee of Guelph & Wellington County since June 2002. She has worked with the Harm Reduction Team as the Gym Outreach Coordinator, doing educational workshops to increase awareness of HIV/AIDS and Hepatitis A, B & C. Maryanne currently works as the Community Hepatitis C Worker and Coordinator, networking with area agencies who work with individuals at risk for Hep C and HIV and facilitating support groups for PHAs and those living with HepC. Maryanne conducts workshops about medical treatments, nutritional needs, harm reduction strategies and, hopefully, legal education. Maryanne has worked in Adult Education for the Upper Grand District School Board and at the Guelph Correctional Centre. *(1 year term)*

James Kreppner is a retired lawyer living with HIV and Hepatitis C, who has been involved with the HIV & AIDS Legal Clinic since its formal inception. He has been one of the Toronto People With AIDS Foundation appointees. In the past, James has been Co-Chair of the Toronto PWA Foundation, a member of the HIV/AIDS Clinical Trials Network (CTN) Steering Committee, a member of the Advocacy Resource Centre for the Handicapped (ARCH) Board of Directors, and a Vice-President of the Canadian Hemophilia Society. He was recently appointed to the Board of Directors of the Canadian Blood Services, and currently serves as a Board member of the Toronto Central Ontario Regional Hemophilia Society, Hemophilia Ontario, and the Canadian Hemophilia Society. He has a longstanding interest in access to treatment issues and human rights issues related to HIV. James continues to sit on the HIV/AIDS CTN Community Advisory Committee, and he is a council member of the Canadian Treatment Action Council (CTAC). *(1 year term)*

Jim Lister is a long-term survivor, HIV+ for over 19 years. As such, he has had first hand contact and run-ins with ODSP, CPP-D, Metro Housing, Substitute Decisions Act (through the death of his last lover), PWA foundation, ACT and most recently, Citizenship and Immigration Canada. Jim has been married for 7 1/2 years. Jim and his husband are the first same sex couple to win the right to appeal an Immigration decision and appear before the Immigration and Refugee Appeal Board. Jim has worked as a fundraising volunteer and coordinator, a volunteer on the HIV/AIDS unit at the old Wellesley Hospital, and was co-chair and co-ordinator/treasurer for the Church St. Community Christmas Dinner for three years. This is Jim's second term on the HALCO board. *(2 year term)*

Martha Mackinnon (vice-chair) was a PWA appointee to our board for two years. Martha taught English and Drama in secondary school for eight years before she went to law school. She has concentrated her legal practice on education law and children's rights, serving as Board Solicitor to the York Region Board of Education for 8 years, and currently as Executive Director of Justice For Children and Youth, a legal clinic for low-income youth. Martha has twice been the Chair of the Education Law Section of the Canadian Bar Association - Ontario. She is the Vice-President of CAPSLE, the Canadian Association for the Practical Study of Law and Education. She is the co-author of An Educator's Guide to Special Education Law. Martha has provided pro bono legal services to the Toronto PWA Foundation almost since its inception and has been on its Board of Directors for 5 years. *(2 year term)*

Rick Peever joined HALCO's board as a community member last year. In his first year, Rick served on the Personnel Committee. Rick wanted to be on the board to see the PHA community develop strength. Rick looks forward to continuing to contribute and learn while serving on the board. *(1 year term)*

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 Chair, Vice-Chair and Treasurer. Bob is also a 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 a past Coordinator of the Gay Men's Caucus of the OAN. Bob is a former member of the Advisory Committee for Positive Youth Outreach. *(2 year term)*

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 a Canada Works Project designed to assist the underprivileged in the downtown Toronto core, and is active in community charitable works. FAB Magazine named him as one of the persons who makes being Gay in Toronto fabulous, 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 since 1999. *(2 year term)*

Lee Zaslofsky has been on HALCO's board for the past three years. Lee is a citizen member of the Toronto Board of Health, where he co-chairs the AIDS Sub-committee, and serves on the board of the Hassle Free Clinic. Lee is the former Advocacy and Media Relations Coordinator at ACT. Previously, Lee was a Community Health Worker at the Queen West Community Health Centre. *(1 year term)*

AGM 2002: Report from the Chair

Bob Watkin is the Chair of HALCO's Board of Directors. This is the text of his speech given at HALCO's Annual General Meeting.

You build a building to house people. You provide them with shelter and freedom from the elements that would otherwise harass them. To make that building strong, you need a strong foundation. For HALCO, that foundation is its staff. We are blessed with inordinate people. They are dedicated, focused and unwavering in providing services to our community.

Yet to be able to build on that foundation requires resources. As always, our resources are stretched beyond the limits. We struggle with juggling a funding formula that requires a piecemeal approach to funding our staff positions while we strive to meet the same requirements as all other legal clinics. Shortfalls in amounts for Legal Aid Ontario funded positions, as well as shoring-up non LAO-funded positions force us to spend precious staff and board resources on fundraising and the time consuming administrative functions of project-based funding envelopes. Yet the limitations forced upon us by being part of the clinic system do not stop us from trying to pursue the goal of bringing relief to and sheltering our client base and providing them with the tools to build safe, and lasting structures of relief.

The demand for our services far exceeds our ability to ever meet it. Over the last year we have seen requests for service increase at a steady pace. We responded to over 2,600 requests for service in the year since our last general meeting, and conducted training and workshops on HIV and legal issues affecting our community for over 900 people. We continue to struggle to meet these increased levels of de-

mand. So in many ways our goal must be to meet the minimum standard of providing our clients with the tools that enable them to create shelter for themselves. The demand has forced us to go beyond the traditional source of funds. We are extremely grateful to the Community Partners Fund of the AIDS Committee of Toronto, the Pride and Remembrance Association, Mr. Leatherman Toronto Competition Inc., the AIDS Community Action Program of the Ministry of Health, GlaxoSmithKlein in partnership with Shire BioChem; Bristol Myers Squibb, the Black Eagle, Zelda's and the many dedicated individuals who have supported us financially and through their volunteer efforts. These partnerships, both new and ongoing, are the raw materials which help us to shore up the foundations we seek to solidify. Every one of them has helped us to address the needs of the community we serve. As always, we are grateful for the continued support of Legal Aid Ontario and the AIDS Bureau with whose support we hope to continue to build and grow to meet the needs of our community.

The past year has also brought some particular challenges and changes to HALCO. Our Executive Director Ruth Carey was able, in February of 2002, to take advantage of a one-year secondment opportunity. Ruth has been working with the Clinic Resource Office as a staff lawyer. The secondment is a great opportunity for lawyers working on the front lines to concentrate on the research side of clinic work. It has also presented an opportunity for Glenn Betteridge, our interim director of legal services and Matthew Perry, our interim director of administration to develop additional skills in their work.

This year, we are sad to note that Connie Vernon will be stepping down from the

board. Connie first joined HALCO's board in 1998 as a community member. She has served as Vice-Chair since 1999, and as a member of the Outreach Committee. We are extremely grateful for Connie's commitment and contribution to the unending work of HALCO. We wish her great success. We will miss her.

Our work of building a strong and effective structure by and for PHAs in Ontario has also led to the by-law changes we have presented tonight. When our community first began to work to build this clinic, we looked to the established community structures around us. The AIDS Committee of Toronto and the Toronto People With AIDS Foundation have been strong, supportive and dedicated supporters of HALCO's construction. In practical terms, this was most evident in the four appointed positions on our board. A little over a year ago, after six full years of successful development and growth, we asked you, our members, if the appointed positions were still necessary, or if we should move towards a board that was fully elected by and from among the membership. Your answer to this question was unambiguous.

We will continue in our struggle. We will not be stopped. We will create and we will continue to build. The needs of our community cannot be underestimated. We have learned over the years that as much as we grow, we have never been able to exhaust the need for our services or even begin to identify its limits. Despite the limitations we face, the need for our services compels us to continue. We will not give up the goal of being able to follow the blueprint and building on our foundation to most effectively address all of the needs of the community we serve.

You Asked Us

Q: I have a friend who is a refugee. He just found out he is HIV positive. He hasn't had his refugee hearing yet. How will being HIV positive affect his immigration situation?

A: In June 2002, the federal government got rid of the old immigration legislation and passed a new law to replace it called the *Immigration and Refugee Protection Act*. Some things have stayed the same under the new legislation and some things have changed.

First of all, being HIV positive may in fact make your friend's refugee claim stronger if he comes from a country where people who are HIV positive are persecuted by the state. Your friend should have a lawyer

for his refugee claim and should discuss his HIV status with his lawyer. If he doesn't have one yet, he should apply for a legal aid certificate as soon as possible. He can use the certificate to pay for an immigration lawyer who understands how HIV affects his situation. If your friend lives in Ontario and needs information about applying for legal aid or finding an immigration lawyer, tell him to call HALCO.

Second, a lot hangs on whether or not he wins his refugee hearing. Many people who lose their refugee hearings apply to become permanent residents on "humanitarian and compassionate" grounds so they can stay in Canada. People who are HIV positive who lose their refugee hearings are not

eligible to become permanent residents this way. So if your friend loses his hearing he may not be allowed to stay in Canada.

There are some circumstances where failed refugee claimants who are HIV positive do get to stay in Canada, so your friend should ask his immigration lawyer about that as well. Under the new legislation, if your friend wins his refugee hearing, he can apply for landing and his HIV status won't prevent him from being landed as long as he applies for landing within six months of winning his hearing. If he waits longer than six months after the hearing to apply for landing, his landing application will normally be denied because of his HIV status.



Even though We're Free, We're Not Cheap!

Here at HALCO, we serve thousands of clients a year. Unfortunately, we are always in a position to have to raise funds to cover the cost of providing this service. Currently we rely on community support to pay for our articling student position, and to make up shortfalls in other staff salaries and our operating budget. These financial constraints limit our ability to respond to the full range of needs of our clients.

Fortunately, there is a way you can help!



As a registered charity, we've enrolled in on-line donation programs with both Canadahelps.org and Charity.ca. These extremely valuable organizations allow us to not only raise funds quickly and efficiently but issue tax receipts immediately! You can easily donate online through the links on our website at

www.halco.org.

Your financial support helps cover our unfunded costs. We rely on this support to continue providing free, high quality legal help for low income people living with

HIV/AIDS in Ontario. Providing articling opportunities to new lawyers not only helps us meet the needs of HALCO clients, but enhances the legal profession by enhancing awareness of HIV & AIDS-related legal issues.

Your support is always welcome and appreciated.

Of course, you can also use the form on the next page to donate to HALCO by cheque or credit card.

Mark Blans is a member of HALCO's Board of Directors and currently serves as Secretary/Treasurer. Mark also acts as the clinic's Webmaster.

By-Law Changes

At the AGM in September 2002, the membership confirmed an amendment to HALCO's by-laws which eliminated the appointed positions on our board and created a board structure that is entirely made up of community members.

HALCO has a nine-member board of directors. Our by-laws were written in a way that would ensure that the board always has a majority of HIV-positive members. In order to help provide some stability for a new organization, we were required by one funder to have two board members each appointed by the AIDS Committee of Toronto and the Toronto People with AIDS Foundation. At least one of these appointed persons had to be HIV positive. The other five members of the board would be elected from among the membership, by the membership.

After almost six years of operation, HALCO was in a position of relative stability, gaining status as a funded clinic under Legal Aid Ontario, and with ongoing funding from the AIDS Bureau. In the Summer of 2001, we felt it was time to survey our membership to determine

whether the appointed board seats were still appropriate, or if we should move to a system where all nine directors are elected from the membership, by the membership.

The overwhelming majority of our membership indicated that we should move to a fully elected board of directors and discontinue the appointed positions.

In July, 2002, the HALCO board passed a motion accepting amendments to our By-law Number 1 which eliminate the appointed positions on the board and made all nine board positions elected by the membership from the membership. In addition, changes were made to create staggered terms to ensure continuity and stability.

At the annual general meeting in September 2002, the membership confirmed the decision of the board. All nine board members were elected by the membership this year, five of them for two year terms and four for one year terms. At each AGM from September 2003 on, either four or five members of the board will be up for reelection.

If you are a member and are interested in standing for election to the board of directors at our AGM in September, please contact Matthew Perry at 416-340-7790 or 1-888-705-8889.



2003 HALCO AGM First Announcement

Mark Your Calendars!

**HALCO's
Annual General Meeting**
will be held on
Monday, September 22

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). Please invoice me

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.

Medical Marijuana Update

On May 26, 2003 the federal government introduced their new marijuana legislation. After many delays and conflicting information about what the legislation would say and do, we finally have our answer: not much.

A number of people have called us to find out what the changes mean for people living with HIV/AIDS who use marijuana for medicinal purposes. Many want to know if this will help solve the problem of medicinal marijuana access. So far, it would appear that the answer is "No".

The proposed legislation says that possession of small amounts of marijuana (15 grams or less) would result in a ticket, as opposed to criminal proceedings. Fines would be set at \$150 for an adult and \$100 for a child under 18. Those found to be in possession of between 16 and 30 grams of marijuana could be issued a ticket, or have criminal charges laid against them. If the ticketing option is chosen, the fine would be \$300 for an adult or \$200 for a youth. All of these fines could be increased if there are "aggravating factors" present — for example if you were also committing another offence at that time, or were operating a motor vehicle, or were on school grounds.

The proposed legislation would also change the penalties associated with production of marijuana, and in fact make the penalties for production more severe. For example, growing 1-3 plants could face a conviction with a fine of up to \$5,000 or 12 months in jail. Four to 25 plants would be \$25,000 and/or 18 months in jail for summary conviction, or five years less a day for indictment. Between 26 and 50 plants would carry a 10 year sentence and more than 50 plants would be a sentence of 14 years.

However, none of these changes does anything to fix the problems for people trying to get or renew their Authorizations to Possess (ATPs) or Licences to Produce

(LTPs) under the Medical Marijuana Access Regulations (MMAR). If passed, they would simply make simple possession of under 15 grams of marijuana a ticketing offence, and not subject to a criminal conviction.

In other developments, Health Canada and the Office of Cannabis Medical Access (OCMA) have struck a Stakeholder Advisory Committee on Medical Marijuana, made up of physicians, pharmacists, applicants under s. 56 or the



MMAR, research community, patient/health care organizations, law enforcement community, and provincial regulators. One of the activities of this group is evaluating and making recommendations on improvements to the MMAR. You can find out more about this committee at the website of the OCMA at <http://www.hc-sc.gc.ca/hecs-sesc/ocma/index.htm>

Finally for those of us in Ontario, the Ontario Superior Court of Justice heard an appeal from a provincial court decision which said that the section of the Controlled Drug and Substances Act which prohibited possession of marijuana was not valid. They agreed with the lower court. The reasons are related to the decision in the Terry Parker case which said that that section of the CDSA was unconstitutional because it denied peoples right to access medicine they needed. That decision gave the government until July 31, 2001 to change the law to fix it, or else the section would be void. The government enacted the Medical Marijuana Access Regulations on July 31, 2001, but these decisions find that the MMAR do not fix the gap, and therefore the ban on possession of marijuana under 30 grams is void. What does this mean? It means that technically, in Ontario there is no legal prohibition against possession of less than 30 grams of marijuana, whether or not you hold an exemption under the MMAR.

ODSP Action Coalition Update

In January 2003, the provincial ODSP Action Coalition presented a report to the Minister of Community, Family and Children's Services detailing the concerns and recommendations of ODSP recipients and advocates from across the province on ways to improve the program.

As a result, meetings have begun with representatives of the Social Assistance and Municipal Operations branch of the Ministry. Four working groups on ODSP accessibility have been formed. The groups are: Disability Adjudication; Application Process; Employment Supports, Earnings & Income; and Local Office Issues.

Matthew Perry, HALCO's community legal worker is participating in the Employment Supports, Earnings & Income working group. Paul Landers, from the Toronto People with AIDS Foundation is participating in the Local Office Issues working group.

If you have issues which you would like to feed in to this process, about employment supports, difficulties with reporting earnings to ODSP, or about issues in dealing with your local office, please contact Matthew at perrym@lao.on.ca, or through the clinic's phone numbers below to provide input into this process. We will keep you updated as the work of the Coalition continues.

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