

Supreme Court Rules on HIV Transmission: *R. v. Williams*

The Supreme Court of Canada released its decision in *R. v. Williams* on September 18th 2003. This is the first Supreme Court decision since *Cuerrier* to consider the criminal liability of HIV positive people who have unprotected sex and do not disclose their HIV-positive status in advance.

In *Cuerrier*, the Supreme Court said that an HIV-positive person who does not disclose their HIV status before having unprotected sex is guilty of assault if they put their partner at “significant risk of serious bodily harm”. In *Cuerrier*, the Court said unprotected vaginal intercourse did carry a “significant risk of serious bodily harm” but did not talk about other kinds of sexual activity. The full text of the Supreme Court’s decision in can be obtained from HALCO or on the internet at www.droit.umontreal.ca/doc/csc-scc/en/index.html. A information sheet about *Cuerrier* published by the Canadian HIV/AIDS Legal Network is also available from HALCO or at <http://>

www.aidslaw.ca/Maincontent/issues/criminallaw/e-info-cla1.htm.

The facts of the *Williams* case are a bit different than *Cuerrier*. *Cuerrier* knew he was infected with HIV from the beginning of his relationships. In *R. v.*

Williams, Williams found out during his relationship with his girlfriend. When he found out, he did not tell his girlfriend and continued to have unprotected sex with her. Health professionals had told Williams to disclose his HIV status to sexual partners and to stop having unprotected sex. Approximately two and half years after their relationship had ended, she tested positive for HIV. The Supreme Court found Williams guilty of attempted aggravated assault.

What does this mean?

This case is different than *Cuerrier* because Williams found out during his relation-



Williams, Williams found out he was HIV positive after he had already had unprotected sex with his girlfriend. William’s girlfriend became infected with HIV, but it was impossible to know whether that happened before or after he knew of his own HIV status.

The Facts of the *Williams* case

Williams found out that he was HIV positive five months after he started a rela-

ship with his girlfriend that he was HIV positive. So, it is possible that she could have been infected before he even knew he was HIV positive. If he had told her of his positive status right away, no crime would have been committed. The Supreme Court decided that Williams could not be charged with aggravated assault because if his girlfriend was already positive when Williams found out he was HIV positive,

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the sex did not carry a “substantial risk of serious bodily harm”. But Williams was still found guilty of attempted aggravated assault, a conviction which has a lower penalty, because he continued to have sex with her without disclosing when he knew he was HIV positive. In other words, he had the same intent to commit the crime as existed in *Cuerrier*, but the Court could not say for sure that the sex carried a “substantial risk of serious bodily harm” as she might have already been infected. The Court described Williams’ behavior as acting “recklessly”.

Areas of Concern

The Canadian HIV/AIDS Legal Network has written a synopsis on the case which can be found on-line at <http://www.aidslaw.ca/Maincontent/issues/criminallaw/williams-comment.htm> or you can get a copy from HALCO. The Network has identified two areas of concern for people with HIV/AIDS that come out of this case.

One area of concern is how the court chooses to define acting recklessly in the HIV context:

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

So Williams says that when someone “becomes aware of a risk” of having contracted HIV, they must disclose this to

their sexual partner if they are planning on having unprotected sex. This could mean that people may have to tell their partners about their potential for having HIV, even if they do not know for sure they are HIV positive. In other words, even though someone may not have a definitive medical diagnosis of HIV, they may still have a duty to tell their partner their risk of HIV before having unprotected sex or sharing needles.

A second concern is the issue of re-infection. Although in the *Williams* case, the Court did not rely on the medical evidence regarding the risks of re-infection for an already HIV positive person, the Court did say they were open to the possibility of considering this type of evidence in future cases. So, this could mean that in future cases, someone who has sex or shares needles with someone who he or she knows to be HIV positive, could be liable for not revealing their own HIV positive status because of the risk of re-infection. Right now, this is only a possible direction of the law. This issue has not yet been decided.

The full text of the Supreme Court’s decision in *R v. Williams* can be obtained from HALCO or on-line at <http://www.lexum.umontreal.ca/csc-scc/en/rec/html/2003scc041.wpd.html>.

A Proposed New Canada Health Protection Act

Health Canada is proposing to combine current federal health protection laws into one act. The proposed new act, tentatively called the “Canada Health Protection Act” would replace the *Food and Drug Act*, *Hazardous Products Act*, *Quarantine Act*, and the *Radiation Emitting Devices Act*. The federal government began the process of combining these acts five years ago. The first public consultation was held in 1998. This fall, there was another round of public consultations. HALCO participated in the consultations in Toronto in November.

Some of the potential areas of concern for people living with HIV/AIDS are the sections on fundamental values and guiding principles, communicable diseases, quarantine and health surveillance.

A detailed legislative proposal can be obtained from HALCO or downloaded from Health Canada’s Legislative Renewal website at <http://renewal.hc-sc.gc.ca> (click on proposal). In order to respond to the proposal, you can send your comments by email, fax, or mail to the Health Protection Legislative Renewal unit of Health Canada to:

Health Protection Legislative Renewal,
Health Canada

Website: <http://renewal.hc-sc.gc.ca>

E-mail address:

Renewal_Renouveau@hc-sc.gc.ca

Phone: 1-888-288-2098 (toll-free)

Fax: (613) 954-0716

Address Locator: 0700A,

Tunney’s Pasture, Ottawa, Ontario,
K1A 0L2

AGM2003: Report from the Chair

Bob Watkin is the outgoing Chair of the HALCO Board of Directors. The following is the text of his Report from the Chair to the members at the 2003 Annual General Meeting held September 17, 2003.

If I may be permitted to express a few personal words and opinions...

Close to nine years ago it was my privilege to join a group of dedicated people working together to implement a shared goal. That goal was the creation of a legal clinic to provide service to persons trying to cope with the legal consequences of living with HIV/AIDS. On the strength of a promise of funding from the then provincial government, working tirelessly, these people met in living rooms and borrowed offices to produce every piece of paper, cross every "t" and dot every "i" conceivable to make their vision a reality.

Eight to nine months later I stood in two empty rooms in the interior of the ACT premises with a temporary employee we had hired to create the physical reality of our new clinic. The need was so desperate that people arrived at the door looking for help before there was a stick of furniture to sit them in or staff hired to help them. The clinic formally opened for business that December.

We have come a long way from those two small empty rooms. The work of this clinic has ranged from altering the form of legislation, providing representation, providing voice when there was no one else to speak, finding solutions and, at times perhaps most importantly, providing an ear when there was no one else to hear. It has been the collaborative effort of so many good people. The many hard

working people who have served on the clinic's board and especially the committed effort of the clinic's talented staff. It has been a pleasure to share this experience with all of you.

The fundamental challenges in the work before this clinic remain to be faced. As is reflected in the film on the Cuerrier decision you will see later tonight no other disease imposes on its sufferers the additional infliction of severe legal consequences including criminal sanctions. I have no doubt those consequences are the effect of an animated bias. No charges were ever laid in the case of the doctor infected with SARS who knowingly and repeatedly breached quarantine. Yet we have seen a proliferation of aggravated sexual assault charges, including the first one laid in the gay community. What purpose and what motivation is served by this usurpation of the legitimate function of the public health authorities? Consider the implications of the so-called "good Samaritan" law. This is an enactment so heinous that the government that enacted it was forced to render it almost unworkable as a practical matter through the form of the regulations under it. It is an abomination that this statute remains on the books. It must be the role of this clinic to challenge the bias that drives this alarming and growing trend. It will also be much more complicated to address issues of discrimination. As one consequence of the effective work we have done has been to educate the bigots. Discrimination will no longer be necessarily obvious and inflammatory but accomplished through misdirection, and deceit.

An issue central to the clinic's functioning

must be addressed before that role can be effectively accomplished. The major component of the clinic's funding is from public sources. While gratitude must be expressed for the continuation of that funding it comes with increasing strictures and restraints which will inhibit the clinic's ability to ever address the fundamental problems and may well effect the clinic's ability to function as it does now. The clinic must refocus to attract greater sources of private funding. Steps have been taken to achieve this goal such as obtaining charitable registration status, even though we were told that was impossible for us to do. The steps taken so far are preliminary and certainly have yielded worthwhile results. Notwithstanding this fact, greater focus and effort must be applied to attracting greater sources of private funding if the viability of the clinic is to be maintained and its ability to address the fundamental issues effecting the day to day lives of its clients is to be enhanced.

Tonight I retire as a member of the Board and as Chair. Perhaps it will simply be to renew and recharge but I can't be certain of the duration of the cessation of my involvement. Collaborating in the creation and functioning of this clinic has been one of the most worthwhile and rewarding experiences of my life. I thank every one of you for your indulgence and patience in allowing me to participate with you.

Mark Blans (Chair), PHA was appointed to the PWA board in 1997 and to the HALCO board as a PWA representative. Mark served as HALCO's secretary/treasurer until September 2003 and now serves as Chair. He has been active on the finance, personnel, outreach, executive and fund-raising committees. Mark has been involved in the HIV/AIDS community for well over 11 years, including involvement with PWA and ACT. Mark brings management & computer skills to the clinic and was instrumental in the development of the HALCO website. Mark also participates on the David Kelley HIV/AIDS Community Advisory Committee. Mark is extremely committed to both the clients and membership of the clinic.

Maryanne Kaay returns after a one year term on HALCO's board, where she participated on the Policy and By-law Committee. Maryanne has a Master of Arts degree in English from the University of Guelph and has been involved with the AIDS Committee of Guelph & Wellington County, as an employee, since June, 2002, with the Harm Reduction team as the Gym Outreach Co-ordinator. She has delivered workshops to increase awareness of HIV/AIDS and Hepatitis A, B, and C and promote the services of the AIDS Committee. Most recently, Maryanne has worked as the Community Hepatitis C Worker and Co-ordinator, networking with area agencies serving individuals at risk for Hepatitis C and/or HIV and conducting support groups for those affected by Hepatitis C and/or HIV. She has worked in Adult Education for the Upper Grand District School Board, the Guelph Correctional Centre, and the Continuing Education program.

James Kreppner is a retired lawyer living with HIV and Hepatitis C, who has been involved with HALCO since its formal inception. He has been one of the Toronto People With AIDS Foundation appointees. 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 the Canadian Blood Services, and is currently 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 and human rights issues related to HIV. James continues to sit on the HIV/AIDS Clinical Trial Network (CTN) Community Advisory Committee, and he is a council member of the Canadian Treatment Action Council (CTAC).

Jim Lister is a long-term survivor, HIV+ for over 20 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 8 1/2 years. Jim and his husband are the first same sex couple to win the right to appeal a CIC decision and appear before the Immigration and Refugee Appeals Board. In the past, Jim has worked as a fundraising volunteer and co-ordinator, 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.

Martha Mackinnon (Vice Chair) has served since 2000, and as Vice-Chair of the Board since 2002. Martha taught English and Drama in secondary school for eight years before going to law school. She has concentrated her legal practice on education law, poverty 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 Ontario Bar Association and is a member of the provincial Council. She is the Past 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 was on its Board of Directors for 5 years.

Paul Petersen is an articulate and energetic individual with over 30 years of experience in all aspects of power system operation and computer monitoring. He worked at the Ontario Hydro Provincial Control Center until his retirement this year at age 51. Paul served for many years on church boards both as a member and officer. He is an accomplished amateur musician having served as church organist, choir member and director, as well as in small vocal groups both as a member and accompanist. He has been married for 29 years, has 2 adult sons and is looking forward to becoming a grandfather this fall.

Steve Silverberg (Secretary-Treasurer) has a BA from the University of Western Ontario. After travel in Europe and South East Asia, Steve earned his Masters in Business Administration at U of Toronto, as well as his Chartered Accountant designation. Steve has gained experience in the accounting industry at Deloitte and Touche, where he administered several audits ranging from Owner-Managed Enterprises to major corporations and not-for-profit organizations including the Kid's Help Phone. After leaving Deloitte and Touche, Steve performed Data Analysis at Ebay Canada and has since started his own Professional Services Company. He looks forward to the working with HALCO and being part of the organization.

Jim Truax is a 67 year old gay man living with HIV for over 12 years. He has worked and volunteered extensively in the HIV/AIDS community. His current focus is on raising awareness that new infections in US and Canadians over the age of 50 are increasing alarmingly (more than 11% and increasing) and has presented on this to local, provincial, national and international conferences over the past 4 years. Jim's article "HIV Infection and Aging: A Personal Journey" appeared in a special June Supplement of the *Journal of AIDS*. Jim also sits on St. Michael's Hospital HIV Community Advisory Panel (CAP); on the Ontario HIV Treatment Network (OHTN) HIV Information Infrastructure Program (HIIP) Advisory Committee (HAC) as a PHA representative of the Ontario AIDS Network and on the AIDS Bereavement Project of Ontario (ABPO) Advisory Board.

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, Transsexual 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, and on HALCO's Board since 1999. Most recently, Gary has been involved on the board's Finance Committee.

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**

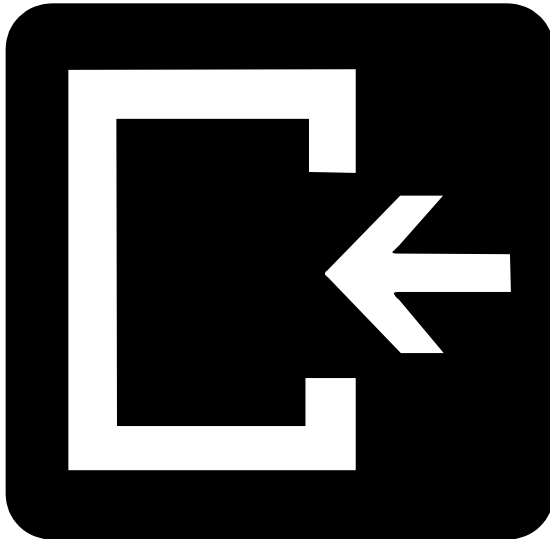
Name _____ Title _____
 Address _____ Postal Code _____
 Phone (day) _____ Phone (evening) _____
 Fax _____ Email _____

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

CPP Automatic Reinstatement: Will It Happen?

The federal government has indicated that they are likely to make changes to the Canada Pension Plan disability benefits program to provide a better reinstatement system for people who receive CPP-D but would like to try a return to work. However, we have no idea when these changes might be implemented.

Under the current provisions, a person qualifies for CPP-D benefits by establishing that they have “severe” and “prolonged” disability which makes it impossible for them to maintain any “substantially gainful occupation”. For many years, if you were able to engage in any work, you risked very quickly losing your eligibility for CPP-D.



As reported in **halco news** volume 6, number 2, CPP introduced an “Allowable Earnings” program which created greater flexibility for people on CPP-D who wanted to try to earn some money. Under the Allowable Earnings policy, individuals are permitted to earn up to \$3,900 for 2003 before they are required to notify CPP of their earnings and work activity. At that point, CPP will look at the circumstances of your work and your earnings and determine whether or not you have regained a capacity to work.

In June 2003, CPP announced another initiative they plan to implement called an

“automatic reinstatement” provision. According to news releases, the automatic reinstatement means people in receipt of CPP-D who fail at return-to-work attempts would be automatically reinstated to their benefits if they are unable to continue working because of their disability. It will be available to clients for two years from the date their Canada Pension Plan disability benefits are discontinued.

The existing policy for return to work attempts is called “rapid reinstatement”. Individuals who have gone off CPP-D benefits because of a return to work can apply to return to CPP-D if it has been less than five years since they were last

on benefits, AND they have re-applied within six months of having to leave work because of the same disability. However, this “rapid” process still requires a re-application and can be very time-consuming.

The government has indicated that the automatic reinstatement provisions would require a change to the Canada Pension Plan legislation, and “this change will be made at the next opportunity that the Canada Pension Plan statute is opened for amendment.” To date, there is no news when that might be, so stay tuned to future issues of **halco news** for further updates.

HALCO Changes

There is always something going on here at HALCO, and so we have another issue of changes to report to you.

In July 2003, our 2002-03 articling student, Stephanie Gibson finished her term with us and returned to Cornwall. Stephanie accepted a position with the firm McDonald & Duncan in Cornwall. We wish her all the best in her future legal career.

In September of this year, we welcomed our newest articling student, Grace Chau. Grace comes to us from her law studies at the University of Windsor, and will be with us until the end of June 2004.

We’ve also been able to expand our use of students to assist us with our work. Over the summer of 2003 Rob DesRoches worked with all of us. Rob is a student at the University of Toronto law school, and worked with us through the Donner Fellowship. Jennifer Malabar also worked with us over the summer through the Bar Admissions Course at the Law Society of Upper Canada.

We have also been fortunate enough to develop our relationship with Pro Bono Students Canada, and this year we will be working with three new students under the PBSC program. Erin Rizok, Sarah Davidson-Ladley and Melanie DeWitt all started their initiation and training at the end of September. Throughout the winter term, Erin, Sarah and Melanie will be assisting us with regular intake duties.

Also in September we were lucky to welcome Lobat Sadrehashemi. Lobat is a student in the joint Law and Social Work program at the University of Toronto. Lobat’s practicum placement runs until the summer of 2004, for two days per week and Lobat, in addition to taking on some intake

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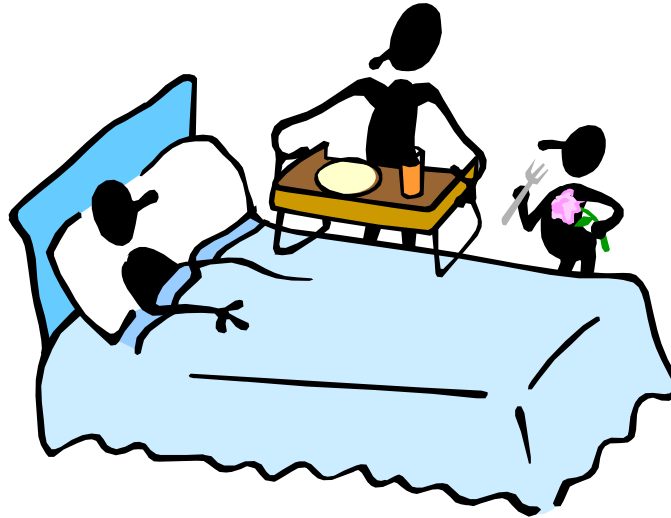
Employment Insurance "Caregiver Benefits"

The Federal government announced in May of 2003 that it would be making changes to the Employment Insurance (EI) legislation, regulations and policies to create what they call "Compassionate Care" benefits. At the same time a second private member's bill with broader definitions and benefits has been tabled after the first one failed to pass second reading.

The government has indicated that they plan to make EI caregiver benefits available as of January 4, 2004. Under the proposed plan, individuals with 600 hours of insurable employment in the last 52 weeks will be eligible for up to six weeks of EI benefits if they have to leave work to care for a close relative. The family member must be seriously ill, and face a significant risk of death within the next six months. The family member must also need you for psychological or emotional support, arrange for third party care, or to directly participate or provide for his or her care. There is a two week

waiting period for the benefits to start, just as there is with other EI benefits.

The federal government's plan for the



"compassionate care" benefit defines a family member as:

- your child or the child of your spouse or [common-law partner](#);
- your wife/husband or common-law

partner;

- your father/mother;
- or your father's wife/mother's husband, if your father/mother has remarried;
- the common-law partner of your father/mother, if there has been no remarriage (A common-law partner is a person with whom you have been living in a conjugal relationship for at least one year. Common-law partners can be same-sex or opposite-sex.)

The date of January 4, 2004 was given in order to allow time for the necessary amendments to be made.

Peter Stoffer, Member of Parliament from Nova Scotia, has introduced two Private Members bills to create a caregivers benefit under EI with a

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work, will be participating in community development and law reform work.

Some of you will be aware that HALCO is currently undergoing some staffing changes over the next few months. Ryan Peck, a former articling student has been working with us on contract during the secondment of staff lawyer Glenn Betteridge, over the last year. In mid January, Ryan will be leaving us to take on a new contract with the Advocacy Centre for the Elderly. Ryan, and his particular love of music will be missed here at HALCO!

In addition, staff lawyer Darrell Kloeze will be leaving us also in early January to pursue his career with the Crown Law Office

– Civil under the Ontario Ministry of the Attorney General. Darrell first joined HALCO in June 2001 as a litigation specialist and was responsible for launching HALCO's civil suit against the Correctional Service of Canada with respect to their treatment of HIV positive prisoners.

And finally, staff lawyer Glenn Betteridge has accepted an opportunity to remain with the Canadian HIV/AIDS Legal Network (CHALN) as a Senior Policy Analyst fol-



lowing the completion of his secondment. Glenn joined the staff of HALCO in the fall of 2000, and served as Director of Legal Services at HALCO from February 2002 to February 2003 when he began his secondment with CHALN.

Our best wishes for continued success go to Glenn, Darrell, Ryan, Stephanie, Rob and Jennifer. And a warm welcome aboard for Grace, Lobat, Erin, Sarah and Melanie. We will keep you updated on our two new lawyers once hiring is complete. If you have an

interest in one of our staff lawyer positions, you can find the job ad posted to our website (www.halco.org). Look under "What's New".

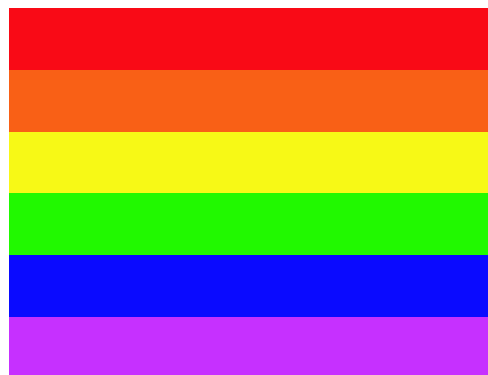
CPP Same Sex Survivors Benefits: Class Action Successful!

On December 19, 2003 the long-anticipated decision in *Hislop* was released by the Ontario Superior Court of Justice. *Hislop* is about the CPP pension for gay and lesbian surviving spouses or partners. Under the current legislation, if your same sex partner died after January 1, 1998 you could be eligible for a monthly survivor's pension. (To be eligible for a pension you would have to show that you were living together at the time of death, had lived together for at least a year, and that you were over 35 years old or had dependent children or were disabled at the time of death. In addition, your partner must have paid into the Canada Pension Plan for at least three years.) But *Hislop* challenged the artificial cut-off date and covers all those people whose partners died before January 1, 1998 (but after April 17, 1985 because that's when the *Charter of Rights and Freedoms* became law).

The court declared that those provisions that prevented same-sex partners from getting a survivor's pension before January 1, 1998 were unconstitutional and of no force and effect. You can access a copy of the decision at http://www.eklaw.ca/cpp_pr.html on the internet, or you can call us and we'll send you a copy.)

The government has thirty days in which to decide whether or not it wants to appeal. If the government does appeal, it

means that it may be a further wait before same-sex survivors receive their pensions. We'll have to wait and see what the government does in January. In the meantime, if you think you may be eligible



for the survivor's pension as a result of *Hislop*, you should register as a member of the class. You can obtain a registration form on-line at http://www.eklaw.ca/cpp_register_intake.html or by calling the law firm of Elliott & Kim at 416-362-1989 or toll free at 1-866-877-0109.

There's one other interesting aspect of *Hislop*. When the government changed the law so that people whose same sex partners died after January 1, 1998 could get the survivor's pension, they added a provision that said that the pension could start no earlier than July 1, 2000. Normally, the survivor's pension is payable starting the month following the date of death. So anyone whose same-sex partner died after January 1, 1998, but before June 2000, couldn't get the pension backdated the way opposite sex survivors could, which was obviously unfair. In *Hislop*, the court stated that this provision was also unconstitutional. Therefore, people whose partners died after January 1, 1998 but before June 1, 2000 might also have arrears owing to them as a result of *Hislop*. If *Hislop* is not appealed by January 19, 2004, anyone in this situation should write to Human Resources Development Canada and ask for the arrears owing to them.

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broader definition of family, as well as longer benefits. The first, Bill 206, was introduced in October 2002 and had a number of significant differences from the government's proposal.

Under [Bill 206](#), a caregiver would qualify if they had to leave work or were terminated because they had to care for a family member who had an impairment and who was not an in-patient in a medical facility or a resident in a long term care facility of home. "Impairment" was defined as a severe and prolonged mental or physical impairment whose effects markedly restrict the individual's ability to perform a basic activity of daily living, or would markedly restrict the individual but for specific kinds of therapy. Bill 206 also defined "family" as spouse or common law partner, child, grandchild, parent, grandparent, sibling, aunt, uncle or a person in an equivalent relationship with the person as a result of marriage or common-law partnership. Bill 206 proposed to provide benefits for up to a total of 52 weeks in one of more periods over a two year period. There was no two week waiting period, and the benefits could be extended beyond these limits if the caregiving was required for the health and safety of the sick person, and that care made it possible for the sick person to remain an outpatient or avoid becoming a resident in a long term care facility or home.

Bill 206 went to a vote on March 25, 2003 to consider whether or not the bill would proceed through second reading and be referred to committee for consideration. The bill was defeated by a vote of 130 to 86.

On May 15, 2003, Mr. Stoffer introduced a second private members bill on this issue. [Bill C-437](#) is exactly the same as C-206, but provides for a maximum benefit period of 26 weeks in one or more periods within any two-year period.

On September 27, 2003, the government

published their proposed regulation changes in the Canada Gazette and invited comments on the regulations by October 27, 2003. HALCO created a response to the regulations which you can access on our website at www.halco.org. In our response we highlighted a number of concerns including the overly narrow definition of family contained in the regulations, as well as concerns relating to the way in which eligibility for caregiver leave was defined. The new regulations require verification that the ill person is likely to die within 26 weeks – a difficult if impossible prediction to make. The proposed private members' legislation, on the other hand, establishes criteria related to the individuals needs for caregiving, and the fact that having that caregiving available would prevent them from having to be hospitalized.

The next step for Bill 437 will likely be a debate and vote for second reading. The government "prorogued" the House of Commons on November 12, 2003 and it will resume business on January 14, 2004, with the Throne Speech. Normally when the house is prorogued, all bills pending before it die and would have to be reintroduced in the next session of Parliament. However, a standing order was established prior to prorogation stating that "*Provisional Standing Orders, in force until June 30, 2004, provide that at the beginning of the 3rd Session of the 37th Parliament, all items of Private Members' business will be reinstated.*"

If you would like to let your MP know your thoughts on this legislation, you can find your MP's contact information easily with your postal code by visiting <http://www.parl.gc.ca/information/about/people/house/PostalCode.asp?lang=E&source=sm> or by looking in the blue pages of your phone book under "member of parliament". You can also contact Peter Stoffer's office at (613) 995-5822, fax (613) 996-9655 or by email at Stoffer.P@parl.gc.ca

Holiday Hours

HALCO will be closed from December 24 at 1 p.m. and will re-open on Friday January 2, 2004 at 9:00 a.m.

Best wishes to all for a healthy 2004

Government Introduces Health Information Privacy Legislation for the Health Sector

On December 17, 2003 the provincial Liberal government introduced Bill 31, the “Personal Health Information Protection Act, 2003”. If passed, Bill 31 will provide people living with HIV/AIDS with significant privacy protections. Unfortunately, it only applies to the health sector, so doctors, hospitals, labs and pharmacies would be covered; employers and insurance companies would not. AIDS Service Organisations would also not be covered, although there is a provision that would allow agencies like ASOs to be covered in the future. A copy of Bill 31 can be obtained on-line at www.ontla.on.ca/documents/Bills/38_Parliament/Session1/index.htm.

Bill 31 is a major step forward in promoting privacy rights, and is considerably better than anything the provincial government has ever proposed before. In contrast to BC’s new legislation, Bill 31 would only permit disclosure of health information in very limited circumstances. Those circumstances would be the ones that already exist in our legislation (like reporting of positive test results to public health) or at common law. One disclosure section that will be of interest to PHAs is section 39. It is similar to the Supreme Court of Canada’s decision in *Smith v. Jones* and says that health information can be released without consent if there are reasonable grounds to believe that the disclosure is necessary to eliminate or reduce “a significant risk of serious bodily harm to a person or group of persons”.



However, in *Smith v. Jones* the Court said that the risk had to be “imminent”, meaning that there had to be a sense of urgency with the risk about to materialise in the foreseeable and near future. In addition, the Court said that any such disclosure should be designed to minimally impact on the privacy rights of the patient. So

section 39 is one section that HALCO would like to see improved.

Some of the new privacy protections that Bill 31 would introduce in Ontario include:

- Hospitals wouldn’t be allowed to use their patient list to fund raise;
- Patients could tell a hospital upon admission that they didn’t want callers to be able to find out they were in the hospital;
- If an agency like an ASO receives health records about you with your consent, then the rules about how that information could be used by the ASO would still apply;
- If your privacy is breached under the legislation, you will be able to file a complaint with the provincial Information and Privacy Commissioner. If that complaint is upheld, you will be able to apply to court for an order for damages.

provisions in Bill 31 is about regulations. If the government is going to pass regulations, Bill 31 says that the government must first give notice of those regulations to the public and invite comment before they can be passed.

Prior to the legislation being introduced, HALCO was consulted by the government and asked to comment on previous drafts. That process, and the content of Bill 31, are a good indication that the new government and Minister of Health and Long-Term Care take the concerns of PHAs seriously and are willing to listen. There are things in Bill 31 that could be tightened up and improved, so HALCO will be tracking the legislation closely. Bill 31 was referred to the Standing Committee on General Government for consideration after first reading. That procedure is a little unusual as most bills are not referred to committee until after second reading. This early referral is another indication that the government wishes Bill 31 to be the best possible legislation that it can be. If public hearings are held, HALCO will be asking to speak to the Committee. If you or your agency would like to speak to the Committee about Bill 31, contact: Tonia Grannum at Room 1405, Whitney Block, Queen’s Park, Toronto, Ontario, M7A 1A2 or at tonia_grannum@ontla.ola.org. Any submissions that HALCO makes will be posted to our web site at www.halco.org.

One of the really unusual and wonderful

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halco news is published by the HIV & AIDS Legal Clinic (Ontario) and distributed free to its membership and other members of the HIV/AIDS community in Ontario. Written by: Ruth Carey, Matthew Perry, Lobat Sadrehashemi, Bob