



halco news - Spring 1998

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Province Introduces Draft Personal Health Information Protection Act

Well, you guessed it. The Harris government continues to churn out new legislation with significant impact on the lives of PHAs in Ontario. First it was the Tenant Protection Act (ugh!). Then it was the Social Assistance Reform Act, 1997 (double ugh!).

Now, we have the draft Personal Health Information Protection Act, 1997 [PHIPA]. The government released a draft of PHIPA for consultation at the end of November, 1997, asking for submissions no later than February 27, 1998. This proposed legislation is very important to PHAs because it regulates the collection, use and disclosure of personal health information in the Province of Ontario. In a nutshell, PHIPA defines what "personal health information" is, who manages it ("health information custodians"), and what they can and

cannot do with that information. PHIPA has created what some people have called a "researcher's dream", facilitating the linking and sharing of information and reducing the obstacles which currently exist that should be an integral part of any legislation which truly protects an individual's personal health information.

PHIPA defines "personal health information" as information relating to the physical or mental health of an individual, or the provision of health care to an individual, if the information identifies the subject of the information. This includes information which could be changed, linked to other information or manipulated in a way that would identify the subject of the information.

A fundamental problem with PHIPA is the section covering "health information custodians". By creating an inclusive/exclusive list of "health information custodians" who are covered by the draft legislation, PHIPA misses the mark in truly protecting the privacy of the individual. Ideally, the protection of personal health information should attach to the information itself, rather than attempting to control the person or people who have access to that information. Under PHIPA it is too confusing for individuals to have to figure out whether or not they are covered by the legislation. If the information itself is covered by PHIPA, any person who comes into contact with it would have to meet the requirements of the legislation. In a rather disturbing turn, the draft legislation currently states that service providers to young offenders are not covered and there is no indication as to whether prisons are covered or not. Finally, the section on "health information custodians" currently says that an employer who collects medical information about employees for "human resources" purposes is not a health information custodian, and therefore is not covered under PHIPA.

Lack of Remedies

PHIPA's failure to create strong privacy legislation in Ontario is evident in the lack of effective remedies available to individuals. PHIPA's failure is also shown by the new protections against liability it provides to health information custodians. Currently, under Ontario law, it is not against the law for your next door neighbour to tell everyone in your apartment building that you are HIV-positive. Good and effective legislation governing personal health information would provide strong legal protection and remedies in such circumstances. PHIPA would be an ideal opportunity for the government to create protections around personal health information which would provide the individual whose information has been mishandled with some kind of compensation. PHIPA would also be an ideal opportunity to create penalties which

would be strong enough to actually prevent the inappropriate disclosure, collection and use of personal health information.

As the draft stands right now, PHIPA creates some financial penalties for the improper handling of someone's personal health information, but these penalties are payable to the Ministry. So, while there may be some incentive to obey the legislation, the person whose information has been improperly handled doesn't get any compensation for the fact that their information has been mishandled.

Related to this lack of effective remedy, PHIPA provides an additional defence for people who disclose someone's personal health information. PHIPA states that if a person believes, "on reasonable grounds and in good faith" that they are allowed to do something under PHIPA, they may be protected from liability for damages resulting from their actions. A person might also have protection from liability if they can show they believed, "on reasonable grounds and in good faith" that they had sufficient consent for their actions. Therefore, a doctor who has disclosed your HIV status may be able to use this defence in a malpractice suit, or when defending her or himself in front of the College of Physicians and Surgeons.

What is most important to note about the remedies and defences created by PHIPA is that this draft legislation actually undermines protections currently available to individuals under the existing law by providing this additional defence.

Permitted Disclosures

Another extremely troubling part of PHIPA is Section 14, "Permitted Disclosures". This section provides a list three pages long of situations in which someone's personal health information may be disclosed without their knowledge or consent. From the perspective of PHAs, one of the most disturbing items on this list is disclosure "for the purpose of eliminating or reducing a risk to an individual's health or safety if there are reasonable grounds to believe that the risk is significant". This concept is commonly referred to as the "duty to warn" third parties.

The government has indicated that this list of permitted disclosures merely restates or builds on the current law. The problem is that by attempting to do this, they have created a broad list of very vague circumstances in which someone can disclose your personal health information without your consent.

Imagine, for example, that Public Health receives calls from two different people informing them that a certain person is HIV positive and

is having unprotected sex with others. They provide this person's name, but have no information for public health as to how to reach this person. Public Health looks into the matter, and is unable to find a way to contact this person. Believing, "on reasonable grounds and in good faith" that this person poses a risk to an individual's health and safety, they decide to put up posters on lampposts in that district health unit identifying the person and his HIV status, in order to warn potential third parties of the risk. By doing this, they are disclosing someone's personal health information without consent "for the purpose of eliminating or reducing a risk to an individual's health and safety", on arguably reasonable grounds and in good faith, and are thus complying with the law as proposed under PHIPA.

If the person named in the posters is a PHA, and is placing others at risk, he or she would have no remedy to the actions of Public Health in this example. If the person turned out not to be HIV-positive, or was but was not practising unsafe sex, he or she would be able to sue for libel. However, their success in this suit would be undermined by the fact that Public Health now has the added defense of claiming they were acting "on reasonable grounds and in good faith".

Currently the public health unit in a given area is already mandated with carrying out the task of partner notification. They have a duty in law to carry out this function, and have developed and implemented ways of doing this. If the government were truly trying to restate the current law, or to build on it in a way that respects an individual's privacy, why would they allow any "health information custodian" to disclose your personal health information without your consent, if, according to them, it is done in order to eliminate or reduce a risk to someone's health or safety? Why not require that the public health unit carry out this task according to the procedures and guidelines they have already established? If Public Health's handling of this task is inadequate, why not specifically address it in the legislation governing public health units, the Health Protection and Promotion Act?

So now what?

In late December, HALCO called for the formation of a group who would look at the draft PHIPA and prepare a [Position Statement](#) from the perspective of PHAs and those who work with them for the government by the deadline for consultation, February 27, 1998. An Ad Hoc committee was put together from several ASOs and other bodies. A draft of the submission prepared by this committee was circulated to all ASOs across the province for comments and endorsement. By the time the [Position Statement](#) was submitted, 35 groups and organizations had endorsed the document.

Now we get to wait and see what effect, if any, the consultation process will have on the draft legislation. In our [Position Statement](#), we called for redrafting of the sections defining health information custodians, and permitted disclosures without consent. We have recommended stiffer, more meaningful penalties in situations where someone's personal health information has been mis-used or mishandled. We have recommended that the government make this legislation available in plain language, and provide ongoing training and education in order to ensure that the vast array of "health information custodians" might understand their legal responsibilities as regards personal health information. We have also recommended a fundamental shift in the legislation from facilitating the collection, use and disclosure of information among custodians, to one which focuses on the information itself, and makes the protection of an individuals privacy a clear priority.

- M Perry

Click on [Position Statement](#), to view this paper. Printed copies are available from HALCO. Please call Matthew at (416) 340-7790 or 1-888-705-8889 to request one.

CH-CH-CHANGES

Goodbye & Thank You!

On behalf of the staff, Board, and members of HALCO, we would like to say a big heartfelt thank you to Mark Freamo who has been with the legal clinic since it was but a thought all those years ago. Mark's dedication over the years bringing to fruition a poverty law clinic and his continued support and hard work after it was established is certainly not only appreciated by all involved with HALCO, but most importantly, the clients that we serve, past and present. Mark has stepped down as an appointee of PWA and returned to the civil service. It is through Mark leading by example that HALCO has been able to attract sterling candidates for Board membership.

Hello & Welcome!

And now we have traded in one Mark for another! Mark Blans has replaced Mark Freamo as one of the two PWA appointees to the HALCO Board. Mark has always been involved with ACT, PWA, and Pride Day as a volunteer in one capacity or another since 1991. Mark started his involvement with HIV/AIDS issues in 1987 by posting Safer

Sex campaigns on that fabulous relic from the 80's, the BBS (Bulletin Board System). Mark brings with him experience in electronics and management, and so far is enjoying his time with HALCO. Welcome Mark!

Announcement

Our hours are changing! Effective immediately, HALCO is open to the public Monday through to Thursday 10:00 a.m. to 6:00p.m. We will no longer be open to the public on Fridays. HALCO has received a grant from the Trillium Foundation to write and produce an [HIV & The Law Advocacy Manual](#). In order to complete this project in the time allowed by the grant, we are setting Fridays aside for the staff to do this work. We will still answer the telephone and take messages. We will also make efforts to accomodate emergency requests for advice or assistance. However, in non-emergency situations, callers will be told that their call will be returned the following Monday. The office will be closed to walk-in traffic on Fridays.

HALCO's Conflict Of Interest Policy: **What You Need To Know**

Because HALCO delivers legal services, all of its staff must act in accordance with the Law Society of Upper Canada's Rules of Professional Conduct. One Rule is that the legal clinic cannot advise both sides of a dispute. Because legal clinics are frequently the only place people can access legal advice, the Rule against advising both sides of a dispute is something we deal with relatively frequently and it is something people should understand.

The most common example of a conflict of interest for the legal clinic is where two tenants call. The first tenant is being evicted by the landlord for disturbing the quiet enjoyment of the landlord or other tenants. The second tenant is the one complaining to the landlord about the first tenant breaching his quiet enjoyment. If the clinic identifies the conflict before learning information or giving advice to the second tenant, then the clinic can represent the first tenant but cannot assist the second in any way. If the clinic does not identify the conflict right away and ends up getting information from the second tenant relevant to the first tenant's problem, then the clinic not only cannot assist the second tenant but if the first tenant calls again, must also not assist the first tenant.

The other common example of a conflict of interest is where an AIDS Service Organization calls us to ask a question about workplace law, or questions about insurance benefits for their employees; and then the employee turns around and calls us. As HALCO' s mandate is to help PHAs, we try and stop this conflict before it arises by asking the AIDS Service Organization if they are calling because of a particular person who is HIV positive. If the answer is yes, we explain the potential for conflict to the ASO and direct them to call the Lawyers Referral Service for free legal advice elsewhere.

- R Carey

PUBLIC LEGAL EDUCATION PAMPHLETS: WHAT THE HECK ARE THOSE ANYHOW?

Public Legal Education Documents, otherwise known as 'PLEs', are pamphlets designed to educate and inform the public about their rights, under Provincial and Federal legislation. Some PLEs are created to be issue-specific, like discussing elder abuse or HIV testing. Others provide information about processes, like how to access legal aid, where to find the nearest legal clinic in your area, or how to apply for welfare.

At HALCO, we have many PLEs in stock. We encourage clients and our membership to feel free to drop in or call us about PLEs. Below are PLE titles that HALCO has produced and still has in stock:

- 1) [When Someone Dies and Leaves a Will;](#)
- 2) [When Someone Dies Without a Will:](#)

and finally,

- 3) [HIV Testing in Ontario.](#)

ALERT: Important Changes To Ontario Trillium Drug Program

In early March, the Ontario Ministry of Health announced changes to the Trillium Drug Plan. The main change has been to move the Program year beginning date from April 1st 1998 to August 1st, 1998. For those people already on the program, this means you will have four extra

months of coverage before renewal and the need to come up with your deductible. For those seeking to apply to Trillium, this may mean more delays as it is currently quite difficult to find applications for the current year, and applications for 98/99 are not available as yet.

The Ministry has indicated that reapplication forms will be sent out in late May or early June. 1998. New applicants will be able to get application forms sometime in June of 1998.

In late breaking news. Minister of Health Elizabeth Witmer, in response to a demonstration by AIDS ACTION NOW! on March 25th, announced that she has instructed her staff to explore ways to pro-rate the deductible for people coming on to Trillium in the midst of the program year, as well as ways of spreading the deductible over the program year. Though there continues to be a push to eliminate the deductible for low-income earners, we have no indication that this will happen in the near future.

The Minister was vague about a time-line for implementing changes relating to pro-rating and spreading the deductible. Ideally these would be implemented by the start of the 1998-99 program year, August 1st. Please don't hesitate to contact either the Minister of Health's office, or your MPP to keep the pressure on.

- M Perry

Ontario Disability Support Program: What's Happening

Looking for the latest news on the Ontario Disability Support Program (ODSP)? Well, there's not much news. The Harris government continues to push Ontario Works as its first priority in the implementation of the Social Assistance Reform Act (SARA). Ontario Works (OW) was expected to come into force on April 1st, 1998, but this has been delayed one month to May 1st, 1998. The latest information from the Ministry suggested that the regulations for the ODSP would be, ready in time for proclamation to happen in June 1998. However, given the recent delays with OW, don't be surprised if it's later than that. Remember that if you are currently on FBA as a disabled or permanently unemployable person, you will be transferred onto ODSP. The Ministry has indicated to us that PHAs on FBA would not be reassessed.

The Ministry recently announced that the extended health benefits program, which provided a drug card and a cheque for \$2.50 to people who were not otherwise eligible for social assistance, is abolished effective April 1, 1998. The Ministry has indicated to us that this change is only for those people who get their drug card from the municipal welfare offices and not for people who get it from their local Family Benefits office. So, if you get a drug card and \$2.50 from your local welfare office, this change affects you. The good news is that very recently HALCO was provided with a copy of the regulations which put into effect this change and the Ministry has not completely cut people off the programme but has created a time delay.

There are two ways of being eligible for the drug card and \$2.50 cheque from welfare. The first is referred to as "buffer zone" recipients. Buffer zone people are those whose income is \$50 or less more than their welfare entitlement would be if they were on welfare. (If you have any dependents the buffer zone is \$ 100.) So if you are single and working and you make \$600 a month, you are probably a buffer zone person because the maximum welfare entitlement for a single person is \$553. The second way you get the drug card and \$2.50 cheque from welfare is if your monthly income minus your monthly drug costs is less than your welfare entitlement would be if you had no income. So someone making \$2000 a month with monthly drug costs of \$ 1500 would fall into this second category.

Under the new regulations, anyone who is getting the drug card and \$2.50 from welfare for the month of March, 1998, should get it for the month of April, assuming no other changes occur. So if you know anyone who had a drug card for March from welfare and has not been issued one for April, tell them to call HALCO immediately. The regulation also says that if you get the drug card from the municipality because of the second category (not a buffer zone person but someone with high drug costs) and you got a drug card and \$2.50 in March and April, then you should continue to get one. That situation will continue until the regulation is again changed at some point in the future. If you are on welfare and you have made an application to Family Benefits and are awaiting their answer, you will not lose your drug card from welfare.

We will keep you posted and will have more information for you in our next issue once the regulations have been made public.

- R Carey

The HIV+ Traveller: Going To The USA

In 1993, US Congress added HIV to the list of "grounds of exclusion" in the Immigration and Nationality Act. This means that a person with HIV or AIDS (a "PHA") who is not a citizen of the USA can be kept out.

Under United States federal law, a person must apply for a US immigration waiver package if he or she is planning to study, work, or live for more than 90 days in the USA, has a criminal record, has tuberculosis, or has HIV or AIDS. This is mandatory. If you cross the border without a waiver, INS agents can legally refuse PHAs entry. If you are a PHA applying for the US immigration waiver, you are doing so on compassionate/humanitarian grounds.

To apply for the US immigration waiver package, a PHA has to contact US Immigration and Naturalization Service (INS) and either collect the forms in person or request that they mail it to you. On this page are INS offices to contact for this information. Be aware that it is very difficult to get through, and chances are the INS agent 'prefers' that an individual visit the point of entry to pick up the package. This does not mean that INS is able to process your documents on site and at that time. It costs \$90.00 US to have your immigration waiver package processed. This does not include the cost of a passport picture which you must send in with your application.

The US immigration waiver is good for travel back and forth between the USA and Canada for one year.

Note that one must apply for renewal of the immigration waiver 6 months before the expiration date.

Please be advised that an immigration waiver does NOT guarantee entry into the United States.

This is due to the fact that an INS agent has the discretion to deny entry to an individual if the INS agent believes that individual is not genuinely visiting the USA. and may try to live and/or work in the USA. INS agents are allowed to do this - it is within their jurisdiction. Therefore, it is a good idea to take with you proof of residency in Canada (like a lease). If you are denied entry into the USA, you may wish to contact your federal MP, External Affairs Canada, or the US Consulate General in Toronto and tell them what happened. The most you will get is a sympathetic ear.

If you are caught at US customs with HIV medications and you do not have an immigration waiver, there are a couple of things that can happen to you. You could be denied entry and your name entered in

their computer system permanently, so that future attempts to cross will be thwarted; or, an INS agent could very well let you enter the USA.

- R Lobodzinski

International - HIV Entry Restrictions

If you are planning to visit a country other than the USA, look in the White Pages under "Consulates" and contact the consulate of the country you wish to visit to find out their HIV entry restrictions. Be careful in identifying yourself when contacting a consulate and their affiliated agencies about HIV entry restrictions. They may record your name and phone number. Some consulates and their affiliated agencies may accept calls only from private telephone lines. An AIDS Service Organization may be able to help you in contacting the consulate.

US Immigration and Naturalization Service (INS) Offices

Lester B Pearson International Airport
Toronto, Ontario
tel. (416) 676-2563
fax. (416) 612-8471

Buffalo District Office
130 Delaware Avenue
Buffalo N.Y. 14202
tel. (716) 849-6760 (8:00 am - 3:00 pm)
fax. (716) 551-3134

Peace Bridge (from Fort Erie, ON)
Buffalo, N.Y.
tel. (716) 885-3367

Rainbow Bridge (from Niagara Falls, ON)
Niagara Falls, N.Y.
tel. (716) 282-3141

Whirlpool Bridge (from Niagara Falls, ON)
Niagara Falls, N.Y.
tel. (716) 282-5920

Lewiston Bridge (from Queenston, ON)
Lewiston, N.Y.
tel. (716) 285-1676

Detroit Airport/Ambassador Bridge/District Office
Tunnel (from Windsor, ON)
Detroit, Michigan
tel. (313) 955-6293
Recorded Information (313) 259-8560

Blue Water Bridge (from Sarnia, ON)
Port Huron, Michigan
tel. (810) 982-0493

THE TENANT PROTECTION ACT

The new Tenant Protection Act (TPA) is supposed to kick in mid-April. The TPA radically changes our landlord and tenant and rent control laws.

For example:

Rent control is abolished for new tenancies. This means that when you go looking for a new apartment, there are no limits on what the landlord can demand as rent. There is nothing to stop a landlord from telling one prospective tenant the rent is \$2000 a month and a different tenant the rent is \$ 500 a month. The TPA also specifically says it's okay for a landlord to charge you more rent for the first month than the other months in the tenancy. So the landlord can say that the rent for the first month is \$2000 but the regular rent is only \$ 500. Basically the landlord can require a cash "bonus" from the highest bidder for the apartment.

If you get evicted the landlord no longer has to take care of your stuff for a while and wait for you to make arrangements to get it back. Under the TPA the landlord only has to wait 48 hours after you're evicted and then he can sell, throw out, or keep your stuff for himself (including pets).

If the landlord makes an application to the new Rental Housing Tribunal to evict you, in order to fight the eviction, you must write out a notice disputing the landlord's application and file it with the Tribunal within 5 days. If you miss the five day limit the landlord gets to evict you without you ever getting a chance to object at a hearing.

The TPA has a new limitation period for disrepair. If your landlord doesn't do repairs the TPA says you have to complain directly to the landlord first. After that you can apply to the tribunal for an order for

repairs and an abatement but you can only complain about disrepair which occurred within the last twelve months.

One good thing in the TPA is that if you have a lease which doesn't run out for a while but you want to move early, you can ask the landlord for permission to rent the unit to someone else. If the landlord refuses permission, under the TPA you can give the landlord thirty day's notice and leave anyway.

The 519 Community Centre is planning an information session on the TPA which is currently scheduled for April 30th.

-R. Carey

Tell Us Your Insurance Nightmares!

In January, the HIV & AIDS Legal Clinic (Ontario) held its annual Planning and Priorities Session. At this year's meeting, it was decided that the clinic would begin to ask for and collect the stories of individual PHAs who have had problems with their private insurance.

To that end, we are asking you, as individual members of the clinic, as well as ASOs, to tell us your stories. We are looking for examples of nightmares involving Long Term Disability Benefits, Life Insurance, Extended Health Care Benefits and Living Benefits/Viaticals.

The stories you relay to us will be made anonymous and collected in order that they may be used to lobby governments and the Insurance Commission to better serve PHAs in Ontario. ASOs receiving this newsletter will also be receiving a 8 1/2 x 11" poster for their offices included in this mailing. Please feel free to copy it and post where your clients will see it.

You can relay your stories to us by calling (416) 340-7790 or toll free at 1-888-705-8889. You can reach us by fax at (416) 340-7248. Our mailing address is 399 Church Street, 3rd Floor, Toronto, Ontario M5B 2J6. Finally, our e-mail address is talklaw@halco.org

- M. Perry

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