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Lifetime Ban for Social Assistance Fraud

Beginning April 1, 2000, individuals who are convicted of any offence in relation to the receipt of social assistance in the province of Ontario may be subject to a lifetime ban on the receipt of any social assistance (OW or ODSP). This change makes the penalty for social assistance fraud much stricter than it was before. The Ontario government is referring to this new penalty as their "Zero Tolerance" policy and believe that making the penalty so severe will act as a deterrent to fraud.

Before the Zero Tolerance policy came into place, the penalties for welfare fraud were already quite strict: anyone convicted of an offence in relation to the receipt of social assistance would have been subject to a three month suspension for the first offence, and a six month suspension for every conviction after that. With the regulation change, this two-step punishment is gone, and there is no chance to ever receive assistance in Ontario again.

When does the Lifetime Ban apply?

The lifetime ban applies to people who have been convicted for an offence which occurred either **completely**, or **partly on or after April 1, 2000**. Any offence which occurred **wholly before** April 1, 2000, and for which a person was convicted, would result in either a three month or a six month suspension. The important thing to remember is that it does not matter when you are convicted of the offence -- what matters is when the offence took place.

The most common "offence in relation to the receipt of social assistance" is fraud, and it is most frequently as a result of failing to provide information to your worker. A simplified legal definition of fraud is the intent to receive money to which you are not entitled, and actually receiving that money. Say, for example, you don't tell your worker that you successfully appealed a denial of CPP because you didn't want your cheque reduced. Because you didn't tell the worker, your CPP disability benefits were not deducted from your ODSP benefits. In this example you might be found to have failed to disclose information in order to receive money to which you were not entitled.

Before the Lifetime Ban, or even the three or six month suspension might be applied, a number of things would have to happen. First, something happens at the level of the local office which turns up unreported income, or an undisclosed asset -- this might be triggered by someone calling the welfare fraud hotline, for instance.

Usually, a file will then be turned over to an Eligibility Review Office (ERO), who will conduct an investigation of your file. Frequently, you will be asked to come to the office for an interview with the ERO. At the end of the investigation, the ERO will issue a report about their investigation. The local office will usually decide to take some action on your file either during this investigation, or after it. They may suspend your file (place your benefits on hold), or they may cancel your benefits.

They may declare an overpayment and begin collecting it. Any of these decisions are appealable by requesting an internal review and appealing to the Social Benefits Tribunal.

The next decision that gets made at the local level is whether or not to refer the file to the local authorities (police) for criminal investigation. If the file is handed over, the police will usually conduct their own investigation into the matter. At the end of their investigation, they may or may not decide to charge you with an offence.

If the police decide to lay a charge against you, your file is handed over to the Crown. At this level, the crown will make a decision, based on the facts, to proceed with the charge or to withdraw it. If the Crown decides to go ahead with the charge, then a trial would be held and a final decision would occur. If you were found guilty (convicted), a conviction would be entered against you, and you would be subject to a lifetime ban if the offence occurred in whole or in part on or after April 1, 2000. If the offence of which you were convicted occurred in whole before April 1, 2000, then you would be subject to either a three month or a six month suspension.

According to the Ministry, if you are given an absolute or conditional discharge (where there is a finding of guilt but no conviction is entered), you would not be subject to the lifetime ban. If you failed to meet the conditions of a conditional discharge, a conviction might then be entered and you may be subject to the ban. If you are given a conditional sentence (where your sentence is served in the community and you do not serve time in jail), you have in fact been convicted and the lifetime ban would apply.

What if there are other people on my cheque?

If you are convicted of fraud and face a lifetime ban, any other people included in your benefit unit will be affected. Normally, the part of the cheque that is designated for you will be cut out of the cheque and the other recipients will continue to get a reduced amount. However, if your spouse or same sex partner and/or dependents are not disabled themselves, then the ODSP benefits in your name would cease and they would have to make their own application for assistance under Ontario Works.

If the ODSP benefit unit has one or two adults who are subject to the lifetime ban, the amount of assistance will be reduced to

cover ONLY the children. In cases like this, ODSP has discretion to pay the social assistance benefits to a third party on behalf of the children. ODSP also has the discretion to pay the benefits designated for the child to the ineligible parent.

How could ODSP or OW find out about unreported income or assets?

It is important to know that the new Zero Tolerance policy under ODSP and OW comes at the same time as the recent introduction of the Consolidated Verification Program (CVP) across the province. Sole support parents were the first to face CVP when they were transferred from Family Benefits to Ontario Works. The program has recently been expanded to cover all ODSP and OW case files.

Under the CVP program, all ODSP and OW files will be thoroughly reviewed for any missing information. In addition, the ODSP and OW offices will examine third party information from a variety of sources (Revenue Canada, Ministry of Education, Ministry of Transportation, Ontario Student Loans Program, Canada Pension Plan, Employment Insurance, Equifax, Workplace Safety and Insurance Board, landlords, employers, your bank, the welfare fraud hotline, etc.) to check for any inconsistencies with the information they already have. When your file is being reviewed, you will likely receive a call from your local office to set up an appointment, and may also receive a letter asking you to provide certain pieces of information. It is very possible that unreported income or assets may come to light through this examination.

What should I do?

If you have unreported income or assets, you might want to think about voluntarily disclosing this information to your office. There is still discretion at the level of the local office when deciding whether or not to refer a file to the police for criminal investigation. The risk is that you may be found to be ineligible for some of the time you received benefits and an overpayment would likely be declared. If you have serious concerns about the risk you might face, contact HALCO or your local legal clinic for advice.

We're Moving!

After much anticipation and angst, HALCO is pleased to announce that we will be moving on Monday, May 15 to our new location at **65 Wellesley Street East, Suite 400, at the corner of Church and Wellesley.**

The new space is bigger, and will be a much better fit for our operations. Over the five years we have been located at 399 Church Street, the demand for our services has grown dramatically, and our ability to meet that demand within our limited space has become more and more difficult.

The actual move will take place on May 15 and 16. Because of the time it will take to network the computers and get our phone systems up and running (aside from the general pandemonium which is part of any move!) we are hoping to be up and running for regular hours on Wednesday May 17, 2000 at 10:00 a.m.

Our telephone, fax and email, will remain the same.

C-23: Federal Same Sex Law

Bill C-23, "*An Act to modernize the Statutes of Canada in relation to benefits and obligations*", had third reading and was passed by the House of Commons on April 11, 2000. The bill has gone to the Senate and is expected to receive royal assent at the end of May, 2000. Bill C-23 is designed very much like the Ontario's Bill 5 a piece of legislation that makes amendments to many existing laws so that they recognize same sex relationships.

One of the most significant changes affecting PHAs will be amendments to the Canada Pension Plan. The plan has modified the definition of common law partner so that it now reads " a person, in relation to a contributor, who is cohabitating with the contributor in a conjugal relationship at the relevant time [i.e. at the time of the contributors death]". To be a common-law partner of a contributor, you have to have been living together for a continuous period of at least one year.

This means that in the future, if your same sex partner has sufficient contributions, and you were living together at the time of death, and had been living together for at least 12 consecutive months prior to his/her death, then you will be able to apply for a survivor's pension.

Bill C-23, as approved by the house of commons, is available on line at http://www.parl.gc.ca/cgi-bin/36/pb_gob.pl?e Scroll down to the House of Commons section and click on the heading for C-23.

For more information about this bill, and how it may affect you, you can also contact your local Member of Parliament. You can find their number in the Blue Pages of your phone book, or at <http://www.parl.gc.ca/36/senmemb/house/membcon-e.htm>.

Charitable Status At Last

At long last, HALCO has been granted Charitable Status by the Canada Customs and Revenue Agency. The process of getting Charitable status was a long one for the clinic because of the nature of the work we do.

HALCO has been granted Charitable status retroactive to April 1, 1999. Our new status means that we can continue to benefit from support through the AIDS Committee of Toronto's Community Partner's Fund, as well as provide charitable tax receipts to individuals and organizations who make donations to the clinic.

HALCO is indebted to Bob Watkin, the current chair of our board, for the many hours he spent on the first draft of our application, and the many more hours he spent on the revisions and final draft.

If you are interested in making a donation to the clinic, we would be more than happy to provide you with a charitable tax receipt. Your donations make it possible for us to provide better service to our clients by creating the possibility of such things as hiring articling students in the clinic. Having an articling student is not only a great benefit to the clinic and our clients, but also benefits the student by providing them with hands on experience in the practice of poverty law and prepares them well to continue to provide service in this area of law.

Bits and Bites

In November of 1999, Andy Visser deVries regretfully resigned from HALCO's board of directors. We wish to take this (belated) opportunity to thank Andy for his contributions to the clinic during this time on the board, and look forward to working with Andy in the future. In February 2000, the board appointed John Plater to fill the vacancy left on the board. John has most recently been a staff lawyer at ARCH, the Advocacy Resource Centre for the Handicapped, and has been a significant figure with Hemophilia Ontario over a number of years. We wish to welcome John and look forward to working with him..... **2000** marks the fifth year that HALCO has been providing legal services to low income PHAs in Ontario, having officially opened our doors in December of 1995. This year's **Annual General Meeting**, to be held in September 2000 (hopefully in our new space) will be focused around our first five years, and will look ahead at the next five. Be sure to watch for your membership renewal forms and notices of the date and time of the AGM and come celebrate with us.... **Are** there articles or items you are burning to write for halco news? Is there a topic you would like to see covered in our next issue? Drop us a line, by [email](#), snail mail, phone or fax to let us know.

ODSP & OW Recognize Same Sex Partners

In November of 1999, the Ontario government passed Bill 5, the *Amendments Because of the Supreme Court Decision in M. v. H. Act, 1999*. This act required all Ontario legislation to be amended to include same sex partners. As a result of the Act, both the Ontario Disability Support Program (ODSP) and the Ontario Works (OW) program have been amended to recognize same sex partners. The amendments officially came into effect March 1, 2000 but the effect of the changes will take some time to be felt.

Under ODSP and OW the term "spouse" still refers to opposite-sex married and common-law couples. The amendments have added a new category called "same sex partner". The legislation has been changed so that everywhere it used to say "spouse", it now says "spouse or same-sex partner".

Two adults of the same sex living together are same sex partners if:

- they declare they are same sex partners

OR

- they help one another out financially, and have social and family-like ties

OR

- they are raising a child together as if they were both the parents of the child

You and your partner are also considered same sex partners even if you don't live together if:

- Your partner is subject to a court order to support you or your dependants;

OR

- Your partner has an obligation under the Family Law Act (which now recognizes same sex partners) to support you or your dependants

The legislation says specifically that sexual factors cannot be investigated or considered in determining whether or not a person is the spouse or same-sex partner of someone on assistance.

What does this mean?

If you and your same sex roommate ("co-resident") are both on assistance, and you are same sex partners, you will only receive one cheque for the two of you, and the total amount of your assistance will decrease. If you live with a partner who is not on assistance, it means that your partner's income and assets will be considered in determining whether you are eligible for benefits and may result in you not being financially eligible for benefits, regardless of your medical condition. This change could have very serious implications for couples where one person is HIV-positive and on ODSP with a drug card and the other is working and earning a salary.

How will the changes be implemented?

A new questionnaire has been developed by the Ministry which will be used to determine whether or not any two adults living in the same residence are spouses or same sex partners. This is called the **Co-Residents Questionnaire** and will be applied to every person who lives with another adult and applies for benefits under the ODSP or assistance under OW. Before, only if two adults of the opposite sex lived together would they have to complete a "determination of spousal status" questionnaire. If you are already on assistance and live with an adult of the same sex, you will be required to answer the questionnaire the next time your file comes up for review, or the next time they have a reason to pull your file. A change in eligibility takes effect only on the date on which an assessment is made; i.e., If you are determined to be living with a same-sex partner on a date after March 1, 2000 you will not be affected retroactively to March 1, 2000.

You should get and have explained to you a "Co-Resident Information Sheet" before you have to answer the questions in the questionnaire. This sheet provides information about the questionnaire and what makes a co-resident a spouse or same sex partner. You will be asked to sign it, showing that you received the form and that it has been explained to you.

Assuming that you haven't declared your same sex partnership to social assistance, you don't have any children together and you aren't subject to any court orders regarding support payments, two main factors will be considered in determining whether you and your same sex roommate are in fact partners:

- The degree of financial interdependence
- Whether there are social and familial aspects of your relationship.

The Co-Residents Questionnaire is divided into two parts. The first part looks only at financial factors, and is designed to determine the level of financial interdependence which exists between the two co-resident adults. It asks questions about how the rent or mortgage is paid, who pays it, if there are agreements about household expenses, whether both of you have (or have ever had) joint bank accounts, loans, credit cards, debt, vehicles, pensions, real estate, or a business. You are also asked to provide information about whether you have ever declared yourself to be partners for any reason including income tax or employee benefits. Finally, you are asked to

provide information about whose name is listed for your utilities, who pays them and how the costs are divided.

Based on the information in this first part of the form, a decision is made about whether there is enough financial interdependence to require you to complete the second part of the form, which asks about the social and familial aspects of your relationship. According to policy, if there is not sufficient evidence that there is financial interdependence, then the second part of the form is not completed and you are not determined to be same sex partners. For this reason, it may be extremely important to be able to have very separate finances and be able to demonstrate a clear division in both your finances and your financial responsibilities in the home.

How much financial interdependence is too much? Good question! The Ministry's policy indicates that there must be "a pattern of mutual support or interdependence". The policy indicates that "circumstances surrounding how rent and utilities are divided may be satisfactorily explained,". The policy does go on to say, however that "the provision of financial support or joint ownership of assets and/or liabilities are strong indicators of financial interdependence."

If the answers you provide in Part 1 of the questionnaire show that there is sufficient financial interdependence, then you will be required to complete Part 2. Part 2 is made up of 23 additional questions. These questions are much more detailed, and personal. They ask whether you are beneficiaries of each other for life insurance or RRSPs, whether you've ever been covered under each other's benefit plans from employment, if you have power of attorney for each other, if you are "known as a couple" by any public agencies like schools, banks, doctors, police; how is the mail addressed (to both of you?); do you share meals, how you share household chores, do you go to family events with each other's family, do you care for each other when one of you is ill, have you ever lived together before. A final section of Part 2 deals specifically with children and asks whose last name the children use, what the kids call you and your roommate, whether agencies recognize you and your co-resident as guardians of the child(ren), how you share child care responsibilities, and who provides guidance, help with schoolwork and discipline for the kids.

There have to be both financial as well as a social and familial relationship demonstrated through the questionnaire before a

co-resident can be considered a same sex partner or spouse. Financial factors alone can't show that a co-resident is a spouse or same sex partner without evidence of a social and family-like relationship.

What if I live with a relative?

Some individuals are exempt from consideration as same sex partners, or spouses, under the legislation. These individuals include a: parent, stepparent, grandparent, uncle, aunt, son, stepson, daughter, stepdaughter, grandchild, sister, brother, niece or nephew. Note that caregivers are not included on this list, so for recipients of ODSP who live with a caregiver who is not one of these relatives, they will need to show that there is sufficient financial independence or a lack of social/familial ties to prove that they are not same sex partners or spouses.

What should I do?

If you are currently living with another adult, you may want to take time to examine your financial and your social relationship. Eventually, all individuals with adult roommates who are in receipt of or who are applying for ODSP will have to answer the Co-Residents Questionnaire. As discussed above, in order for ODSP to determine that you and your roommate are spouses or same sex partners they will need to show both that there is some financial interdependence AND that there are social and familial aspects to your relationship. If there is no financial interdependence, then it is less likely they will even inquire into the social/familial aspects of your relationship. The easiest way to avoid any difficulties in terms of your eligibility for assistance is to ensure that finances are clearly separate and that bills and rent are equally divided. If you have specific questions about your situation, call us directly at HALCO or check out the links available on our website at <http://www.halco.org>.

OHIP Card Help

Do you need to apply for an OHIP card? Need to replace a lost or stolen card? If you live in Toronto, you can do this at a satellite location at St. Michael's hospital. An insurance card booth will be set up from 10:00 a.m. to 2:00 p.m. in 1, Bond Board Room, in the Bond Wing of St. Michael's Hospital.

In order to get your new card, you will need to bring three pieces of identification: Proof of Canadian citizenship or Immigration Status, Proof of Ontario Residency (a home address in Ontario) and an original document with your name and signature on it.

The upcoming year 2000 dates for the booth are: June 6 & 7, July 4 & 5, August 1 & 2, September 5 & 6, October 3 & 4, November 1 & 7 and December 5 & 6.

For other satellite locations around the province, you can call the Ministry of Health and Long Term Care at 1-800-268-1154 to ask about booths available in hospitals near you.

You Asked Us

Q: I got a job about four months ago at a call centre. I worked 20 hours a week. I was sick one day about two months ago so I disclosed my HIV positive status to my supervisor. She got all weird on me after that and asked me about my "condition" as if she was afraid I could not do my job or I might contaminate the phones or something. Yesterday, the boss called me into the office and told me that I was being let go because "I wasn't working out", whatever that means, and that my last day of work would be next Friday. She gave me a letter which says the same thing. Can they do this? What can I do?

A: When you work for an employer where you are not a member of a union, the law governing your relationship is found in the *Employment Standards Act*, *Ontario's Human Rights Code* and in the common law. If the employer is a federally regulated business (like a major bank or airline), the *Canada Labour Code* applies instead of the *Employment Standards Act*. The common law is judge made law. In employment situations, we often talk about wrongful dismissal actions these are judge made and part of our common law. If you have an employment contract, that contract is part of the common law.

In this situation, you have worked more than three months for this employer. Therefore, the termination provisions of the *Employment Standards Act* apply. The fact that you work part-time is irrelevant you have the same rights under the *Employment Standards Act* that you would have if you were working full-time. The Act says that if you have been working for more than three

months but less than one year, you are entitled to one week's written notice of termination of your employment. If they do not give you proper notice, you are entitled to one week's worth of wages instead of the proper notice. However, if they give you the proper notice of one week, then they do not have to pay you additional termination pay. In this situation, they have given you proper notice, so you can work out the week until Friday and you are not entitled to any additional wages on top of that. This is probably also true at common law. You could sue for wrongful dismissal in small claims court but all you can get at common law is wages in lieu of proper notice that might be more than the one week you got but it might not be. Damages in wrongful dismissal are related to how long you worked there, the degree of responsibility you had, your ability to obtain a comparable job, and how badly the employer treated you. For low wage short term jobs there is very little to be gained in suing in small claims court.

In this situation you would be entitled to vacation pay. Your last pay cheque should have your wages on it plus 4% of your wages earned since your last vacation. Some employers pay part-time employees this 4% weekly but if you have not been getting it all along it should be included in your last pay cheque. If you do not get your vacation pay, you should ask the employer for it. If they won't give it to you, you should file an application with the Employment Standards Branch of the Ministry of Labour. They will investigate and order the employer to pay you the money it owes you.

Regardless of how long you worked there the *Human Rights Code* applies. If you have reason to believe that the termination was because you disclosed your HIV status, you can file a human rights complaint. Whether or not you should file a complaint will depend on what evidence you have that the firing was linked to your HIV status. If there is evidence (for example, your supervisor asked you if you could continue to do the job in your "condition") then filing a complaint is not a bad idea. The process is free and most cases where there is favourable evidence will settle early on in the process for between \$2000 and \$3000. You can pursue both a human rights complaint and your employment law rights at the same time.

Resources On-Line

For those of you who have access to the internet, there is a growing number of resources which you can access on your own. As part of **halco news**, we will try to regularly update you on sites which are useful and informative.

(HTML Editor Note: Check Our Links for Lots of Info!)

A good source for treatment and information about HIV/AIDS can be found through the Community AIDS Treatment and Information Exchange (CATIE) at www.catie.ca. Another very good (though U.S. based) site for HIV/AIDS information can be found at www.aegis.com.

Want to find out what's going on at provincial parliament, or check on the status of provincial legislation? Check out the Ontario Legislative Assembly at www.ontla.on.ca. Choosing the "library" link will allow you to check on bills currently before the house. Choosing "hansard" from the home page will get you access to transcripts of the proceedings of the house. You can also check out Ontario statutes (laws) and regulations by choosing "parliamentary publications" on the home page, and then clicking on "Ontario Statutes and Regulations". Similarly, Federal laws and regulations can be found at:
<http://www.canada.justice.gc.ca/FTP/EN/Laws/index.html>.

Finally, though we've mentioned it here before, the Canadian HIV/AIDS Legal Network's site (www.aidslaw.ca) is an excellent source for information and research about HIV and Canadian law. Happy surfing!