

Ontario Human Rights Review 2011-12 Submissions of the HIV & AIDS Legal Clinic Ontario

Introduction

The HIV & AIDS Legal Clinic Ontario (HALCO) is pleased to be given the opportunity to participate in the Ontario Human Rights Review 2011-12.

Background

HALCO is a poverty law clinic serving the legal needs of low-income people in Ontario who are living with HIV/AIDS. We are a charitable non-share capital corporation with nine members on our Board of Directors, the majority of whom are HIV positive.

We have two primary sources of core funding – Legal Aid Ontario pursuant to the *Legal Aid Services Act, 1997*, and the AIDS Bureau of the Ministry of Health and Long-Term Care. We have a staff of eleven: six lawyers (including the Executive Director), an articling student, a community legal worker, an office manager, and two support staff.

We deliver five kinds of services: legal representation; summary advice, brief services and referrals; public legal education; community development; and law reform.

In 2011 we handled over 4400 requests for legal services and delivered over 70 workshops. We provide services in many areas of the law, including: social assistance, housing, immigration, health, privacy, employment, insurance, and human rights. Since January 2001, we have had approximately 1,200 client inquiries related to human rights.

Stigma and Discrimination Facing People Living With HIV/AIDS

There are believed to be in excess of 26,000 people living with HIV/AIDS (PHAs) in Ontario.¹ The HIV/AIDS epidemic, which is now over two decades old, has

¹ Report on HIV/AIDS in Ontario 2008, Robert S. Remis, MD, University of Toronto, June 2010, found on-line at http://www.phs.utoronto.ca/ohemu/doc/PHERO2008_report_final_rev%20June2010.pdf

been marked by remarkably persistent stigma, with accompanying discrimination. A telephone survey of 2036 participants across Canada conducted in February 2006 revealed the following:

- 65% of surveyed Canadians believe that people with HIV/AIDS should not be allowed to serve the public in positions like dentists;
- 42% think people with HIV/AIDS should not be allowed to serve the public in positions like hairstylists;
- 26% would be very or somewhat uncomfortable working in an office where someone is known to be infected with HIV/AIDS;
- 49% feel uncomfortable using a restaurant drinking glass once used by a person living with HIV/AIDS;
- 26% feel uncomfortable even wearing a sweater once worn by a person living with HIV/AIDS;
- 20% do not believe in supporting the rights of people living with HIV/AIDS; and
- 13% feel afraid of people living with HIV/AIDS. ²

These findings are not surprising to us. We provide service to a very wide spectrum of the HIV community in Ontario. All of our clients, across populations, have a shared experience of profound stigma and discrimination. The complex legal difficulties they face arise as a result of the stigma and discrimination that we see increasingly embedded in social attitudes, institutions, law and policy.

The new human rights system

Our clinic actively advocated for the reforms to the human rights system which were instituted in 2008. We are generally satisfied with the result of the reforms.

In response to the questions posed in the Terms of Reference of the current review, we have the following comments:

² EKOS Research Associates Inc., HIV/AIDS Attitudinal Tracking Survey 2006: Final Report to Health Canada, March 31 2006, available on-line at http://www.phac-aspc.gc.ca/aids-sida/publication/por/2006/pdf/por06_e.pdf.

Whether the redesigned Human Rights Tribunal of Ontario (HRTO) is providing quicker and direct access for applicants, and a fair dispute resolution process for all parties, including respondents.

We have noticed three big improvements to the claims process at the HRTO since July 2008.

1) More claims are getting a hearing at the HRTO

From 1995, when our clinic first opened, to 2008, our clinic's clients had no hearings at the HRTO. A large percentage of our clients' claims were effectively denied by the Ontario Human Rights Commission (OHRC) as part of their gatekeeper function. Since 2008, we have had two matters proceed to a hearing.

2) Claims are proceeding faster under the new system

Until the changes were implemented in 2008, provincial human rights claims proceeded very slowly. It could take four or five years for a matter to progress through the process at the OHRC. It could then be another year or two before the parties had a mediation at the HRTO. Since 2008, we have noticed that our human rights matters progress at a significantly faster pace. Our clients can have a hearing within approximately 18 months of commencing their claim, which is a vast improvement over the pace under the old system.

3) Respondents are more motivated to settle, on better terms and faster in the progress of the proceedings

Under the old system respondents had an incentive to wait out the case until the OHRC exercised its gateway function. Now that applicants will get a hearing at the OHRT much more readily, respondents have been much more receptive to negotiations. Prior to 2008, the settlements achieved by our clients were on the level of nuisance damages. Under the new system, our clients are more likely to settle for amounts that could better be characterized as appropriate compensation for their loss of dignity. Further, settlements in general are good for our clients not only because they have access to a remedy but also because their proceedings are resolved. Many of our clients find any kind of litigation to be very stressful and stress can adversely affect their health. A timely resolution is often healthier for them.

Additional comments:

We are pleased that under the new system the HRTO has continued to be free of administrative fees. Such fees can obstruct access to justice for people of low incomes, who encounter disproportionately high levels of discrimination. If administrative fees are ever to be considered, we recommend that there be a fee waiver for people of low incomes similar to that adopted by the Small Claims Court of Ontario.

We were privileged to be permitted to make submissions to the HRTO during its review of its privacy policies in 2009. Our clients are very protective of their privacy and we endorse any policies or procedures that enhance their privacy as parties to applications at the HRTO. In the context of this review, we offer the observation that the HRTO's Rules of Procedure authorize the Tribunal to make an order to protect the confidentiality of personal or sensitive information; however, it is not clear in the Rules or Practice Directions how this kind of order is to be obtained. Where people are self-represented, this may present an obstacle.

Whether the new Human Rights Legal Support Centre (HRLSC) is effective in providing information, support, advice, assistance and legal representation for those seeking a remedy before the Human Rights Tribunal of Ontario (HRTO).

We have referred a significant number of our clients to the HRLSC. Roughly half of our referrals were for a second opinion because we determined that there was not sufficient merit for a prima facie claim, based on one conversation with the client. Roughly one quarter of our referrals took place because the issue was not one involving HIV or the client did not meet our financial eligibility criteria. Roughly one fifth of our referrals took place because the client lived outside Toronto or we did not have the resources to open a file (there is often a lack of prima facie merit to these cases as well).

Without the HRLSC, HALCO would have had to refer 247 of our clients to private bar lawyers (we do not have enough human rights lawyers on our referral list to accommodate this many requests) or the Lawyer Referral Service. Many would be left with no further assistance.

Approximately 2% of those we referred to the HRLSC later told us that they were unsatisfied with the service. The main complaints were that clients were not able to reach the HRLSC, there was no follow up by HRLSC, or the HRLSC did not provide representation.

Given how process-heavy the proceedings at the HRTO are, it would be much better if the HRLSC had the resources to represent their clients more often. Our client base would particularly benefit, as a number of our clients live with mental health disabilities and their capacity to represent themselves adequately in any proceeding is impaired. Our own decision on whether or not to represent a client in any matter takes this factor into account. However, given our own limited resources we often refer clients to the HRLSC who are not capable of representing themselves in a proceeding.

HALCO caseworkers have benefited from the advice of HRLSC staff on several occasions (at least five times since July 2008). It has been enormously

beneficial to have the HRLSC to call upon when we wrestle with difficult human rights issues, and our clients have received better advice from us as a result.

A small but significant number of our referrals to the HRLSC (3%) took place because our clients did not want their HIV status revealed in the course of their representation. Stigma against people with HIV is an unfortunate and pervasive reality and is the cause of most of the discrimination faced by people with HIV. Some of our clients facing discrimination are so afraid of facing more of it that they will avoid pursuing their legal rights if revealing their HIV status is necessary in order to do so. We are grateful for the HRLSC for advising and assisting our clients who are in this position.

Whether the Ontario Human Rights Commission (OHRC), in its revised role, is proactively addressing systemic human rights issues through activities such as research and monitoring, policy development, and education and training.

We have not been in contact with the OHRC since June 2008. We are aware that under the new system, the OHRC was to develop a disability secretariat to address issues of systemic discrimination against people with disabilities. However, we have not heard anything about the disability secretariat or its activities.

The work that the OHRC is mandated to do is very important to our clients. We believe that the OHRC must continue to do its work to address systemic discrimination and provide public legal education.