

HALCO

HIV & AIDS Legal Clinic Ontario

Free legal services
for people living
with HIV in Ontario

Annual Report

2011-2012

The HIV & AIDS Legal Clinic Ontario (HALCO) is a not-for-profit charitable organization founded in 1995.

HALCO's Mission

The mission of the HIV & AIDS Legal Clinic Ontario is to provide legal services to persons living with HIV/AIDS in Ontario that are relevant to their well-being and that enable them to participate fully in the communities in which they live.

HALCO's Vision

HALCO's vision is a society where laws and the legal system help reduce discrimination, stigma, poverty and injustice faced by people living with HIV/AIDS.

HALCO's Statement of Principles

It is agreed that:

1. People living with HIV/AIDS are confronted with unique legal problems of enormous proportions and complexity;
2. Those best equipped to make choices regarding HIV/AIDS issues and problems are those individuals who are HIV positive themselves;
3. People living with HIV/AIDS must have control over their own lives;
4. The HIV/AIDS affected communities are very diverse and are confronted by overwhelming challenges derived from both their diversity and from their common experience as people living with HIV/AIDS;
5. It is necessary to create and foster a climate of understanding and mutual respect for the dignity and worth of people living with HIV/AIDS; and
6. The confidentiality, bodily security, autonomy and privacy of people living with HIV/AIDS must be respected, which include but are not limited to:
 - a) the right of individuals to exercise control over their own medical treatment;
 - b) the right of individuals to exercise control over decisions concerning their own socio-economic position;
 - c) the right of all persons living with HIV/AIDS to be fully informed of all processes and procedures in which their interests are in any way involved; and
 - d) the right of all persons living with HIV/AIDS to consent, or withhold their consent, in all matters affecting them.

Message from the Chair and the Executive Director

On behalf of the board of directors and staff of the HIV & AIDS Legal Clinic Ontario (HALCO), we are very pleased to present our 2011-2012 annual report.

As we head into the fourth decade of the AIDS epidemic, HIV treatment, where available, has never been better. Knowledge surrounding prevention strategies also continues to grow—we know that in addition to focusing on strategies involving safer drug use and safer sex, a low/undetectable viral load can reduce transmission risks to the point where transmission risks become negligible. The glaring exception to these very encouraging developments is the persistence of stigma and accompanying discrimination that continue to surround people living with HIV. It is shameful that in 2012 a wide-ranging survey found that almost 25% of Canadians expressed discomfort shopping at a small neighbourhood grocery store owned by someone living with HIV, and that 35% would be somewhat or very uncomfortable if their child attended the same school as another child living with the illness.

These attitudes have very real and negative impacts on the lives of people living with HIV, and on HIV prevention efforts. In addition, lack of knowledge about the illness and transmission risks lead to problematic public policy and law. An example is the current use of the criminal law. HIV is effectively the only disease being singled out for prosecution—people are being charged with some of the most serious offences in the Canadian *Criminal Code* even when there is effectively no risk of HIV transmission. This approach to the criminalization of HIV non-disclosure continues to be the most pressing legal issue facing people living with HIV in Canada. Criminal prosecutions that ignore science and that are based on ignorance must cease.

Since 1995, HALCO, the only legal clinic in Canada devoted to providing legal services to the HIV community, has been doing its utmost to enforce the human rights of people living with HIV and to eliminate discrimination, stigma, poverty

Message from the Chair and the Executive Director

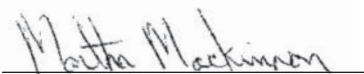
and injustice faced by people living with the illness. This past year has seen HALCO continue its mission in exciting ways. In addition to providing front-line legal services, the clinic continued to engage in public legal education, law reform and community development initiatives. It was particularly pleasing to have had the opportunity to appear at the Federal Court, the Court of Appeal for Ontario, and the Supreme Court of Canada.

This year has also seen the launch of HALCO's new website, and continued growth of its fundraising and volunteer programs (the clinic raised a record \$70,762 with the assistance of a record 50 volunteers). HALCO board, staff and volunteers are also particularly proud to have raised the highest amount of any team at the recent Pride and Remembrance Run in Toronto.

HALCO truly is a *community* legal clinic, and on behalf of the board and staff we thank all of you for your support and participation in the clinic's activities.

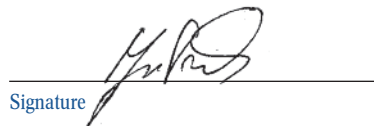
The pages that follow highlight some of the activities of HALCO's busy year (please note that the Activity Report is for the period of August 1, 2011 to July 31, 2012, while the Audited Financial Statement is for the period of April 1, 2011 to March 31, 2012).

Martha Mackinnon
Barrister & Solicitor
Chair, Board of Directors



Signature

Ryan Peck
Barrister & Solicitor
Executive Director



Signature

CASEWORK

Casework

HALCO's areas of legal practice include:

- Income Maintenance
- Housing
- Human Rights
- Immigration law
- Employment Standards
- Privacy
- Health law
- Substitute Decision-Making
- Regulated Health Professions complaints
- HIV/AIDS-related prison matters
- Insurance
- Other administrative law matters

HALCO's primary focus is the provision of direct legal services for people living with HIV in Ontario. The clinic's direct legal services, referred to as "casework", are comprised of intake (summary advice, brief services and referrals) and representation.

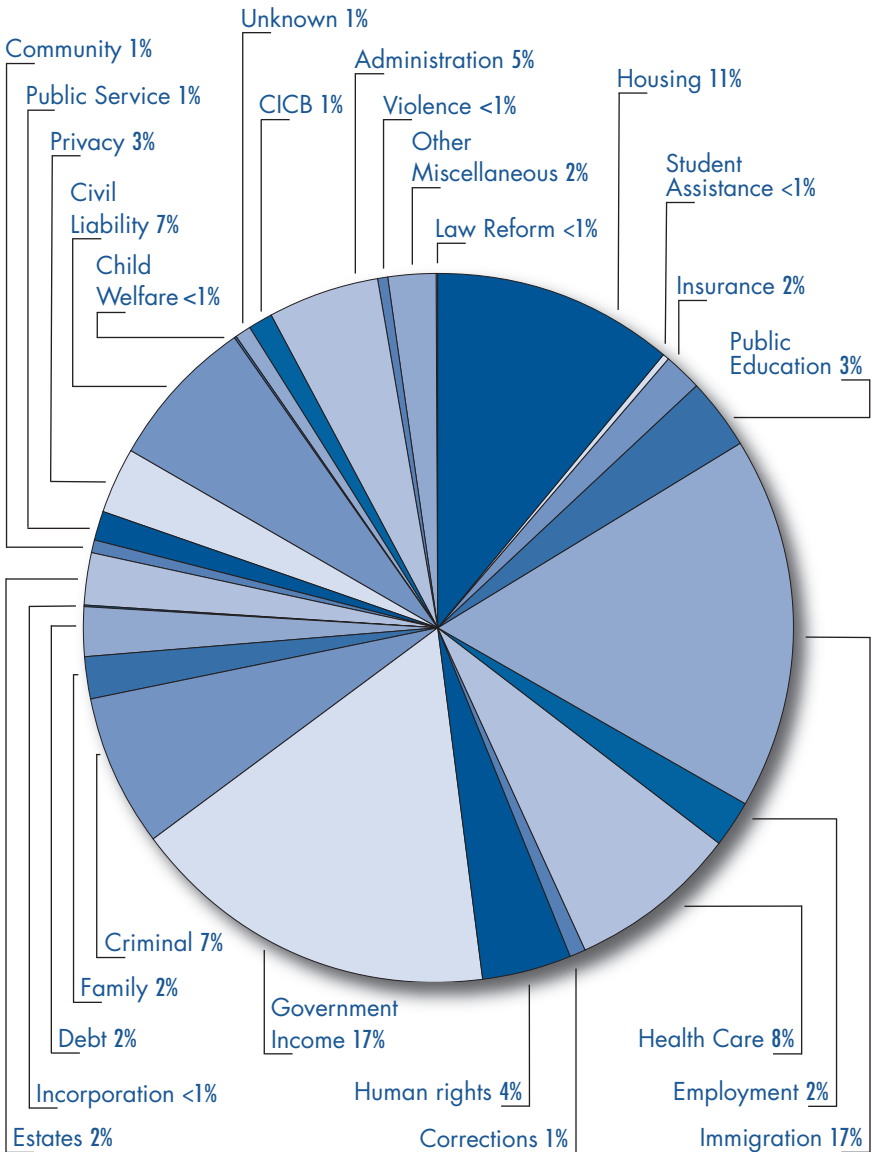
Intake: Advice, Brief Services and Referrals

HALCO continues to devote the majority of its resources to intake services. The clinic's intake services are available to people living with HIV in Ontario, regardless of income.

The clinic handled 4133 intakes in this reporting period, which amounts to approximately 350 intakes per month. Housing and income maintenance matters comprised 28% of intakes, and immigration matters comprised 17%. The remainder were extremely varied, including criminal, health, human rights, and privacy law matters.

The chart on the following page provides a breakdown of HALCO's intake services for the reporting year.

CASEWORK



CASEWORK

Representation

In addition to intake, the clinic provides full legal representation to financially eligible people living with HIV in Ontario. For this reporting period, the clinic opened 254 case files, the largest annual number of case files in the clinic's history.

Over 60% of the case files consisted of housing and income maintenance matters, and approximately 20% consisted of immigration matters. The clinic also assisted clients with various other legal issues, including human rights, privacy, and health law matters.

A large number of the clinic's social assistance files were opened to respond to significant reductions to the special diet allowance for people in receipt of provincial social assistance. The clinic handled over 250 requests for special diet-related advice, and opened case files for 69 clients. To date, almost 65% of these case files have been successfully resolved.

An important part of the clinic's immigration casework took place in spring of 2012, when 26 clients were assisted in filing Humanitarian and Compassionate grounds applications before the federal government's regulatory changes took effect at the end of June. Without this assistance, it is possible that a number of these clients would have faced removal from Canada.

Case File Examples

- appealed Canada Revenue Agency's decision to deny a client's application for child tax benefits—the client was awarded the benefits, including a retroactive payment of \$23,000
- successfully reunited a mother with her teenaged son from east Africa whom she had not seen in over 15 years
- assisted in obtaining refugee status for a woman with physical and developmental disabilities who had been repeatedly sexually assaulted by family members
- assisted a client with mobility issues in obtaining an accessible subsidized housing apartment

LAW REFORM

Law Reform

HALCO works to improve laws and the legal system to better meet the needs of people living with HIV. Law reform activities are frequently based in community development initiatives and seek to involve as many and as broad a range of individuals living with HIV as possible. HALCO has played a leading role in campaigns, court interventions and more.

Criminalization of HIV non-disclosure

The criminalization of HIV non-disclosure continues to be the most pressing legal issue facing people with HIV in Canada. Unfortunately, Canada is one of the world leaders in pursuing these types of prosecutions. The clinic is involved in various projects designed to bring fairness and consistency to the use of criminal law in relation to HIV non-disclosure.

For this reporting period, the clinic focussed on law reform activities related to

- the criminalization of HIV non-disclosure,
- health law (consent to treatment),
- issues surrounding public interest standing in the courts, and
- medical marihuana.

HALCO continues to provide information and advice to clients, as well as public legal education sessions for the community. The clinic also continues to work closely with criminal lawyers handling HIV non-disclosure matters.

HALCO also continues to play a leading role in the Ontario Working Group on Criminal Law and HIV Exposure (CLHE). CLHE continues to urge Ontario's Attorney General to develop guidelines for Crown prosecutors handling allegations of HIV non-disclosure, and continues to explore the negative public health impacts associated with the current approach to criminalization.

LAW REFORM

As part of a country wide coalition of AIDS service organizations, HALCO intervened in the HIV non-disclosure matters that were heard by the Supreme Court of Canada in February 2012. By hearing these cases, the Supreme Court has the chance to revisit the criminal law as it applies to HIV non-disclosure.

Currently, based on the 1998 Supreme Court of Canada *R. v. Cuerrier* decision, a person with HIV may be convicted of a serious offence—generally aggravated (sexual) assault—for not disclosing her or his HIV-positive status before engaging in behaviours that pose a "significant risk of HIV transmission."

In February 2012, the prosecution in the Supreme Court cases argued that people living with HIV should be found criminally liable if they do not disclose their status, regardless of the sex acts or risk of transmission in question.

HALCO's position, as part of the coalition, is that the criminal law should only be used as a last resort and should only apply to non-disclosure matters in the most blameworthy of cases. The coalition argued that the law must be guided by up-to-date science, and, at a minimum, the Supreme Court should clarify that there is no duty to disclose before anal or vaginal sex with a condom, before oral sex, or when the person living with HIV has a low/undetectable viral load. The decision is pending.

LAW REFORM

Rasouli: “Consent to treatment”

HALCO has been granted intervener status, in partnership with the Mental Health Legal Committee (MHLC), in the upcoming appeal in *Brian Cuthbertson, et al. v. Hassan Rasouli (Rasouli)* to be heard by the Supreme Court of Canada in December 2012. Canada’s highest court will be deciding whether a doctor can unilaterally withdraw life support without consent from a patient or substitute decision-maker. HALCO and the MHLC strongly believe that consent must remain at the core of all treatment decisions.

Mr. Hassan Rasouli tragically fell into a coma in October 2010 as a result of an infection following surgery. He is being kept alive by a mechanical ventilator and feeding tube at Sunnybrook Health Sciences Centre in Toronto. While incapable of making treatment decisions, his wife, Ms. Rasouli, is the substitute decision-maker for Mr. Rasouli. However, Mr. Rasouli’s physicians are taking the position that life support can be withdrawn, thereby ending Mr. Rasouli’s life, without the consent of Ms. Rasouli. In spring 2012, Mr. Rasouli was clearly communicating to his family members—even giving the “thumbs up” signal.

The Supreme Court’s decision will have profound implications for all medical treatment, not only treatment at the end of life. It is imperative to maintain the principle of “no treatment without consent.” Doctors should not be allowed to unilaterally make life and death decisions. The clinic and MHLC look forward to presenting arguments at the Supreme Court.

LAW REFORM

Public interest standing

HALCO, in a coalition with the Canadian HIV/AIDS Legal Network and Positive Living of British Columbia, intervened in the Supreme Court of Canada matter of *Attorney General of Canada v. Downtown Eastside Sex Workers United Against Violence Society, et al.* This case, which was heard by the Supreme Court in January 2012, originated with a challenge to the criminal law provisions relating to sex work. However, the Supreme Court matter is not about the substance of the challenge to the criminal law, but about the legal test for “public interest standing.” The Supreme Court will decide the test to determine when someone (including organizations like HALCO) can obtain public interest standing to raise issues before the courts.

The Supreme Court’s decision will have very significant implications for HALCO and many other organizations. The coalition argued for a more liberal approach to public interest standing than the current legal test. The Supreme Court’s decision is pending.

Medical Marihuana

HALCO, along with the Canadian AIDS Society and the Canadian HIV/AIDS Legal Network, intervened in the *R. v. Mernagh (Mernagh)* matter at the Court of Appeal for Ontario. The Mernagh matter deals with the constitutionality of Canada’s *Marihuana Medical Access Regulations (MMAR)*. Although production and possession of marihuana is illegal, the *MMAR* allow an exemption from the criminal law for individuals who require marihuana for medical purposes. The *MMAR* require that a physician complete an application to Health Canada in order for individuals to legally

LAW REFORM

possess medical marihuana. However, many Canadian physicians are unwilling to complete applications for patients.

Mr. Mernagh, who lives with a number of serious medical conditions, uses and produces medical marihuana to control the symptoms associated with his illnesses. Although a legitimate medical marihuana user, Mr. Mernagh was unable to find a physician to complete the required forms. As a result, he was charged with production of marihuana. At trial, the charges were dismissed, and the *MMAR* regime was found to be unconstitutional as it failed to provide an adequate means for a legitimate medical user like Mr. Mernagh to obtain a lawful exemption from the criminal prohibition. Due to the fact that many legitimate users cannot find a physician to complete the required form, the trial judge found that the current *MMAR* regime violates section 7 of the *Canadian Charter of Rights and Freedoms* by depriving ill persons of a means to access a safe and effective medicine of choice without both the threat and risk of criminal sanction.

Although this was the third time in less than 11 years that courts in Ontario have told the federal government that its medical marihuana exemption regime must be more sensitive to the needs of individuals who require marihuana for medical purposes, the federal government appealed the trial decision. The Court of Appeal heard the matter in May 2012. HALCO's coalition argued that the current regime is unconstitutional, and submitted that the federal government has a constitutional obligation to ensure that the regime provides a just and rational mechanism for ill persons to obtain medical marihuana. The decision is pending.

EDUCATION

Public Legal Education

For this reporting period the clinic opened 182 public legal education files, many of which were for public legal education workshops. Almost 40% of public legal education files related to public health law and the criminalization of HIV non-disclosure, and the remaining were devoted to legal issues including immigration, social assistance, privacy and human rights. The clinic spoke to people living with HIV, AIDS service organization staff, legal clinic staff, lawyers, law students, health care professionals, correctional staff, and others.

In December 2011, a HALCO staff lawyer attended health fairs at twelve federal prisons across Ontario. Through these fairs, the clinic was able to make contact with prisoners living with HIV who otherwise might not have been aware of the clinic's services. The staff lawyer disseminated legal information and referrals to prisoners and staff, and spoke to approximately 635 prisoners who stopped by the HALCO booth.

The clinic's new website, launched in September 2011, has proven to be a great success. It contains a wealth of information about various legal issues and is accessible to persons with various disabilities. It also looks fantastic!

In addition to publishing three newsletters, the clinic is very proud to have produced, in partnership with the African and Caribbean Council on HIV/AIDS in Ontario, a robust resource entitled *Planning for illness: legal information for people living with HIV in Ontario*. This new resource covers an array of topics including powers of attorney, wills and benefits.

HALCO provides information in print, on-line and in person to help people understand legal issues, advocate for themselves, and seek broader social change.

HALCO also provides public legal education for governmental and non-governmental organizations.

John Plater

June 1, 1967 – July 28, 2012

It is with great sadness that we acknowledge the passing of John Plater. A leader since the 1980s, John was a lawyer and dedicated advocate for people with HIV and Hepatitis C. He championed HIV treatment for all and opposed the criminalization of HIV.

John was a member of HALCO's Board of Directors in 2000 and was also active in many other organizations over the years. The Ontario AIDS Network awarded him the Social Justice Award in 2006. The Canadian AIDS Society and Ontario AIDS Network websites have moving tributes to John:

www.cdn aids.ca/JohnPlater2012

www.ontarioaidsnetwork.on.ca/news_dtls.php?nid=20

The tributes are an inspirational reminder of the extraordinary John Plater. Our hearts and thoughts are with John's family, friends and colleagues.



ORGANIZATION

Board of Directors and Staff

Board of Directors

Mark Blans, VICE-CHAIR
Michael Capp, SECRETARY-TREASURER
Eric Cashmore
Frederique Chabot
Peter Gross
Gary Logie
Martha Mackinnon, CHAIR
John McCallum
Eric Mykhalovskiy
Robert G. Watkin

HALCO deeply thanks Martha Mackinnon and Robert Watkin, two dedicated members who will be leaving the clinic's board after many years. Martha, current HALCO chair, has been on the board since 2000. Her extremely sharp mind, quick wit and thoughtfulness were instrumental in leading the clinic through its current period of expansion. Bob, who has been with HALCO since 1995, poured his heart, soul and sweat into HALCO. Bob's accomplishments were many, including navigating HALCO's drive to attain charitable status and steadfastly advocating for the rights of people with HIV.

Staff

Renée Lang, STAFF LAWYER
Rick Lobodzinski, ADMINISTRATIVE ASSISTANT
Rhonda Major, ADMINISTRATIVE ASSISTANT
Jill McNall, COMMUNITY LEGAL WORKER
Bill Merryweather, DIRECTOR OF ADMINISTRATION
John Nelson, STAFF LAWYER
John Norquay, STAFF LAWYER
Ryan Peck, EXECUTIVE DIRECTOR/LAWYER
Amy Wah, STAFF LAWYER
Kevin Wong, STAFF LAWYER

Jennifer Goodfellow, ARTICLING STUDENT 2011-2012



HALCO's James Kreppner Awards

In recognition of the breadth and depth of the late James Kreppner's contributions in both the public and private domains, HALCO established the Kreppner Awards in 2010. The awards were created to recognize unparalleled achievement in advocating on behalf of or bettering the lives of people living with HIV or people co-infected with HIV and Hepatitis C. Up to two awards may be given each year: one in recognition of outstanding accomplishment in the public domain, and one in recognition of outstanding accomplishment in the private domain (i.e. an "unsung hero").

HALCO was honoured to present the 2011 awards to Dr. David Wong and Pauline Murphy. Dr. Wong is a hepatologist whose dedication to providing and improving care and treatment for people living with HIV or co-infected with HIV and Hepatitis C is exemplary. He received the award for outstanding accomplishment in the public domain. Ms. Murphy is a nurse who, for many years, has provided extraordinarily compassionate care and advocacy for people living with HIV or co-infected with HIV and Hepatitis C. She received the "unsung hero" award.

HIV & AIDS LEGAL CLINIC (ONTARIO)Statement of Operations and Fund Balances
Year ended March 31

	LAO Operating Fund	MOH AIDS Bureau Fund	LAO Legal Disbursements Fund	Donations Fund	TCTC Fund	ACAP Fund	Project Funding Fund	2012 Total	2011 Total
Revenue									
Legal Aid Ontario									
Direct receipts	\$ 590,781	\$ -	\$ 4,080	\$ -	\$ 41,380	\$ -	\$ -	\$ 636,251	\$ 565,136
Indirect receipts (note 4)	5,369	-	-	-	-	-	-	5,369	3,599
AIDS Bureau	-	366,227	-	-	-	-	-	366,227	335,472
Project funding	-	-	-	-	-	-	45,774	45,774	29,749
Donations	-	-	-	30,504	-	-	-	30,504	22,256
Interest	54	19	12	790	33	-	34	942	830
Recovered from clients	-	-	944	-	-	-	-	944	220
	596,204	366,246	5,036	31,294	41,423	-	45,808	1,086,011	957,262
Expenses									
Salaries and benefits	418,356	319,006	-	14,568	-	-	37,945	789,875	714,797
Occupancy	94,061	-	-	-	-	-	-	94,061	83,046
Indirect payments (note 4)	5,369	-	-	-	-	-	-	5,369	3,599
Supplies and services	19,585	2,500	-	-	-	-	-	22,085	24,201
Communications	18,769	-	-	-	-	-	-	18,769	16,611
Library	9,117	-	-	-	-	-	-	9,117	10,797
Travel	7,564	-	-	-	-	-	-	7,564	6,428
Professional dues	11,294	5,810	-	-	-	-	-	17,104	14,564
Equipment and maintenance	4,882	-	-	-	-	-	-	4,882	16,152
Fundraising development	-	-	-	12,406	-	-	-	12,406	10,104
IT development	-	-	-	-	-	-	-	-	15,129
Renovations and furniture	-	37,995	-	-	-	-	-	37,995	-
Legal disbursements	-	-	7,632	-	-	-	-	7,632	4,058
Project expenses	9,791	-	-	-	41,719	-	1,548	53,058	25,712
	598,788	365,311	7,632	26,974	41,719	-	39,493	1,079,917	945,198
Excess (deficiency) of revenue over expenses	(2,584)	935	(2,596)	4,320	(286)	-	6,315	6,094	12,064
Fund balances (deficit), beginning of year	(23,734)	(5,578)	12,134	153,789	(8)	2,958	59	139,620	127,556
Fund balances (deficit), end of year	\$ (26,318)	\$ (4,643)	\$ 9,538	\$ 158,109	\$ (304)	\$ 2,958	\$ 6,374	\$ 145,714	\$ 139,620

FUNDING

Funders & Donors

The generosity of HALCO's funders and donors allows the clinic to provide legal services to the HIV community. The clinic is grateful to all those who provide support, and particularly grateful to the following funders:

- CORE FUNDERS Legal Aid Ontario
 Ministry of Health and Long-Term Care
- VISIONARY FUNDER M•A•C AIDS Fund

HALCO also sincerely thanks all of the individuals who provided us with charitable donations.

THANKS

HALCO owes a special thanks to the following individuals for their support of our work:

Paul Burstein
Michael Feder
Cynthia Fromstein
Jesse Kalyshov
Corie Langdon

Arlo Litman
Eugene Meehan, Q.C.
Mercedes Perez
Jonathan Shime
Marshall Swadron

HALCO

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