

# **HALCO submission to the Consultation on proposed amendments to Human Rights Tribunal of Ontario (HRTO) procedures, Practice Directions and the Rules of Procedure**

*(submitted by email on March 17, 2014)*

Thank you for this opportunity to comment on proposed amendments to your procedures.

I am a staff lawyer at the HIV & AIDS Legal Clinic Ontario (HALCO). I make these comments on behalf of HALCO.

## **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 ten: six lawyers (including the Executive Director), an articling student, a community legal worker, and two administrative staff.

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

In 2013 we handled over 4000 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 1,300 client inquiries related to human rights.

## **Comments**

We wish to comment only on the proposed changes to the Practice Direction on Anonymization of HRTO Decisions.

Privacy is very important to HALCO's clients, who experience stigma and discrimination in all facets of their lives. We have many clients who will not pursue their legal remedies if they believe that their HIV status will be revealed. Often, for example, clients will tell us that they would prefer to just ignore their legal issues rather than have us communicate with someone on their behalf because for us to do so will reveal their HIV status. At least twice, our clients have been granted orders by the Ontario Small Claims Court anonymizing their claims on the basis that HIV positive status is highly sensitive information and there is no public interest in revealing it in proceedings.

In many cases where our clients file human rights claims, their claim is related to discrimination on the basis of their HIV status. It would be counter to the purpose of the Ontario Human Rights Code for these clients to experience discrimination as a result of having their HIV status revealed through their engagement of the HRTO process.

The proposed amendment to the Practice Direction on Anonymization of HRTO Decisions ("the Practice Direction") clarifies the process by which a party may request anonymization and the factors that the HRTO will consider in granting such a request. The Practice Direction makes it very clear that such requests will be granted only under the rarest of circumstances. The Practice Direction lists a number of fact situations in which a request for anonymization was or would be granted. However, it is not clear that such a request will be granted to a person with HIV/AIDS who wishes to have their HIV status remain private. A person with HIV/AIDS reading this Practice Direction may reasonably conclude that there is a good chance that their HIV status would be revealed if they were to commence a proceeding at the HRTO. We suggest that the Practice Direction should specifically mention HIV status as an example of private information that could be protected by anonymization. Alternatively, we suggest that the Practice Direction mention "personal health information," "stigmatized health information," "highly sensitive health information" or words of this nature as an example of private information that would be protected by anonymization upon request. We believe that it is necessary to include some indication in the Practice Direction that people with HIV/AIDS are likely to be granted a request for anonymization, so that our clients (or potential clients) do not decide to ignore their legal remedies for human rights breaches in favour of their privacy interest.

Also, we recommend that the process for anonymizing a party's name be available prior to filing the initial application. The Practice Direction outlines a process whereby the party should make a Request for Order during Proceedings (RFOP) in order to request anonymization. A RFOP can only be made after proceedings are commenced. Once proceedings are commenced, the parties' names are on the Application, Response, and Reply (if any). Many of our clients would be hesitant to commence proceedings using their name and hoping that later in the process they may have the proceedings anonymized. This is of particular concern because of the language in the Practice Direction emphasizing how extraordinary anonymization orders are. If it is not possible to create a process for anonymization requests that is available prior to the filing of the initial application, then we suggest that the process for anonymizing a party's name be available simultaneously with the filing of the initial application (i.e., allow the RFOP to be filed with the Application).

Thank you for considering our comments on the proposed amendment to the Practice Direction on Anonymization of HRTO Decisions. If you have any questions, please do not hesitate to contact me.

Regards,

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