

# HALCO

HIV & AIDS Legal Clinic Ontario

# news

- HALCO provides free legal services for people living with HIV in Ontario -

## *HALCO news Spring 2015*



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# The Supreme Court decides life, and death, with medical choice

*(adapted, with permission, from the Canadian HIV/AIDS Legal Network)*

In February 2015, the Supreme Court of Canada unanimously ruled that people living in Canada have the constitutional right to medical assistance in dying. *Carter v. Canada (Carter)* was a landmark decision that was a long time in the making.

We applaud this historic decision. And we celebrate the many individuals and organizations that came together to help make it happen. HALCO is proud to be among them as a joint intervener with the **Canadian HIV/AIDS Legal Network** (Legal Network).

*Carter* is about a very difficult and sometimes divisive issue. This article will briefly explain the law, why we made the decision to intervene, and what the Supreme Court ruling means.

## The law: before and after

In *Carter v. Canada*, two specific parts of the *Criminal Code of Canada* were at issue. Section 14 says that nobody can consent to death inflicted upon them, and section 241(b) says that anyone who assists a person in committing suicide commits a criminal offence. Together, these two sections make it a crime to assist someone in dying in a manner and a time of their choosing.

The Supreme Court decision struck down these sections of the *Criminal Code* because the sections violate section 7 (the right to life, liberty and security of the person) of the *Canadian Charter of Rights and Freedoms (Charter)*. The Supreme Court found that the sections of the Criminal Code deprive people of their section 7 rights by denying fundamental life choices to those living with serious health conditions that cause enduring and intolerable suffering. The decision can be viewed at

<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do?r=AAAAAQAGY2FydGVyAAAAAAE>.

***Supreme Court decides (continues on page 3)***

## Why did we intervene?

The issue before the court was specifically about the right to receive assistance, if needed, in controlling the time and manner of death. The larger principle at stake is that the law must respect and protect autonomy in **all** medical decision-making throughout a person's life. This principle has always been central to the HIV movement.

We argued that the law regarding medical decision-making applies to everyone. It must not be determined by the beliefs of religious groups in ways that deny other people's autonomy, strip them of dignity, and condemn them to pain and suffering they may choose to avoid. To view our written argument, please see [www.halco.org/wp-content/uploads/2014/09/Supreme\\_Court\\_Intervener\\_Factum-Medical\\_Decision-making\\_Autonomy-CARTER-2014Aug.pdf](http://www.halco.org/wp-content/uploads/2014/09/Supreme_Court_Intervener_Factum-Medical_Decision-making_Autonomy-CARTER-2014Aug.pdf).

## What happens now?

The Court gave the federal government 12 months to respond to the decision, so the former law remains in place for now. The government could enact new criminal legislation (which would have to comply with the *Charter*), or it could remove the sections of the *Criminal Code* so that the criminal law would not apply to this type of health-care decision-making.

We maintain that medical choice throughout life, and not just at life's end, is important. Instead of criminalizing assisted dying, a society committed to human rights should enhance the autonomy of all Canadians, including those living with disabilities, by scaling up access to quality health care and social services, as well as end-of-life care.

The Supreme Court of Canada has affirmed dignity and autonomy. It is a welcome decision and we are pleased to have played a part in it.



# Access to Remedies under Ontario *Human Rights Code*

In February 2015, HALCO, jointly with the Mental Health Legal Committee, was granted intervener status in the judicial review of *K.M. v. Kodama* before the Ontario Divisional Court.

In April 2015, the Court heard arguments about whether a human rights complaint should be dismissed when a decision has already been made by the College of Physicians and Surgeons (College) in a complaint about doctor conduct. We demonstrated that this case will have an impact on our clients and that we would be able to provide a helpful perspective to the court by our intervention application. At the judicial review hearing, we had the opportunity to tell the Court why patients should not have to choose between taking action against a doctor for individual compensation or complaining to the College that disciplines and regulates doctors.

In this case, a transgender man, referred to anonymously as “K.M.”, complained to the College alleging that Doctor Kodama made discriminatory comments. The College’s Investigation and Complaints Review Committee completed an initial investigation and found that there was “some degree of miscommunication” but that there was no “independent information” that the doctor had “intentionally treated” the patient in a “discriminatory manner.”

K.M. then applied to the Human Rights Tribunal of Ontario (Tribunal) asking for financial compensation and other remedies for discrimination under Ontario’s *Human Rights Code*. The doctor, however, asked the Tribunal to dismiss K.M.’s human rights application on the grounds that the same issue had already been decided by the College. The Tribunal refused the doctor’s request and made it clear that the human rights complaint can and should go forward.

The doctor asked the Court to review the Tribunal’s decision before the Tribunal goes forward with the full hearing of the discrimination application. We strongly supported the Tribunal’s decision to hear the complaint and made our position clear to the Divisional Court when the case was heard in April 2015. We were extremely fortunate and grateful to team with **Marshall Swadron** and **Mercedes Perez** of Swadron Associates, Barristers & Solicitors, for this intervention. Our factum can be found on our website:

[www.halco.org/wp-content/uploads/2015/04/Intervener\\_Factum-Kodama\\_v\\_KM-HALCO-MHLC-2015Mar31.pdf](http://www.halco.org/wp-content/uploads/2015/04/Intervener_Factum-Kodama_v_KM-HALCO-MHLC-2015Mar31.pdf)

# Second Increase to Legal Aid Ontario Financial Eligibility Guidelines

Legal Aid Ontario (LAO) has financial eligibility guidelines for most legal aid services, including community legal clinics such as HALCO. As we announced in our [Autumn 2014 newsletter](#), LAO financial eligibility guideline amounts were increased by 6% on November 1, 2014, and by another 6% on April 1, 2015. The next 6% increase will be made on April 1, 2016. The November 2014 increase was the first since 1994. The increases mean that more low income people in Ontario will be eligible for LAO services. The financial eligibility increases will increase access to justice in Ontario. The government of Ontario is providing new funding to LAO to help serve the larger numbers of people eligible for legal aid services. Please see [HALCO welcomes new funding from Legal Aid Ontario](#) below.

## HALCO welcomes new funding from Legal Aid Ontario

In March 2015, Legal Aid Ontario announced details of new funding for community legal clinics. HALCO was very pleased to be allocated a portion of the new funding. We are now carefully considering how we will allocate the new funding to enhance our services. You can find more information about the new funding on the Legal Aid Ontario website:

[www.legalaid.on.ca/en/news/newsarchive/1503-13\\_increasedclinicfunding.asp](http://www.legalaid.on.ca/en/news/newsarchive/1503-13_increasedclinicfunding.asp).

## HALCO thanks all of our funders and supporters

- Core Funders:**
- Legal Aid Ontario
  - AIDS Bureau of the Ministry of Health and Long-Term Care
- Funding Partner:**
- M.A.C AIDS Fund
- Individuals:**
- To all those who support us in so many ways: thank you!  
Without you, we would not be able to do the work we do.

# Specialty Legal Clinics Co-location Project Update

As we reported in our [Autumn 2014 newsletter](#), HALCO has been participating in a project exploring the possibility of a co-location model with a number of other specialty clinics.

HALCO is one of more than 75 community legal clinics in Ontario. Local legal clinics serve their local community (a geographic catchment area). Specialty legal clinics serve a particular community of people or respond to a particular area of law. HALCO's community is people living with HIV in Ontario.

The project includes a number of specialty clinics and the Association of Community Legal Clinics of Ontario (ACLCO). There are a number of goals for the project, but the key objective is improved services for the clinics' communities.

The project is not about the merging of clinics, but about co-location. Our participation is based on a number of factors, including assurances from Legal Aid Ontario (LAO) that:

- All clinics will maintain their current incorporated status and continue to be governed by independent boards of directors representative of the communities they serve.
- Administrative savings realized through the project will be reinvested in the specialty clinics to enhance client service, and support and strengthen the clinic system.
- There will be no job losses, although the duties of certain positions in particular clinics may be altered.

The search for an actual co-location site is currently in progress (in the downtown Toronto area). Over the next month, HALCO, along with the other participating clinics, will be making a final decision about co-location. For more information about the project, please visit the project website: <http://specialtylegalclinics.ca/>.

**Rest assured that whether the co-location project proceeds or not, HALCO's primary focus will continue to be the provision of free legal services to people living with HIV across Ontario.**

# Medical-Legal Partnership Project

(adapted from **ARCH Alert** March 2015 newsletter, with permission from ARCH Disability Law Centre)

In our **Autumn 2014 newsletter**, we reported on a new medical-legal partnership between ARCH Disability Law Centre, Aboriginal Legal Services of Toronto, HALCO, Neighbourhood Legal Services and St. Michael's Hospital Family Health Team (FHT).

**Johanna Macdonald**, the program lawyer, joined the project in December 2014. She is employed by ARCH but based at FHT's 80 Bond Street clinic. Through the program she provides:

- legal services to patients of St. Michael's FHT
- legal education to FHT's health care professionals, and
- leadership on law reform and advocacy projects.

The goals of the program include improving the social determinants of health for patients and enhancing access to justice.

The program has already received a number of referrals from FHT for some of the most vulnerable patients in the practice. Legal issues have included: family, immigration, civil litigation, income security, housing, employment, human rights, and issues around abuse and violence. Some legal problems are chronic and complex, while others require a quick response. As the practice grows, program partners will identify systemic problems where deeper collaboration is required in legal education and law reform.

The work is grounded in a disability rights framework and uses a community development model to guide the direction of legal services, education and law reform activities.



St. Michael's  
Inspired Care.  
Inspiring Science.

# Government Postpones Changes to ODSP and OW Employment-Related Benefits

In the fall of 2014, the Ministry of Community and Social Services announced that three existing Ontario Disability Support Program (ODSP) employment-related benefits and four existing Ontario Works (OW) employment-related benefits would be replaced with a discretionary Employment-Related Benefit (ERB).

The existing benefits being replaced are:

- Ontario Disability Support Program (ODSP):
  - Work-Related Benefit
  - Employment Training and Start-Up Benefit, and
  - Employment Transition Benefit.
- Ontario Works (OW):
  - Employment-Related Expenses
  - Other Employment and Employment Assistance Activities Benefit
  - Full-Time Employment Benefit, and
  - Vocational Training benefit.

These seven benefits were to be replaced with the Employment-Related Benefit (ERB) beginning in April 2015.

In February 2015, the Ministry announced that the changes are being postponed until October 2015. The seven employment benefits will continue to be available until the new ERB is implemented. According to the Ministry, the delay in implementation is related to finalizing the design and delivery of the new ERB. As well, the delay is partly related to the complexity of implementing a new benefit as well as the transition issues the Ministry has faced with the new Social Assistance Management System (SAMS) computer system.

## Transition Period for ODSP Work-Related Benefit (WRB)

When the ERB is implemented, the ODSP WRB will continue to be available to ODSP recipients for a six month transition period, as long as they continue to qualify for the benefit each month. During the transition period, the Ministry advises that they will actively engage clients in order to develop plans for employment and increasing earnings.

***Government Postpones Changes to ERB (continues on page 9)***



## **What is the new Employment Related Benefit (ERB)?**

The Ministry has not released many details about the ERB. Our understanding is that the ERB may result in people getting less money, and that it may not significantly benefit people who are already working in the same way the WRB does. Decisions about current employment benefits like the WRB may be appealed to the Social Benefits Tribunal. It is our understanding that ERB decisions can only be reviewed but not appealed to the Social Benefits Tribunal.

You can find more information on the Income Security Advocacy Centre website:  
[www.incomesecurity.org/ODSPEmploymentBenefitsarechangingin2015.htm](http://www.incomesecurity.org/ODSPEmploymentBenefitsarechangingin2015.htm).

People living with HIV in Ontario can contact us for free legal advice (see back page). Others can contact their local community legal clinic, which can be found on the Legal Aid Ontario website: [www.legalaid.on.ca/clinics](http://www.legalaid.on.ca/clinics).

## **Universal Child Care Benefit Changes**

The government of Canada is proposing to enhance the Universal Child Care Benefit (UCCB). Under the proposed enhancements, families would receive UCCB of up to \$1,920 per year for each child under 6 years of age and up to \$720 per year for each child aged 6 through 17. The new UCCB amounts would be retroactive to 1 January 1, 2015, and would be paid on a monthly basis beginning in July 2015. The government indicates that the majority of families will automatically receive the enhanced UCCB, but that about 200,000 might not receive it because they have not applied for it. You can find more information on the Government of Canada website:

[www.cra-arc.gc.ca/bnfts/uccb-puge/menu-eng.html](http://www.cra-arc.gc.ca/bnfts/uccb-puge/menu-eng.html).



# Three New ODSP/OW Special Diet Allowance Conditions

As of December 1, 2014, three new conditions have been added to the Special Diet Allowance (SDA) under the Ontario Disability Support Program (ODSP) and Ontario Works (OW):

1. Unintended weight loss due to interferon treatment for people with hepatitis C who have a body mass index of less than 25:
  - \$191 SDA if weight loss is between 5 and 10% of usual body weight, or
  - \$242 if the weight loss is more than 10% of usual body weight.
  - (The SDA of \$88 for chronic hepatitis C with a body mass index of less than 25 was added in January 2013.)
2. Congenital heart defect in patients who have had a Ross Procedure or an arterial switch procedure or coexisting coarctation of the aorta.
3. Rett Syndrome with body mass index of less than 18.5.

There is a maximum of \$250 in SDA per month per ODSP/OW recipient. The list of all the current Special Diet Allowance conditions is on the Ontario government website:

[www.mcscs.gov.on.ca/en/mcscs/programs/social/sda\\_medical\\_conditions.aspx](http://www.mcscs.gov.on.ca/en/mcscs/programs/social/sda_medical_conditions.aspx).

The ODSP/OW policy directives have been revised to include the new conditions and are on the Ontario government website:

[www.mcscs.gov.on.ca/en/mcscs/programs/social/directives/index.aspx](http://www.mcscs.gov.on.ca/en/mcscs/programs/social/directives/index.aspx)

- ODSP Income Support Directive 6.4, “Special Diet Allowance” (November 2014).
- OW Directive 6.6, “Special Diet Allowance” (November 2014).

People living with HIV in Ontario can contact us for free legal advice (see back page). Others can contact their local community legal clinic, which can be found on the Legal Aid Ontario website: [www.legalaid.on.ca/clinics](http://www.legalaid.on.ca/clinics).

## Getting Legal Help

If you are living with HIV in Ontario, please contact us for free legal advice. Please see **Getting Legal Help** on the back page.

# HALCO's website: [www.halco.org](http://www.halco.org)

Our **What's New** website sidebar helps keep you up-to-date on current issues, announcements, events, and more.

Our **Areas of Law** pages include information about many different legal topics: [www.halco.org/areas-of-law](http://www.halco.org/areas-of-law).

You can apply to become a member of HALCO or to renew your HALCO membership:

[www.halco.org/getinvolved/membership](http://www.halco.org/getinvolved/membership).



If you have any questions about our website, please contact us!

## HALCO's Public Legal Education Workshops

As always, our staff continue to provide legal education workshops for groups and organizations across Ontario. Workshops are on topics of interest to people living with HIV as well as HIV/AIDS legal issues for the community in general. Also, twice a year, we hold a series of free workshops in our boardroom that are open to everyone.

Please contact us or visit the **Public Legal Education** section of our website for more information: [www.halco.org/our-services/public-legal-education](http://www.halco.org/our-services/public-legal-education).

### Our workshop legal topics include:

- Criminalization of HIV Non-Disclosure
- HIV and the Law Overview
- HIV and Immigration Law
- HIV and Privacy Law
- HIV and Private Insurance
- HIV and Employment Law
- Medical Marijuana
- Planning for illness: legal information for people living with HIV in Ontario
- Powers of Attorney and Advance Care Planning
- Government Sources of Income for Individuals and Families
- Disability Tax Credits and Registered Disability Savings Plans
- Ontario's Drug Benefit Programs

**Please contact us if you would like to request a workshop or our participation in an event** (please see back page for HALCO contact information).

# HALCO Staff Update

## HALCO bids farewell to Renée Lang, litigation lawyer

**Renée Lang** joined HALCO in 2004 as our litigation lawyer. In her more than 10 years at HALCO she did everything from covering reception to attending at the Supreme Court of Canada. Innumerable people, including HALCO's many articling students, benefitted from her insight and wry wit. Renée was known as HALCO's resident expert in several distinct areas of law, including privacy and private insurance. We wish Renée every success in her new role as an adjudicator at the Landlord and Tenant Board.

## HALCO welcomes Khalid Janmohamed, litigation lawyer

**Khalid Janmohamed** has widespread private bar litigation experience, including experience in areas of law related to private and public benefit systems. As a law student, he was actively involved in Downtown Legal Services, a student legal aid clinic that provides free legal services in Toronto. Khalid has and will continue to support litigation surrounding access to needle and syringe programs in prison, and has participated in an HIV/AIDS awareness and education project in Tanzania. We warmly welcome Khalid.

## HALCO immigration lawyer John Norquay takes one-year secondment at Legal Aid Ontario's Refugee Law Office

**John Norquay** started at HALCO in 2008 as the clinic's first immigration lawyer, and upon arrival was described as "the most exciting thing to ever happen to HALCO." He did it all: summary advice, representation, public legal education, law reform, and community development. And he did it with deep smarts, commitment and compassion. We are very happy that John is taking advantage of this opportunity, but will very much miss him. The Refugee Law Office is lucky. All the best, John.

## HALCO welcomes Raymond Lo, immigration lawyer

**Raymond Lo** is joining us as an immigration lawyer while John Norquay is at the Refugee Law Office. Raymond has immigration/refugee law and clinic law experience at Flemingdon Community Legal Services and Neighbourhood Legal Services (both are Toronto area community legal clinics). His focus here at HALCO is immigration/refugee work, but he will also be handling some matters in other areas of law. Raymond also worked at a student legal clinic in Victoria, BC, and is currently serving his second year on the National Executive Committee of the Canadian Association of Refugee Lawyers. We warmly welcome Raymond.

## HALCO says farewell to Jennifer Hild, administrative assistant

In early 2014, we welcomed **Jennifer Hild** as our temporary receptionist/administrative assistant. In addition to reception, Jennifer helped out with many of the tasks that help to keep us going. Thank you for everything and we wish you well Jennifer!

# HALCO People

## HALCO Staff

- **Amy Wah** (staff lawyer)
- **Ashley Jacobs** (articling student)
- **Bill Merryweather** (director of admin.)
- **Jill McNall** (community legal worker)
- **John Nelson** (staff lawyer)
- **Khalid Janmohamed** (staff lawyer)
- **Meagan Johnston** (staff lawyer)
- **Raymond Lo** (staff lawyer)
- **Rick Lobodzinski** (admin. assistant)
- **Ryan Peck** (executive director/lawyer)

## HALCO Board of Directors

HALCO's skilled and dedicated volunteer board members oversee our governance and provide direction:

- **Andrew Paizee**
- **Barbara Ncho**
- **Eric Mykhalovskiy**
- **John McCallum**
- **Judith Odhiambo**
- **Laura Bisailon**
- **Michael Capp**
- **Scott Nickerson**

For more information about our board and board committees, please contact us or visit **Get Involved** on our website:

[www.halco.org/get-involved](http://www.halco.org/get-involved)



# HALCO Membership

HALCO's work is supported by our 175 members. HALCO membership is free and renewed annually.

Our primary goal is to provide free legal services to people living with HIV/AIDS in Ontario. To help us to fulfill our goal and to ensure that our services are relevant, we need the participation of people living with HIV/AIDS in Ontario, as well as those who are not living with HIV/AIDS.

To become a member: you must be a resident of Ontario who is 16 years of age or older and you must agree with our ***Statement of Principles*** (see page 15).

As a member of HALCO, you will have the right to participate in and vote at our general meetings, and to stand for election to our volunteer board of directors. Membership takes effect when it is approved by the board of directors. Only members in good standing who have been members for at least 30 days before the meeting may vote at a membership meeting.

You can also choose to receive other HALCO information, including our newsletter. We will only share your membership information as required by law.

**Please offer your support by becoming a member of HALCO!**

You can apply for HALCO membership or renew your HALCO membership:

- on our HALCO website: [www.halco.org/get-involved/membership](http://www.halco.org/get-involved/membership)
- by contacting us to ask for a membership application form by mail (for HALCO contact information please see back page).

# **Statement of Principles of the HIV & AIDS Legal Clinic Ontario**

**Adopted January 30, 2006, by the Board of Directors  
of the HIV & AIDS Legal Clinic Ontario.**

**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.**

## Getting Legal Help

**If you are living with HIV in Ontario, please contact us for free legal information and advice.**

Others in Ontario can contact their local community legal clinic:  
[www.legalaid.on.ca/clinics](http://www.legalaid.on.ca/clinics).

HALCO provides intake for new inquiries on Monday, Tuesday, Thursday and Friday from 9 a.m. to 5 p.m. (not on Wednesdays). A HALCO caseworker is assigned to deal with new inquiries each intake day.

**HALCO is a “scent-reduced environment”:** please avoid wearing scented products when coming to our offices. Help us to make HALCO more comfortable for everyone!

HALCO is a registered charity funded by Legal Aid Ontario, the AIDS Bureau of the Ministry of Health and Long-Term Care, and other sources including corporate, foundation and individual donors. We welcome donations.

*HALCO news/brief* **contains general information only. It is not legal advice.**

**Laws, policies and practices can and often do change.**

**If you have a legal question or problem, you need legal advice. Please contact HALCO, your local legal clinic or a lawyer for legal advice.**

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**The views expressed in *HALCO news/brief* may not reflect those of HALCO board and/or staff, or funders.**

*(HALCO – 2015 April)*