

HALCO

HIV & AIDS Legal Clinic Ontario

news

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

HALCO news Summer 2015



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HALCO Annual General Meeting and 20th Anniversary Celebration

- Thursday, October 15, 2015 -

HALCO is turning 20! Please plan to join us on Thursday, October 15, 2015, for our Annual General Meeting and 20th Anniversary Celebration. Our meeting and celebration will take place in the evening in the Ball Room, 519 Church Street, 2nd Floor, Toronto, Ontario.

If you would like to celebrate with us, please contact us by September 30, 2015:

- o email to talklaw@halco.org
- o telephone 416-340-7790/toll-free telephone 1-888-705-8889.

HALCO thanks all of our funders and supporters

Core Funders - Legal Aid Ontario
- AIDS Bureau, 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!

HALCO is a registered charity and welcomes donations (tax receipts are issued for donations of \$20.00 or more). You can make a donation at any time by clicking on the **DONATE** button on our website www.halco.org or by contacting us (see back page).

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 *Spring 2015* and *Autumn 2014* newsletters, we have been participating in a project exploring 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 co-location project is progressing and we expect to announce more information about the project in the early autumn. For information about the project, please see our *HALCO news Spring 2015* newsletter, page 6.

Please rest assured that HALCO's primary focus will continue to be the provision of free legal services to people living with HIV across Ontario.



Making good use of 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 and we have already put the funding to good use by creating a new policy lawyer position. **Amy Wah**, one of our staff lawyers, is our new policy lawyer.

You can find information about the new funding on the Legal Aid Ontario website:

www.legalaid.on.ca/en/news/newsarchive/1503-13_increasedclinicfunding.asp

Court confirms importance of access to remedies under Ontario *Human Rights Code*

We reported in our *Spring 2015* newsletter that HALCO, jointly with the Mental Health Legal Committee (MHLC), submitted arguments as interveners in the judicial review of *K.M. v. Kodama* before the Ontario Divisional Court in April 2015.

We argued that a patient should not be prevented from making a complaint to the Human Rights Tribunal of Ontario (Tribunal) about discriminatory treatment by a doctor solely because the patient has already made a complaint to the College of Physicians and Surgeons (College).

We are pleased that the Court agreed with us in their decision released on May 27, 2015. The decision is released as *Ontario (Community Safety and Correctional Services) v. De Lottinville* and can be found on-line at:

www.canlii.org/en/on/onscdc/doc/2015/2015onsc3085/2015onsc3085.html.

The decision relates to two separate Tribunal decisions that were reviewed by the Court together because both judicial reviews raised the same legal issue: should a human rights complaint against a professional be dismissed because a decision has already been made by a regulating body that has oversight over the respective profession. In K.M.'s case, the College had decided that there was no discriminatory conduct by the doctor. In Mr. De Lotinville's case, both the Ontario Provincial Police and the reviewing Ontario Civilian Police Commission decided that there was no discriminatory conduct by police.

"K.M." is a transgender man who made a complaint to the College alleging that Doctor Kodama made discriminatory comments. The College 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 Tribunal asking for financial compensation and other remedies for discrimination under Ontario's *Human Rights Code*. The doctor asked the Tribunal to dismiss K.M.'s human rights application on the grounds that the College had already decided the same issue. The Tribunal refused the doctor's request. The doctor then asked the Court to review the Tribunal's decision.

Access to remedies under Ontario Human Rights Code – continues on page 5

The Court dismissed the doctor's application. The Court acknowledged the different and distinct goals of human rights tribunals and professional discipline proceedings. Professional discipline bodies are charged with maintaining public confidence in the profession, but those bodies do not provide personal or systemic remedies to people who make complaints against regulated professionals. The Court made clear that individuals should not have to choose between professional oversight and personal/systemic human rights remedies.

We thank **Marshall Swadron** (of Swadron and Associates) and **Mercedes Perez** (sole practitioner), who represented the MHLC and worked jointly with us in 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

Increases to Ontario's Minimum Wages

Increases to Ontario's minimum wages will take effect on October 1, 2015:



- General minimum wage increasing to \$11.25 per hour (from \$11.00).
- Student increasing to \$10.55 per hour (from \$10.30).
- Liquor Server increasing to \$9.80 per hour (from \$9.55).
- Homeworker increasing to \$12.40 per hour (from \$12.10).

You can find more information on the Ontario government website:

www.labour.gov.on.ca/english/es/pubs/guide/minwage.php

Social Assistance Rate Increases

Some Ontario Disability Support Program (ODSP) and Ontario Works (OW) rates are increasing. Recipients will see these increases in the benefits that they receive at the end of October 2015. Some of the increases include:

- \$12 per month increase to basic needs allowance for people with disabilities who receive ODSP (no increase for their non-disabled family members and no increase to maximum ODSP shelter amounts).
- \$25 per month increase to basic needs allowance for single adult OW recipients without children.
- 1% increase for other adult OW recipients for basic needs and shelter maximums.
- Increases to Remote Communities Allowance.

Other ODSP and OW amounts continue to be frozen, including ODSP for non-disabled family members, ODSP shelter maximums, and the Special Diet Allowance (Special Diet maximum has not changed in many years).

Medical Cannabis (marijuana) Updates



MMAR to MMPR Transition Update

As we reported in our *Winter 2013-2014* and *Autumn 2014* newsletters:

- The *Marihuana Medical Access Regulations* (MMAR) were replaced by a new regime called the *Marihuana for Medical Purposes Regulations* (MMPR).
- The new MMPR came into effect in June 2013 but some of the old MMAR provisions were still the law until March 31, 2014 (some authorizations and licenses have been extended, as described below and in our *Autumn 2014* newsletter).
- There is a lawsuit that is challenging the new MMPR.
- In March 2014, the Federal Court of Canada made an interim order in the lawsuit, which meant that most people who had valid MMAR licences to use and/or grow medical marijuana can continue to use their licences until a decision is made in the lawsuit.

As a result of the interim order, Health Canada was also allowing patients with a valid Authorization to Possess (ATP) under the old MMAR to use their ATP to register with a Licensed Producer of medical marijuana under the new MMPR. According to Health Canada, Licensed Producers could only accept the ATPs for registration purposes until March 31, 2015, so ATPs can no longer be used to register with a Licensed Producer.

If you have not already registered with a Licensed Producer, you must now get a “medical document” from a doctor to be able to register with a Licensed Producer.

The interim court order is in effect until a decision is made in the lawsuit. The lawsuit trial took place between February and May 2015, but the Court has not released the decision yet.

For more information about the lawsuit, or to keep updated, you can visit the website of the law firm that is handling the lawsuit: <http://johnconroy.com/mmar.htm>.

You can find more information about the medical cannabis (marijuana) and registration under the MMPR on the Health Canada website:

www.hc-sc.gc.ca/dhp-mps/marihuana/index-eng.php.

www.hc-sc.gc.ca/dhp-mps/marihuana/info/faq-eng.php.

Medical Cannabis (marijuana) Updates – continue on page 7

Medical cannabis is no longer limited to dry form (*R. v Smith*)

The former *Marihuana Medical Access Regulations* (MMAR) and the new *Marihuana for Medical Purposes Regulations* (MMPR) both limited medical cannabis (marijuana) to dried form for authorized patients.

In August 2014, the British Columbia Court of Appeal released its decision in *R. v Smith*, finding that the former MMAR's restriction relating to dried marijuana is unconstitutional. The decision was appealed to the Supreme Court of Canada, and HALCO, the Canadian HIV/AIDS Legal Network, and the Canadian AIDS Society intervened.

We are very pleased to report that the Supreme Court agreed with us when they released the decision in this matter on June 11, 2015. The decision makes clear that patients with a legal authorization to use cannabis as medicine are entitled to consume it in various forms such as edible or topical products. So, authorized patients are no longer limited to smoking or vapourizing dried cannabis.

The Supreme Court declared that if you have a legal authorization to use cannabis as medicine (either a "medical document" under the MMPR or an ATP under the MMAR that was valid as of March 21, 2014), it is now legal for you to possess cannabis derivatives and not just dried cannabis. This ruling took effect immediately when it was released on June 11, 2015.

Unfortunately, the Supreme Court did not address the production of cannabis derivatives or how authorized patients can legally obtain cannabis derivatives. As a result, it may still be a criminal offence for anyone to produce cannabis derivatives, though the law is somewhat unclear on this point. Here is a link to the Supreme Court's decision:

<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15403/index.do>

Breach of Privacy of Medical Marijuana Program Participants



As we reported in our *Winter 2013-2014* and *Autumn 2014* newsletters, Health Canada sent a mailing to medical cannabis recipients in envelopes that indicated the recipient's name, mailing address, and that the mailing related to the *Medical Marihuana Access Program*. The mailing was sent in November 2013 to approximately 40,000 people.

A law firm in British Columbia filed an application to start a class action on behalf of these recipients asking for damages for breach of privacy. The Federal Court certified the class action on July 27, 2015, which means the case can proceed as a class action. All recipients of the mailing will automatically be part of the class action law suit (unless you notify the law firm that you do not want to be part of the class action). It is not necessary to register to be part of the class action. However, people who register will receive updates about the class action. To find out how to register or for more information, you can visit the law firm website: www.marijuanaclassaction.com/ .

Canadian Citizenship Law Changes

As we reported in our *Autumn 2014* newsletter, in June 2014, the government of Canada passed Bill C-24, which is called the *Strengthening Canadian Citizenship Act*.

The law makes many significant changes to Canadian citizenship, including:

- changes to requirements to become a Canadian citizen.
- expanding the grounds for revoking citizenship.

Some changes took effect last year and some this year, but all of the changes are now in effect. If you are a refugee/protected person in Canada, please see page 9.



Applying to become a Canadian Citizen has changed

Some of the changes to applying for Canadian citizenship include:

- **Fee Increase:** The adult fee is \$530 as of January 2015 (the fee was increased in February 2014 from \$100 to \$300), plus the \$100 right of citizenship fee.
- **Residence in Canada:** You now have to have been physically present in Canada as a permanent resident for at least 1460 days in the 6 years immediately before you apply. Days spent in Canada before you became a permanent resident no longer count. Now, you must also be physically present in Canada as a permanent resident for at least 183 days per year in any 4 calendar years within the 6 years before you apply.
- **Knowledge of Canada and English/French:** If you are between the ages of 14 and 64, you must be able to demonstrate that you have an adequate knowledge of Canada and an adequate knowledge of either English or French (it used to be between age 18 and 54 years).
- **Declare intention to live in Canada:** If you are an adult, you must declare that you intend to reside in Canada.
- **Meet personal income tax obligations:** If you are adult, you must “have met any applicable requirement under the *Income Tax Act* to file income taxes for four (4) taxation years that are fully or partially within the six (6) years immediately before you apply”.
- **Convicted of crime in other country:** If you have been charged with or convicted of a crime committed in another country, you should get legal advice before you apply for Canadian citizenship. Certain crimes could affect Canadian citizenship.
- **Fraud and Misrepresentation Penalties Increased:** The penalties for fraud and misrepresentation have increased.

Refugees and Protected Persons

If you have refugee/protected person status in Canada (even if you are a permanent resident of Canada):

- You should not travel to your home country.
- You should not apply for or renew a passport from your home country.
- You should not travel anywhere using your home country passport.

If you do any of the above, you may risk losing both your refugee and permanent resident status in Canada.

If you have already done any of the above, you need to get legal advice right away.

Applying for Canadian Citizen as a Refugee/Protected Person

If you have refugee/protected person status in Canada, you should get legal advice before you apply for Canadian citizenship.

Getting legal help

If you are living with HIV in Ontario, please contact HALCO for free legal advice about Canadian citizenship, refugee/protected person or immigration law issues. Please see the back page of this newsletter for HALCO contact information.



Enhanced Universal Child Care Benefit replaces Child Tax Credit

The Child Tax Credit (CTC) has been eliminated as of the 2015 tax year and has been replaced by an enhanced Universal Child Care Benefit (UCCB). Parents receive an increased UCCB for children under 6 and a new UCCB for children age 6 through 17. These changes may have implications for parents with taxable income.

Child Tax Credit eliminated

The Child Tax Credit is eliminated as of the 2015 tax year. The CTC was a non-refundable tax credit of \$2,255 per year per child for parents of children who were under 18 years of age at the end of the year (2014 amount). If you have earnings and claimed the Child amount on a TD1 Personal Tax Credits form, you may not be having enough income tax deducted by your employer now. Please see **Income Tax, the eliminated Child Tax Credit and the enhanced UCCB** below for more information about income tax and the elimination of the Child Tax Credit.

Universal Child Care Benefit (UCCB) is enhanced

The Universal Child Care Benefit (UCCB) was a benefit of up to \$60 per child per month for parents with children under 6 years of age. The UCCB has been enhanced. For each child under 6, families now receive up to \$160.00 per month (up to \$1,920 per year). For each child aged 6 through 17 years, families now receive UCCB of up to \$60 per month per child (up to \$720 per year).



The new UCCB amounts are retroactive to 1 January 1, 2015. Monthly payments began in July 2015 and most parents received a lump sum for the retroactive UCCB. The government indicates that the majority of families are automatically receiving the enhanced UCCB, but that about 200,000 might not receive it because they have not applied for it.

The UCCB is a taxable benefit but tax is not deducted directly from the UCCB. Depending on your and your spouse/partner's taxable income, you may owe income tax on the UCCB. Please see **Income Tax, the eliminated Child Tax Credit and the enhanced UCCB** below for more information about income tax and the UCCB.

Enhanced Universal Child Care Benefit – continues on page 11

Income Tax, the elimination of the CTC and the enhanced UCCB

The Child Tax Credit (CTC) income tax credit has been eliminated as of 2015. The UCCB is taxable. If you have taxable income, you might owe income tax as a result of the elimination of the CTC and the enhancement of the taxable UCCB.



If you have taxable income, you may want to increase the amount of tax withheld at source to try to avoid unexpectedly owing income tax at tax time. If you have taxable income, you can complete a new TD1 Personal Tax Credits Return form for your employer or other income payer (see TD1 forms link below). You will need to do both a federal and Ontario TD1 form.

Depending on your situation, your new TD1 forms may mean that your employer or payer will increase the amount of income tax deducted from your pay so your paycheque may be lower.

Please see below for more information, including links to 2015 TD1 forms.

More information

Your tax preparer may provide you with more information. Some community organizations offer free income tax assistance to people with lower incomes. You can contact 211 Ontario to find out about services in your community:

- dial 211 on your phone
- [visit www.211ontario.ca/](http://www.211ontario.ca/)

You can find more information about the elimination of the CTC, the enhancement of the UCCB, and the TD1 forms on the government of Canada websites:

- **Elimination of CTC:** www.cra-arc.gc.ca/gncy/bdgt/2014/qa12-eng.html.
- **UCCB and income tax:** www.cra-arc.gc.ca/bnfts/uccb-puge/tx-eng.html.
- **UCCB:** www.cra-arc.gc.ca/bnfts/uccb-puge/menu-eng.html.
- **TD1 forms for 2015:** www.cra-arc.gc.ca/formspubs/frms/td1-eng.html.

TRANS*-forming JUSTICE

As reported in our *Summer 2014* newsletter, we have begun a trans* legal needs assessment project. The project, **TRANS*-forming JUSTICE**, is dedicated to the legal needs of all trans* communities in Ontario, and includes a particular focus on trans* persons living with HIV. The project goals are:

- 1) assess the legal needs of trans* community members, and the needs of lawyers/legal service providers in serving trans* clients;
- 2) conduct workshops with trans* community members and lawyers/legal service providers; and
- 3) identify barriers to accessing justice and root causes of injustice experienced by trans* communities, and make recommendations for change.

There are four committees providing guidance to the project:

- trans* community consultation and outreach committee
- legal service provider committee
- social service provider committee, and
- decision-maker committee (including judges and administrative tribunal members).



Data will be gathered from trans* communities and legal service providers through surveys, focus groups/workshops and interviews. The focus groups/workshops for trans* communities will include a public legal education component. The workshops for legal service providers will include a “trans* 101” component.

The five members of the project’s research team are:

- **Nicole Nussbaum**, Legal Aid Ontario staff lawyer (seconded to HALCO to lead the project)
- **Dr. Julie James**, Ph.D. in Sociology
- **Dr. Greta Bauer**, Department of Epidemiology and Biostatistics, Schulich School of Medicine, The University of Western Ontario, Co-Principal Investigator, Trans-Pulse Project
- **Dr. David Brennan**, Factor-Inwentash Faculty of Social Work, University of Toronto, Ontario HIV Treatment Network Scholar/Member
- **Ryan Peck**, Barrister & Solicitor, Executive Director, HIV & AIDS Legal Clinic Ontario

In the coming months, ethics approval will be sought for the project, after which surveys will be made public and workshops/focus groups scheduled. A report with recommendations will be produced in late 2016. The current three-year project is funded by Legal Aid Ontario, with additional funding from the Ontario HIV Treatment Network. We will be seeking additional funding to implement the recommendations. You can find more information on our website:

www.halco.org/our-services/trans-legal-needs-assessment-ontario

HALCO's website: 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.

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

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.

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 Cannabis (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 People

HALCO Staff Update

David Nisker is our new articling student

In July 2015, we welcomed **David Nisker** as our articling student for the 2015-2016 year.

Fathima Cader is our new intake lawyer

In August 2015, we welcomed **Fathima Cader** as our intake lawyer.

Amy Way is our new policy lawyer

Amy Wah has been our intake lawyer since 2010. In August 2015, she became our first-ever policy 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

HALCO Staff

- **Amy Wah** (staff lawyer)
- **Bill Merryweather** (director of admin.)
- **David Nisker** (articling student)
- **Fathima Cader** (staff lawyer)
- **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 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 in Ontario.

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** (below).

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
- by contacting us to ask for a membership application form by mail (for HALCO contact information please see back page).

Please note that HALCO membership has no effect on eligibility to receive legal services from HALCO.

Statement of Principles of the HIV & AIDS Legal Clinic Ontario

Adopted January 30, 2006, by the Board of Directors

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.

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.

HALCO news newsletter is published by the HIV & AIDS Legal Clinic Ontario (HALCO) and is distributed free to our members, interested individuals, agencies and organizations.

Please contact HALCO if you want to reproduce or excerpt any part of our newsletter.

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

(HALCO – 2015 August)