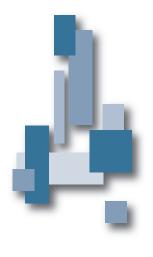


HIV & AIDS Legal Clinic Ontario

Free legal services for people living with HIV/AIDS in Ontario

Annual Report 2015-2016



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;
- 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 provide this year's annual report.

Things have never looked better, medically and scientifically speaking, for people with HIV. While it is still a chronic illness and we are still learning the ways in which the aging process interacts with HIV, people with HIV in Ontario can live long and productive lives. This picture, however, is incomplete. First, HIV is manageable only with access to effective medications and care. It is outright unacceptable that there is no universal access to medications and care in Ontario, and that people are dying as a result. Second, access to a living income and affordable housing are directly related to better health care outcomes. It is outright unacceptable that poverty is rife and affordable housing scant. Third, stigma and accompanying discrimination remain pervasive. This too is outright unacceptable, and not only has a direct impact on the daily lives of people with HIV but presents barriers to HIV testing.

This good news/bad news story is echoed in the legal landscape. Human rights legislation generally protects people with HIV, yet people in Canada continue to be charged, prosecuted, and convicted of serious criminal offences in relation to behaviours that pose little to zero risk of HIV transmission. Refugees and some immigrants with HIV are permitted to remain in Canada, while others, based solely on their HIV status, are not.

In short, attitudes, public policy and law lag behind welcome scientific developments.

Message from the Chair and the Executive Director

As it has since 1995, HALCO continues to respond to these issues. In addition to providing direct legal services for people with HIV in diverse areas of law including income maintenance, tenancy, human rights and immigration/refugee, HALCO staff engage in public legal education, law reform, and community development initiatives. Amongst other activities in the past year, we:

- appeared at the Supreme Court of Canada and Court of Appeal for Ontario,
- provided submissions to governmental bodies, and
- spoke to diverse audiences including people with HIV, health care providers, legal service providers, and students.

And, as always, all aspects of the clinic's work are done in conjunction with people with HIV.

Your ongoing support of and participation in our activities is invaluable and warmly appreciated. Some of the activities of HALCO's busy year are highlighted in the pages that follow (the activity report is for the period of August 1, 2015 to July 31, 2016, and, the Audited Financial Statement is for the period of April 1, 2015 to March 31, 2016).

Judith Odhiambo Chair, Board of Directors Ryan Peck Executive Director Barrister & Solicitor

Signature

Signature

Casework

From its inception, HALCO's primary focus has been 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. Our areas of legal practice include:

- Income Maintenance
- Immigration/Refugee
- Tenancy
- Human Rights
- Employment
- Privacy

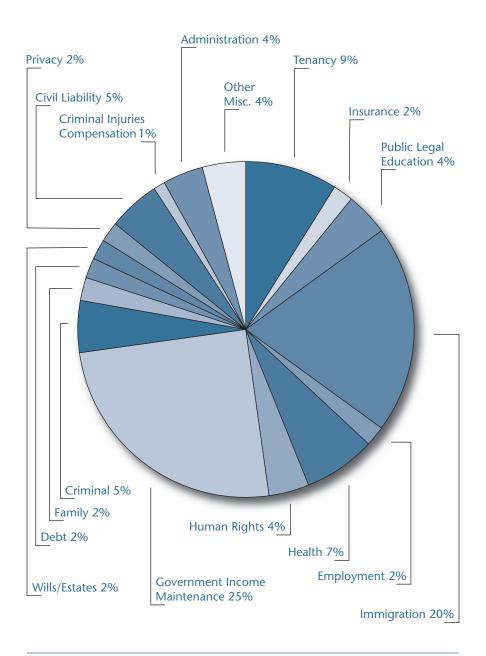
- Health
- Substitute Decision-Making
- Regulated Health Professions complaints
- HIV-related prison matters
- Insurance
- Other administrative law matters

Intake - Advice, Brief Services and Referrals

HALCO continues to devote the majority of its resources to intake services, which are available free of charge to all people with HIV in Ontario.

We handled 3522 intakes in this reporting period. Income maintenance and tenancy matters comprised 34% of intakes, and immigration matters 20%. 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 of August 1, 2015, to July 31, 2016:



Representation

In addition to intake, HALCO provides full legal representation to financially eligible persons living with HIV in Ontario. For this reporting period, we opened 145 case files. A case file may be opened to handle a legal matter for an individual (e.g., representation at the Social Benefits Tribunal or Landlord and Tenant Board) or it may be a test case with the potential to benefit many people with HIV.

Almost 50% of our case files consisted of income maintenance and tenancy matters, and over 25% immigration matters. We also assisted clients with various other legal issues, including human rights, privacy, and health law matters.

Some Case File Examples

- assisted clients to successfully appeal various private insurance decisions, including one which resulted in an award of \$75,000
- assisted a client to obtain
 Ontario Health Insurance Plan
 (OHIP) coverage for an
 operation to address HIV-related
 lipodystrophy
- assisted clients to maintain their housing, including a situation in which eviction proceedings were initiated while the client was in hospice care
- assisted a client in a correctional institution to obtain HIV medications

- assisted a number of clients and their family members to become permanent residents, including one client who has been living in Canada for 20 years
- assisted a client to disclose his HIV status to the private bar lawyer handling the client's refugee claim – the claim was subsequently accepted
- assisted clients to maintain social assistance when their benefits were improperly suspended

Law Reform and Community Development

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. We have played a leading role in campaigns, court interventions and more.

The clinic's primary law reform activities during this reporting period focussed on criminal law issues, including the criminalization of HIV non-disclosure, as well as human rights, correctional and health law matters. In addition, work continued on our trans legal needs assessment project and the specialty legal clinic co-location project.

In this reporting period, we participated in court interventions, including:

Supreme Court of Canada:

 Mandatory minimum sentences for drug trafficking offences (R. v. Lloyd)

Court of Appeal for Ontario

• Criminalization of HIV non-disclosure (R. v. G.)

Human Rights Tribunal of Ontario

• Segregation in correctional institution (S. v. Ontario)

In addition to engaging in consultations regarding medical assistance in dying, as well as participating in Legal Aid Ontario's Group Applications and Test Case Committee and the Ontario Advisory Committee on HIV/AIDS (which provides advice on HIV-related issues to the Minister of Health and Long-Term Care), HALCO staff provided input on other issues, including:

- Safe Consumption Sites (SCSs) along with the Canadian HIV/AIDS Legal Network (Legal Network) and ARCH Disability Law Centre, we provided written submissions, as well as a deputation at the City of Toronto's Board of Health, supporting the development of SCSs.
- "Pay Day Loans" we provided written submissions to the Ministry of Government and Consumer Services on the impacts of pay day loans on low-income persons with HIV.
- Ontario Human Rights Commission (OHRC) we provided written and verbal submissions in relation to OHRC's strategic planning process.

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 (Ontario in particular) continues to be a global leader in such prosecutions. Based on offences such as aggravated sexual assault, one of the most serious in Canada's *Criminal Code*, people with HIV continue to be branded violent sexual offenders and face lengthy jail sentences even in circumstances where the risk of HIV transmission is extremely low, if not non-existent, and no transmission occurs.

To ensure that the law is informed by up-to-date science and human rights principles, and is compatible with broader scientific, medical, public health, and community efforts to prevent the spread of HIV and to provide care, treatment and support to people living with HIV, we continue to:

- provide legal information, advice and referrals to people with HIV,
- work with defence counsel throughout Canada to ensure the best possible representation for people accused of non-disclosure offences, and
- fight for prosecutorial guidelines for Crown prosecutors handling allegations of HIV non-disclosure.

2015-2016

This year, we again intervened in a criminalization matter at the Court of Appeal for Ontario (R. v. G.). Amongst other things, this matter dealt with the governance of the issuance of police press releases detailing criminal allegations. A lower court found that the issuance of such a release, which included the accused's health information, violated the accused's section 7 life, liberty and security of the person rights under the Canadian Charter of Rights and Freedoms. The Ontario government appealed the court decision, and HALCO, along with the Legal Network, argued that there must be strict guidelines surrounding the release of information about accused persons. The matter was heard in March 2016, and the decision is pending.

Over the past year, we also met with Crown prosecutors who handle sexual assault prosecutions to raise concerns surrounding HIV non-disclosure prosecutions. We also continued to meet with members of provincial parliament, play a leading role in the Ontario Working Group on Criminal Law and HIV Exposure (CLHE), and, were very proud to be one of the founding members of the first ever national coalition focused on criminal law and HIV issues.

We will not rest until Canada's criminal law is reformed.

Mandatory minimum sentences for drug trafficking offences

In April 2016, the Supreme Court of Canada, in R. v. Lloyd, recognized that a mandatory minimum sentence (MMS) for certain drug offences is not only harsh and damaging, but also unconstitutional.

Under the previous federal government, Canada's Controlled Drugs and Substances Act was amended to mandate a minimum one-year sentence for certain drug offences. This change was made despite objections from opposition lawmakers and legal and medical experts, and despite overwhelming evidence about the harmfulness and ineffectiveness of MMS laws.

With our coalition partners – the Legal Network, Prisoners with HIV/AIDS Support Action Network (PASAN), the British Columbia Centre for Excellence in HIV/AIDS, and the Canadian Association of People who Use Drugs – we intervened in the *Lloyd* challenge to MMS laws.

The Supreme Court agreed with us that the MMS before the Court unjustifiably violates the right to be free from cruel and unusual punishment, per section 12 of the Canadian Charter of Rights and Freedoms. We are pleased that the Court recognized the fact that individuals caught by the MMS law may be drug-dependent and sentencing them to a one-year MMS may undermine treatment for their drug dependency.

However, it is also important to note, as we did at the Supreme Court, that many such individuals might also be living with HIV and/or hepatitis C virus (HCV). Mandating prison time for these individuals can mean disruptions in treatment because of inadequate health care in prisons. Furthermore, prolonging incarceration puts people who use drugs at increased risk of returning to their communities with HIV or HCV, and of suffering fatal overdose because of lack of adequate prison-based harm reduction services. Not only do MMS laws cause these negative health consequences, they completely fail to deter drug-related crimes or protect public health.

The Supreme Court's decision presents an opportunity for the federal government to:

- undo Canada's punitive arsenal of harmful drug laws, including eliminating all MMS laws for drug-related offences,
- ensure access to comprehensive harm reduction services and medical treatment for drug dependence and infection with HIV and HCV, both inside prisons and out, and
- decriminalize possession of all drugs for personal use.

2015-2016

Segregation in Correctional Institutions

In Canada and around the world, HIV rates are significantly higher among people in prison than in the general population. A recent landmark outcome (June 2016) from a human rights challenge - in which we intervened along with the Legal Network and PASAN – has secured a number of positive improvements for people with HIV in prison.

The applicant in the challenge stated that he experienced stigma and discrimination in a provincial correctional institution because of his HIV status. While in prison, he spent approximately three months in solitary confinement after other prisoners complained that they did not want him in their unit because he was living with HIV. During that time, his requests for medical attention and information on his situation went unanswered.

Segregating prisoners on the basis of their HIV status is discriminatory under Ontario's Human Rights Code and international human rights norms. It creates or exacerbates mental health issues, reinforces HIV-related stigma, and increases the risk of treatment interruptions or delays.

The successful resolution of this matter requires the Ontario Ministry of Community Safety and Correctional Services to:

- prominently display notices in all provincial correctional institutions on the rights of people living with HIV/AIDS in prison;
- train correctional staff on issues relating to people living with HIV/AIDS in prison; and,
- allow voluntary workshops for prisoners in the Toronto South Detention Centre on the myths and realities of HIV/AIDS.

The outcome of this case represents a significant step forward in acknowledging the rights of people with HIV in Ontario's prisons, which we hope will encourage policies and practices that protect and promote the human rights of people with HIV in correctional institutions across the country.

Autonomy in medical decision-making

Autonomy in medical decision-making has always been central to the HIV movement, and HALCO maintains that medical choice throughout life, including at end-of-life, is vital. A society committed to human rights ought to enhance the autonomy of all Canadians, including, of course, those living with disabilities, by scaling up access to quality health care and social services, as well as end-of-life care.

We were therefore very pleased to intervene, along with the Legal Network, in Lee Carter, et al v. Attorney General of Canada, et al (Carter) supporting the right to assisted dying. As noted in last year's annual report, the Supreme Court of Canada, in Carter, unanimously struck down Canada's Criminal Code (Code) prohibition against assisted dying.

In response, the federal government amended the Code in June 2016 to allow, in discrete circumstances, medical assistance in dying. The amendments allow an adult (18 years of age or older) to access medical assistance in dying where they have a "grievous and irremediable" medical condition and are capable of making decisions related to their health at the time that the assistance is provided. A person is considered to have a "grievous and irremediable medical condition" if:

- they have a serious and incurable illness, disease or disability;
- they are in an advanced state of irreversible decline in capability;
- the illness, disease or disability or state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable; and
- their natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining.

As noted in our submissions to government, we take the position that the amendments do not fully incorporate the rights recognized by the Supreme Court. Because the amendments limit access to assistance in dying to those whose natural death is "reasonably foreseeable," some people experiencing intolerable suffering will not be able to access the assistance. Further, mature minors and those who are not considered capable of making health care decisions at the time assistance is provided are not able to access assistance in dying.

We will continue to argue for a more robust approach to medical assistance in dying, one that includes safeguards for vulnerable persons while supporting autonomous decision-making.

TRANSforming JUSTICE

As previously reported, HALCO is administering the TRANSforming JUSTICE: Trans Legal Needs Assessment Ontario project. The project uses "trans" as an umbrella term to refer to people whose gender identity or expression is not reflected by the sex assigned to them at birth, including people who identify as two-spirit, non-binary, agender, gender queer, cross dresser, transgender, or transsexual, as well as those who identify as men or women with a history that involves a gender transition.

Funded by Legal Aid Ontario (LAO) and the Ontario HIV Treatment Network, the project aims to:

- document the legal burden facing trans people in Ontario;
- identify challenges the law and legal system may pose for trans people;
- understand barriers to accessing justice and legal services; and,
- help determine and support law reform and legal service priorities.

The legal challenges and needs of trans people living with or affected by HIV are a significant focus of the project. Ethics approval was obtained through research ethics boards at the University of Toronto and the University of Western Ontario.

There are four committees guiding the project:

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

The data collection phase of the project is underway. More than 200 trans community members have completed the survey, a number of workshops for trans communities as well as legal service providers have taken place or are scheduled, and one-on-one interviews are being conducted. The final report is expected in 2017.

Information about the project can be found at www.transformingjustice.ca.

Specialty Legal Clinic Co-location Project

In May 2016, HALCO moved to its new location at 55 University Avenue, Suite 1400, in Toronto, Ontario. The move is the exciting result of a co-location project with the Association of Community Legal Clinics of Ontario (ACLCO) as well as the following specialty community legal clinics:

- Advocacy Centre for Tenants Ontario
- ARCH Disability Law Centre
- Canadian Environmental Law Association
- Income Security Advocacy Centre
- IAVGO Industrial Accident Victims Group of Ontario
- Justice for Children and Youth
- Landlord's Self Help Centre

In the short time that we have been housed together, there has already been increased collaboration and information exchange amongst the clinics. The deepening of these relationships will ultimately result in more effective service for all of the clinics' clients, including people with HIV.

It is important to note that although we share common space with our community legal clinic colleagues, HALCO retains a separate office (14th floor) and reception area to address privacy and confidentiality concerns. We continue to be an independent community-based legal clinic with a volunteer board of directors, the majority of whom must be living with HIV.

Public Legal Education

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. For this reporting period, we opened 218 public legal education files, over 70 of which related to in-person workshops across the province. More than 40% of files related to public health law and the criminalization of HIV non-disclosure, more than 5% to immigration law, and the remainder to other legal issues including income maintenance, privacy and human rights.

Clinic staff spoke to audiences including people with HIV, AIDS service organization staff, law students, legal clinic staff and health care providers. The clinic also produced three newsletters and our website had over 84,000 visits.

We developed a partnership with Centre francophone de Toronto as they launched their legal services program for French-speaking persons with HIV.

We continued to engage in outreach to various communities including Indigenous persons and newcomers with HIV. For example, we launched a public legal education project with People 2 People Aid Organization, Africans in Partnership Against AIDS and Women's Health In Women's Hands. The project is focussed on the provision of legal education workshops and information for faith leaders and community workers in the Greater Toronto Ethiopian-Canadian community, and utilizes the traditional coffee ceremony to facilitate participation.

In addition, we assisted the Toronto Public Library to arrange the Law at the Library public legal education series of workshops (and we conducted two of the sessions).

Our 13th series of free public legal education workshops, held at our office, was once again extremely popular.

Along with the Legal Network, METRAC and the AIDS Committee of Toronto, we produced *Women living with HIV and intimate partner violence: Questions & Answers/Femmes vivant avec le VIH et violence au sein d'une relation intime: Questions et Réponses.*

We also prepared a resource detailing the significant changes that took place in relation to the anonymous HIV testing scheme in Ontario.

IN MEMORIAM Martha MacKinnon



HALCO board and staff were extremely saddened to learn that Martha MacKinnon died on January 8, 2016, after living with cancer for some time. We extend our sincerest sympathies to her family, friends and colleagues.

After starting her career as a teacher, Martha became a lawyer in 1986. Throughout her

career in law, she was committed to access to justice, particularly for those who were often on the margins, including children, youth, and people with HIV. Martha was a staff lawyer and then the executive director at Justice for Children and Youth for many years.

Martha was a staunch supporter of social justice and of HALCO. She joined our board in November 2000 and continued to serve until September 2012, all the while making innumerable and invaluable contributions (including serving as vice-chair and chair, as well as actively participating in many board committees). Her ability to skilfully chair a meeting while knitting elaborate socks with beautiful yarns was memorable.

We remember Martha as determined, wise, insightful, skilled, wry, witty and truly dedicated. She will be sorely missed.

For more about Martha, please visit:

www.legacy.com/obituaries/thestar/obituary.aspx?pid=177315011.

Board of Directors and Staff

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Ryan Peck, EXECUTIVE DIRECTOR/LAWYER

Amy Secord, OFFICE MANAGER

Amy Wah, STAFF LAWYER

David Nisker, ARTICLING STUDENT

Funders and Donors

The generosity of HALCO's funders and donors enables 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

Funding Partner

M·A·C AIDS Fund

Viiv Healthcare provided a much-needed grant in support of our 2015-2016 articling program.

HALCO also sincerely thanks all of the individuals who provided volunteer services and donations.

Thanks

HALCO owes a special thanks to the following for their support of the clinic's work:

Ranjan Agarwal Jennifer King

Michael Battista Marie-France Major

Mark Blans Aadil Mangalji

Joseph N. Blinick Jodi Martin

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Caroline (Nini) Jones Rathika Vasavithasan

Michael Jordan Richard Wazana

Danny Kastner Pro Bono Ontario

Cécile Kazatchkine Pro Bono Students

Canada

Audited Financial Statement for period

April 1, 2015 to March 31, 2016

HIV & AIDS Legal Aid Clinic (Ontario) Statement of Financial Position

March 31

	LAO Operating Fund	MOH AII Bure Fund	LAO Legal Disbursements Fund	Donations Fund	Proj TCTC Fundi Fund Fu		2015 Total
Assets Current assets Cash Interfund advances Short-term investments (Note 3) Funding and other receivables Sales tax recoverable Prepaid expenses	\$ 108,092 4,282 1,006 20,809 30,303	\$ 38,032 1,645 - - 93	\$ 8,656 418 - - 1,379	\$ 33,874 \$	<u>-</u>	88) - 75,999 - 1,006 42 22,590 - 30,303	\$ 303,016 75,091 9,418 21,070 14,306
	<u>\$ 164,492</u>	\$ 39,770	\$ 10,453	<u>\$ 109,906</u>	1,054 \$ 49,7	64 \$ 375,439	\$ 422,901
Liabilities and fund balances Current liabilities Accounts payable and accrued liabilities Deferred revenue Interfund payable (receivable)	\$ 35,120 229,758 (41,896) 222,982	\$ 9,704 - 30,471 40,175	\$ - - 1,213 1,213	\$ - \$ - (4,722) - (4,722)	- \$ 4 - 27,7 1,040 13.8	94	\$ 69,114 294,217
Fund balances (deficit) Externally restricted Internally restricted Unrestricted	(58,490) (58,490) \$ 164,492	(405 	9,240 - - ! <u>9,240</u> \$ 10,453	114,628 	14 7,7	- 114,628 - (58,490) 27 72,714	1,938 99,846 (42,214) 59,570 \$ 422,901

20 21

Audited Financial Statement for period

April 1, 2015 to March 31, 2016

HIV & AIDS Legal Aid Clinic (Ontario) Statement of Operations and Fund Balances Year ended March 31

	(LAO Operating Fund	N	IOH AIDS Bureau Fund	
Revenue					
Legal Aid Ontario Direct receipts	\$	760,639	\$		
Indirect receipts (Note 4)	Ψ	11,709	Ψ		
AIDS Bureau		-		329,172	
Project funding		-		-	
Donations		-		-	
Interest	_	667	_	23	
	_	773,015	_	329,195	
Expenses					
Salaries and benefits		523,241		322,204	
Occupancy		108,576		-	
Supplies and services		38,461		2,500	
Communications		22,225		-	
Legal disbursements		(2,405)		-	
Indirect payments (Note 4) Professional dues		11,709 5,928		5,707	
Equipment and maintenance		11,436		5,707	
Travel		7,687		_	
Library		2,138		-	
Fundraising development		-		-	
Project expenses	_	60,295	_	-	
		789,291	_	330,411	
Excess (deficiency) of revenue over expenses		(16,276)		(1,216)	
Fund balances (deficit), beginning of year	_	(42,214)	_	811	
Fund balances (deficit), end of year	\$	(58,490)	\$	<u>(405</u>)	

	AO Legal ursements Fund	Donations Fund	TCTC Fund	Project Funding Fund	2016 Total	2015 Total
\$	23,855 - - - - - 6	\$ - - - 37,227 926	\$ 44,866 - - - - 20	\$ - - 37,817 - 27	\$ 829,360 11,709 329,172 37,817 37,227 1,669	\$ 696,833 12,419 329,172 98,074 16,167 2,769
_	23,861	38,153	44,886	37,844	1,246,954	1,155,434
	- - - - 18,799	23,118 - 3 -	- - - -	32,644 - - - -	901,207 108,576 40,964 22,225 16,394	818,684 104,476 33,271 22,093 11,798
		- - - - 250	- - - - - 35,049	- - - - - - 4,245	11,709 11,635 11,436 7,687 2,138 250 99,589	12,419 8,261 11,649 14,182 3,313 13,088 76,710
	18,799	23,371	35,049	36,889	1,233,810	1,129,944
_	5,062 4,178	14,782 99,846	9,837	955 6,772	13,144 59,570	25,490 34,080
\$	9,240	\$ 114,628	\$ 14	\$ 7,727	\$ 72,714	\$ 59,570

Notes

HALCO

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