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March 2009 - VIA FACSIMILE to AIDS Service Organizations in Ontario (7 pages)

Law Society of Upper Canada Licensing Regime - Update and Request for Input from AIDS Service Organizations -

This is a follow-up to our previous communications about the “Paralegal Regime” in Ontario. As promised at the January 2009 Ontario AIDS Network Executive Director/President Summit, we are writing to update you and to gather your input about the new regime.

We are now referring to the regime as the *Law Society of Upper Canada Licensing Regime* rather than the *Paralegal Regime*. This is deliberate. The new regime is about more than regulating paralegals. Fundamentally, the regime is about who can provide legal services in Ontario.

There has been a lot of confusion about the regime. As we have indicated in our past communications, this regime has a significant impact on the type of work that AIDS Service Organization (ASO) workers can and cannot do. **The bottom line is that legal services in Ontario can only be provided by licensees (lawyers or paralegals) or individuals exempt by the Law Society of Upper Canada.**

There are two exemptions that could potentially apply to ASO workers.

The first exemption only applies to workers who are governed by other legislation, such as registered social workers. If the worker is governed by legislation that regulates their activities, they can provide legal services as long they are acting in the “normal course” of their profession or occupation.

The second exemption is the one that applies to most ASO workers. Under this exemption, **an ASO worker, acting in the “normal course” of their work, can provide legal services as long as the service does not relate to a proceeding before a decision-maker.**

ASO workers are unable to do almost *anything* related to a proceeding because the legal definition of “representation in a proceeding” is very broad. The law specifically states that they cannot engage in any “conduct necessary to the conduct of the proceeding”.

So, ASO workers cannot give advice or provide legal services with regard to proceedings. They cannot provide advice or legal services with regard to the required forms in a proceeding, applicable time limits, etc. They cannot advocate, negotiate or represent clients in relation to a proceeding. For example, ASO workers cannot advise about or assist with:

- Social Assistance internal reviews or appeals
- Landlord and Tenant Board matters
- Human Rights claims

At the Ontario AIDS Network Executive Director/President Summit, we indicated that ASO workers may be able to provide immigration law services. We based this on Citizenship and Immigration Canada's position that a person or organization that does not charge a fee may provide such services. However, the Law Society of Upper Canada has since clarified for us that the new licensing regime applies to immigration legal services in Ontario. As a result, under the new licensing regime, ASO workers *cannot* assist with immigration-related legal services such as completing a Personal Information Form "PIF".

The Law Society of Upper Canada has taken the position that only lawyers can provide legal services related to real estate, family law, wills, and/or Powers of Attorney.

ASO workers can still provide general legal information, and can help clients with things like:

- applications for income-related benefits such as Ontario Disability Support Program (ODSP) benefits
- applications for rent-geared-to-income housing
- finding a health-care professional

However, we encourage workers to contact HALCO for information and advice about the potential interactions of programs (for example: the implications of a change in financial or housing circumstances, the interaction between Employment Insurance and ODSP, etc.).

The penalties for providing unauthorized legal services are serious (up to \$25,000 for a first offence and up to \$50,000 for each subsequent offence).

Review of the Regime Exemptions

The Law Society of Upper Canada is required to review most of the exemptions by May 1, 2009. Although the exemption that applies to most ASO workers is not up for review, we believe that it is an appropriate time to raise any ASO concerns about the exemptions.

We have found that there are differing opinions on the exemptions in the new licensing regime. Some people take the position that community workers should *not* provide legal services, because the law is complicated and they are not trained to do so. Others take the position that community workers *should* be able to provide legal services, especially when there is no other legal assistance available for the client.

We are interested in hearing your views about the exemptions, as well as what impact, if any, the regime is having on your work. Your feedback will assist us in determining any next steps.

Please provide us with your comments by April 10, 2009 (to the attention of Jill McNall at HALCO: by mail, E-Mail mcnallj@lao.on.ca or FAX 416-340-7248).

A powerpoint presentation on this issue is attached and is also available on our website under *Publications*.

For further information about the regime, you can contact the Law Society of Upper Canada:
www.lsuc.on.ca
Toronto-area telephone: 416-947-3300
Toll-free telephone: 1-800-668-7380

This document contains general information only. It is not a substitute for legal advice.

Prepared by the HIV & AIDS Legal Clinic (Ontario) – “HALCO”

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