

HIV&AIDS legal clinic ONTARIO HALCO NEWS

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Human Rights Reform - News Flash!!

What's Happening?

The government of Ontario is currently debating reform of our human rights enforcement system. HALCO has long taken the position that reform of our human rights system is absolutely necessary. This is because of our experience with how the current system works.

HALCO's Experience

Since HALCO opened its doors in late 1995, it has represented between 50 and 100 people living with HIV/AIDS at both the provincial and federal human rights Commissions. But in all that time, we have never had a complaint proceed to a hearing. (Trials in front of tribunals are called "hearings" instead of trials, but they're really the same thing.) Partly this is because we settle most of the complaints, and the clients involved are usually happy with that. But it is also partly because the Commission has the right to tell complainants "we do not think your complaint warrants a hearing" and those complaints get dismissed without any right of

appeal. This dismissing of complaints behind closed doors, without any hearing of the evidence, is deeply distressing to people who experience it. It feels profoundly unfair to them. When the Commission does this, it is frequently referred to as "gatekeeping", or "Commission veto". It is this "gatekeeping" function that the current proposed reforms are primarily about.



Gatekeeping

We're not the only ones who complain about the soul destroying nature of these dismissals. The Centre for Equality Rights in Accommodation has written eloquently about why they believe the "gatekeeping" function must be abolished. (See: Birenbaum, J., and B. Porter. Screening Rights: The Denial of the Right to Adjudication

in the Canadian Human Rights Act and How to Remedy It, (Ottawa: Canadian Human Rights Act Review Panel, 1999) at:

<http://www.equalityrights.org/cera/index.cfm?nav=reso&sub=charter.>)

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Two different bodies at the United Nations have commented negatively about the structural way our system dismisses complaints without a hearing.

Myths

There are a lot of myths about how the Commission currently deals with complaints. For example, complainants do not currently have the right to be represented free by Commission lawyers in proceedings before the Commission – that is simply a lie. If you're lucky enough to get to the Tribunal, the Commission does not provide you with a lawyer. Rather the Commission's lawyer represents the Commission, which often prosecutes the complaint by leading your evidence, but the Commission is entitled to withdraw from the hearing and leave complainants completely alone. The Commission does not provide complainants with a free investigator to help them build their cases. Investigations at the Commission are done to help the Commission decide whether or not they're going to dismiss your complaint or not, and you have no right to access the results of the investigation.

Typically, less than 10% of complainants get referred by the Commission for a hearing at the Tribunal. In the 2005-2006 year, the Commission sent 6.3% of complaints to the Tribunal for a hearing. The rest were either settled (57.1%), withdrawn (16.7%), or dismissed by the Commission (19.9%).

HALCO's Activities

In July of 2005, the HIV & AIDS Legal Clinic (Ontario) ["HALCO"] lobbied the government of Ontario to improve the human rights system in Ontario in co-operation with a number of other community groups, and a lawyers' group called the Association of Human Rights Lawyers.

In February 2006, Ontario's Attorney General announced that he planned to change the human rights system in Ontario. (You can view that announcement on line at: <http://www.attorneygeneral.jus.gov.on.ca/english/news/2006/20060220-hrmod.asp>.)

On April 26th, Bill 107 (the *Human Rights Code Amendment Act, 2006*) received first reading in the legislature. It is now at the second reading stage in the legislature.

In order to hurry Bill 107 along to public hearings, HALCO has written to every MPP in the province to encourage them to move the process to the Committee stage, where people can suggest improvements to the Bill. For example, one improvement we will be asking for is to amend Bill 107 so the clinic can file "third party" complaints. This would enable us to file complaints on behalf of a group of people with a similar issue where no single individual is willing to be a named complainant.

For an excellent and detailed analysis of Bill 107, along with a lot of other supporting materials, visit

the web site of the law firm: Cavalluzzo Hayes Shilton McIntyre & Cornish at <http://www.cavalluzzo.com/>.

If your local AIDS Service Organisation (ASO) or another group would like to learn more about Bill 107 and human rights reform, we would be happy to come speak to you about the issues. Call Ruth Carey at HALCO: (416) 340-7790 -OR- 1-888-705-8889.

(Please also see the article on page 15 of our newsletter – "The Last Word – Catherine Frazee's letter concerning Human Rights Reform.")



ODSP Special Diet Update

As you may know, a province-wide review of all ODSP Special Diet Allowances is currently underway. This is happening because the government changed the regulation about eligibility for Special Diet.

People who were getting Special Diet before November 2005:

If you were receiving a Special Diet Allowance prior to November 4, 2005 you probably have received a form to re-confirm your eligibility for a Special Diet Allowance. The form must be completed by an approved health professional (physicians, registered nurses in the extended class, registered dieticians) and is called "the revised *Application for Special Diet Allowance* [Form

3059 and 3060]”. Along with the form, you probably will get a letter. You have 90 calendar days from the date appearing on the review notification letter to return the completed *Application for Special Diet Allowance*. If you do not submit the form before the 90 day deadline, ODSP will stop paying you the Special Diet after the 90 days has passed. During the 90 day period, you will continue to get the same amount for Special Diet you did before.



The Ministry has issued two new information bulletins (December 23, 2005 and April 26, 2006) and an instruction sheet for health professionals. The bulletins basically say that where an ODSP recipient has been granted a Special Diet allowance to help them reach a healthy body weight, the Special Diet allowance should be continued at the same amount as before the regulation change BUT up to the maximum for HIV/AIDS (\$240) if HIV is the only condition you have. Recipients who receive the Special Diet Allowance for specified weight-related conditions, such as HIV/AIDS, will not have their Special Diet reviewed in the future. Doctors are now being instructed to fill in the form based on how much weight you will lose in the future if you do not receive the Special Diet allowance.

A number of people living with HIV/AIDS had their Special Diets reviewed before the bulletins were published. Some of those people saw the amount of their Special Diet amount change. If that happened to you, and the amount of your Special Diet went down, please call the clinic to talk about it as we have been able to get it back to its original level, or to \$240, for most people.

Although the new maximum amount for people with HIV/AIDS is \$240, some people remain eligible for the total maximum Special Diet amount of \$250. This is true for people who have a second condition listed on the new form – hepatitis, for example. The Ministry has informed us that if your doctor believes that you have a suppressed appetite, the doctor should consider checking the box on the form for “Marasmus or Kwashiorkor or Anorexia”. This is because “Anorexia” means loss of appetite.

ODSP Recipients who have Never Received the Special Diet:

If you have never received a Special Diet amount, you should apply for it. By virtue of being HIV+, you are now automatically entitled to \$75 for a Special Diet allowance.

If you submit the new application form and your Special Diet allowance is reduced or cut-off entirely, please contact HALCO immediately. To read the Ministry’s bulletins and the Instruction sheet for Physicians and Health Professionals, please go to:

http://www.odspaction.ca/special_diet.htm#apply



ODSP Earnings and Employment Changes

The following is an update on Ontario Disability Support Program (ODSP) changes concerning earnings and employment effective April 1, 2006 and November 1, 2006.

Changes effective April 1, 2006:

Employment Requirements for non-disabled spouses

If you are a non-disabled spouse of an ODSP recipient, you may now be subject to mandatory Ontario Works (OW) participation requirements, as a condition of continuing eligibility for ODSP benefits. Non-disabled spouses will be referred to Ontario Works (OW) to complete a Participation Agreement and participate in OW employment assistance activities. ODSP offices will review their files to see who should be referred to OW. Referrals will start shortly after June 2006. Participation will not be required if:

1. you are a caregiver for a family member "who requires ongoing physical assistance or supervision on an ongoing basis as a result of disability, illness or old age" and this

makes it impossible for you to look for work

2. you are already participating in employment or employment related activities and it is unlikely that participation in OW will increase the chances of being employed
3. you are 65 years of age or older
4. you are experiencing "exceptional circumstances" which would excuse participation

ODSP income support will be cut back if the spouse refuses or fails to make reasonable efforts to participate in OW employment assistance activities or employment, resigns from employment without cause, or is dismissed with cause. Ministry documentation states that it is expected that a spouse referred to OW under this new provision will complete a participation agreement within 30 days of the referral and will begin employment activities shortly after.

New Approach to Employment Supports

If you are a disabled person in receipt of ODSP and you want to find a job, you may be able to get Employment Support services. To get these supports, you have to show that you have the potential to be employable. Examples of Employment Support services are retraining and upgrading, job coaching, specialized equipment and sign language interpreters. Often private individuals or companies are paid by ODSP to provide Employment Support services.

As of April 1, 2006, the Employment Supports program has new policies

that are supposed to make it easier and faster to get ODSP Employment Supports.

A key change in the program is that the individuals and companies that are hired to provide the services will be paid based on whether you find and keep a job.

As an applicant, you will have to go to an Employment Information Session, choose a service provider and sign an Employment Supports Funding Agreement with ODSP. The service provider's funding will be "results-based" and tied directly to whether you find a job, keep that job, and your earnings in that job.



Changes effective November 1, 2006:

New Work Related Benefit

A new "Transportation Expense" of \$100/month will be issued to each ODSP recipient, spouse and dependent adult, not in school full time, who reports earnings from employment, profits from a business (self-employment) or is participating in a training program. This benefit is automatic and will not be pro-rated with your level of income or related to actual costs. Although it is not indicated in the new regulation, Ministry policy states that this new benefit is intended to cover all employment related expenses, not

just transportation costs. It is important to note that this does not replace medical transportation costs which will still be available to you as a separate benefit.

Earnings Exemption - Changed

If you are in receipt of ODSP and you or your spouse work, earnings from the job are partially deducted now from your ODSP cheque. ODSP lets you keep a certain amount of earnings each month (basic flat exemption), depending on your family size, and then allows you to also keep 25% of your earnings above that amount.

As of November 1, 2006, the earnings exemption rules will change. Under the new formula, the basic flat exemption will be eliminated and your family will keep 50% (no longer 25%) of "net earnings" (net earnings = gross earnings minus mandatory payroll deductions such as CPP, tax, EI, mandatory pension plan, union dues, etc.). It is important to note that the combination of this change with the \$100 Transportation Benefit (see above) may leave a small number of single earner families with income in the \$200 - \$300 level worse off. Single recipients and families with earnings above or below the \$200-\$300 range should be better off under the new rules. The Ministry has indicated that it will be flagging families who will be adversely affected by the new rules for priority assistance in accessing other benefits and services, including employment supports. (To view a chart breaking down the effect of these changes for

single earner individuals and families with differing levels of income, please visit:

www.incomesecurity.org and click on the document called "ODSP Earnings and Employment Changes – Feb 06" or talk to us at HALCO about your specific situation)

Informal Child Care Deduction - Improved to match OW deduction

The maximum deduction from income you earn for informal child care costs will increase from \$390 to \$600 to match OW changes made in May 2005. (There is no change to licensed child care, where the actual amount paid for licensed care is deducted from net earnings, unless reimbursed through some other program.) The informal child care deduction, up to the new maximum, will apply to net employment earnings, training allowance or business income (self-employment).



Advanced/Up front Child Care Benefit - Informal Care Amount Increased

You may be aware that an advanced child care payment is currently available to ODSP recipients who need to pay for child care up front. As mentioned above, the informal child care expense deduction amount has increased from \$390 to \$600 per

child per month, so those requiring to pay up front for informal care can now claim \$600 per child per month. The advanced child care payment can be provided in any 12-month period to cover commencement of any employment-related activity approved by the Director, in addition to starting employment. Please note that the increased amount for informal care will not be available retroactively to cover child care costs incurred before November 1, 2006.

Improved Disability-related Work Expense Deduction

The maximum deduction from income you earn for disability-related work expenses will increase from \$140 to \$300. This deduction applies to net employment earnings, training allowance or business income (self-employment). To qualify, expenses must be "necessary for employment and not paid through any other program."

Increased Employment Start-up Benefit (ESUB)

As you may know, the Employment Start-Up Benefit (ESUB) is available to ODSP recipients, spouses or dependent adults, not in school full-time, who may be engaging in eligible activities such as: accepting a new full or part-time job; starting a training program that leads to a job; starting your own business; or changing to a new job that is a different type of work from your previous job. The maximum amount for this benefit will increase as of November 1, 2006, from \$253 to \$500 in any 12 month period. This benefit is available to assist with start-up costs such as: work wear,

tools and equipment, grooming costs, licensing fees, drive-clean tests, etc. In addition, eligible activities will be expanded to include any employment-related activity approved by the Director, such as: job search activities; job preparation activities; and, volunteer positions that will prepare a recipient for employment. The amount of this benefit matches the OW Full-Time Employment Start Up Benefit, but unlike the OW benefit, ODSP recipients do not have to be engaged in full-time employment related activities to qualify for the ESUB. This benefit is not available when a recipient leaves ODSP for employment (in this case, you would access the new Employment Transitional Benefit – see below). The other thing to keep in mind here is that the increased amount may not be issued retroactively for expenses incurred before November 1, 2006.

New Employment Transition Benefit (ETB)

Effective November 1, 2006, a new benefit of \$500 will be paid to you if you leave ODSP for employment, training or self-employment (or where the employment earnings of your spouse causes you to leave ODSP). It is important to note that you do not have to be leaving ODSP for full time work to be eligible for this benefit. As long as your benefit unit's income includes income (can be part-time) from employment, training or the operation of a business, the benefit is payable. This benefit will be available to you once in any 12-month period and you will be eligible for the benefit in the month before the actual month you

exit ODSP. So if you start work in January 2007, you would be eligible for this benefit in the previous month – December 2006. The benefit is a flat rate and not related to actual costs incurred as a result of employment. Finally, this benefit is payable even if ESUB has been provided within the past 12 months to you.

New Transitional Health Benefit (THB)

Although we have not seen any regulations yet, we understand that a new Transitional Health Benefit will be available to ODSP recipients who: 1. Are ineligible for ODSP because their income exceeds or equals their budgetary requirements **AND** the income includes earnings from employment or a training program or income from self-employment; 2. Cannot get benefit coverage through their employer; 3. Are not eligible for the Extended Health Benefit. Transitional Health Benefits will include prescription drug, dental and vision care benefits. Full-time employment is not required to be eligible for this benefit. Recipients who exit ODSP with a combination of earnings and other income are eligible. Benefits will continue until the recipient is covered by an employer health plan (recipient's plan or plan of family member) and there is no time limit to this benefit. Eligibility for the benefit must be re-established annually.

Rapid Reinstatement - Extended

The 12-month limitation for grand-parented Family Benefits Allowance

(FBA) recipients who left for employment will be removed. Recipients grand-parented from FBA will qualify for rapid reinstatement, if financially eligible, regardless of how long they have been off ODSP, as long as they left ODSP because of income from employment, training or the operation of a business. Grand-parented FBA recipients who leave ODSP for reasons other than employment will continue to be ineligible for rapid reinstatement.

All other ODSP recipients who have left ODSP will be eligible for rapid reinstatement at any time, as long as they meet financial and other eligibility requirements, regardless of their reason for leaving ODSP and even if their medical eligibility review date has been passed.

Note: If you are receiving ODSP, these changes may affect you. If you have any questions or you receive any negative decision letters, you should contact HALCO immediately.

Adapted from materials written by LAO's Clinic Resource Office and the Income Security Advocacy Centre.



DID YOU KNOW? Right of Permanent Residency Fee Reduced by 50%

The Right of Permanent Residency Fee (formerly "Right of Landing

Fee") for immigrants in all social, humanitarian and economic classes (refugees, protected persons and dependent children of the principal applicant are exempt from the fee) has now been reduced from \$975 to \$490, as stated in the recent 2006 federal budget. This change came into effect on May 3, 2006. Anyone who paid the \$975 but did not receive permanent residency until after May 3 is entitled to a refund of the difference (\$485).



Approximately 185,000 people who have paid the fee but who have not yet become permanent residents of Canada as of May 3, 2006, are eligible for a refund.

If you or your sponsor paid the \$975 fee in Canada, Citizenship & Immigration Canada (CIC) expects to begin issuing refunds by mail within a few weeks of the effective date and to have issued the majority of them within one year. If you have moved since you paid the Right of Permanent Residency Fee, you can use CIC's on-line services to notify them of your new address. If you do not have a permanent address, or if you have trouble using the on-line service, please contact the [CIC Call Centre](#) at 1-888-242-2100 (only in Canada). There is no charge for this call. For more information concerning this announcement and the refund request form, please visit:

<http://www.cic.gc.ca/english/resid-fee/index.html> or contact HALCO for more information.



Bill 102 – Changes to the Drug Interchangeability and Dispensing Fee Act & the Ontario Drug Benefit Act

Bill 102 is the Ontario government's response to escalating costs for drugs, and complaints about the programs we have to help people access drugs.

The Bill, if passed, would make changes to the *Drug Interchangeability and Dispensing Fee Act* (DIDFA) and the *Ontario Drug Benefit Act* (ODBA). Some of the key changes are:

*A new "Conditional Listing" category will be created for new drugs that have not yet been fully evaluated or processed for formal listing. This will allow patients to access new drugs on a conditional basis without needing to go through individual section 8 applications.

*A position of "Executive Officer of the Ontario Drug Programs" would be created. The Executive Officer would be a political appointee who would exercise many powers now held by cabinet and the Minister. These include placing drugs on the ODBA formulary (the list of drugs

funded for ODSP, OW, Trillium and seniors), removing drugs from the formulary, deciding who will get unlisted drugs (those not listed on the formulary) in special circumstances (the current ODBA Section 8), and designating which drugs are interchangeable.

This could potentially result in decisions being made more quickly. For example, new drugs could be made accessible more quickly and



decisions on funding unlisted drugs could be made more quickly. However, there could be questions about the accountability of the Executive Officer – a great deal of authority would be placed in the hands of one unelected official.

*The criteria for designating drugs to be interchangeable would be loosened. Currently a pharmacist can dispense a generic drug in place of a name brand drug prescribed by a physician. However, this can only be done if the actual drug and the formulation are the same. Under the new Act, interchangeability would be broadened. For instance the Executive Officer could designate a product to be interchangeable if it contains "the same amounts of the same *or similar* active ingredients in the same *or similar* dosage form." This is intended to lower the cost of

drug treatments by allowing more generic drugs to be dispensed. However, this also has the potential to result in serious medical problems when a pharmacist dispenses a drug or formulation different than what the doctor prescribes.

*Rebates from drug companies to pharmacists will no longer be permitted. Currently, drug producers can give rebates to pharmacies that dispensed their products. This is an incentive for pharmacists to dispense generic drugs which are interchangeable with name brand drugs. This is, again, intended to reduce the cost of drugs funded under the ODBA. Some pharmacists have argued that small independent pharmacies depend on these rebates to stay in business and that without this source of income some pharmacies would close. Although not part of Bill 102, the government has also announced that the mark-up pharmacists can charge on a product will be reduced from 10% to 8% and capped at \$25. This could make it impractical for small independent pharmacists to stock expensive drugs (e.g. anti-retrovirals), again making these drugs less accessible.

*The current ODBA Section 8, under which unlisted drugs are funded in special circumstances, is replaced by Section 16. The wording of Section 16 is almost identical to Section 8 except that the Executive Officer will now make decisions under the section in place of the Minister who currently has the authority to make these decisions. Also, the new Section 16 states explicitly that decisions made under the section can be made to apply

retroactively. This is not included in the current Section 8.

Although not part of Bill 102, the government has announced that the current Drug Quality and Therapeutics Committee will be renamed the "Committee to Evaluate Drugs" and will include 2 patient representatives. This committee would be involved in individual drug funding decisions. The creation of a Citizen's Council, which would provide recommendations on related policy issues, has also been announced.

Bill 102 has been referred to the Standing Committee on Social Policy and public hearings have been scheduled for May 29 and 30 and June 3, 4 and 5. HALCO will continue to monitor developments in this area.



Local Health Integration Network Bill Passes

*By Lesli Bisgould, Staff Lawyer,
ARCH Disability Law Centre*

Bill 36, the *Local Health System Integration Act, 2006* ("Bill"), passed Third Reading in the Ontario legislature on 1 March 2006. Over several days in February, the Standing Committee on Social Policy heard from many organizations and individuals who expressed serious concerns about the Bill and the changes that it will

bring. Minister of Health George Smitherman dismissed these concerns and the Bill was passed, despite both opposition parties voting against it.

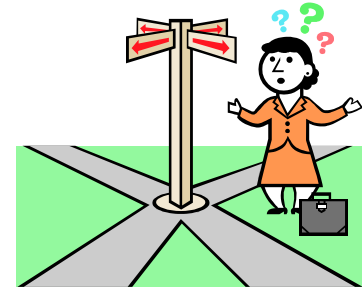
This Bill makes fundamental changes to the way health care is structured across Ontario. It continues the 14 Local Health Integration Networks ("LHINs") that the government recently set up. Each LHIN is responsible for a certain geographical area in the province.

Rather than being accountable to the local community, the Boards, Chair and Vice-Chairs of each of the 14 LHINs are chosen by the Lieutenant Governor in Council. The Cabinet may create, amalgamate, dissolve or divide LHINs. LHINs are defined as an "agent of the Crown", and will enter into "accountability agreements" with the Ministry of Health.

Each LHIN is required to develop its own integrated health service plan. The Bill gives the Minister of Health, the LHINs and the Cabinet broad new powers to merge health providers, transfer funding and contract out and re-organize health services.

Some of the LHINs will be quite large. In fact, five of the LHINs each will serve more than a million people, a larger number of persons than the population of Saskatchewan or four other provinces. Kenora and Thunder Bay will be covered by the same LHIN even though they are 500 kilometres apart. People in

Scarborough will be covered by the same LHIN as people in Haliburton. Yet Torontonians will find themselves in a number of different LHINs.



Given the size and diversity of the areas covered by LHINs, some organizations are concerned that there will be significant conflicts over resource allocation. Will smaller communities see their services integrated into the larger centres in the LHINs? Will persons who now receive local services have to travel long distances to where services are available?

The Bill requires LHINs to work with health service providers to look for opportunities to integrate services. LHINs may even "encourage" integration by providing, or changing, funding to a health care provider.

The Bill gives the Minister the power to order a health service provider to stop operating, dissolve or wind up its operations, or to amalgamate with another provider. However, this power only applies to not-for-profit health service providers, not to for-profit providers.

The Bill also makes changes to the current set-up of Community Care Access Centers ("CCACs"). From the present 42 CCACs, there will

now be only 14, one for each LHIN. CCACs will continue to be their own corporation, but the Bill provides that the Lieutenant Governor in Council may make regulations to amalgamate or dissolve CCACs, or to divide them into two or more CCACs. The competitive bidding process, which has been so harmful in the context of CCACs, continues for CCACs and is introduced in other areas as well.

Many critics have expressed deep concern that this Bill opens the door to a more fully privatized or two-tier health care system in Ontario. Some amendments to address these concerns were proposed after it went through hearings in the Standing Committee. Amendments that would specifically reject privatization, prohibit competitive bidding and stop contracting out were voted down by government members.

Once the Bill receives Royal Assent, we will begin to see the effects that these changes will have on health services in Ontario.

(Editor's note: Bill 36 received Royal Assent on 28 March 2006. HALCO will continue to monitor effects on the health services system in Ontario as a result of these changes.)

This article is updated from an article that appeared in the 10 March 2006 issue of ARCH Alert. Reprinted by permission of ARCH Disability Law Centre.



Supreme Court of Canada Ruling - Social Benefits Tribunal must consider human rights

On April 21, 2006, the Supreme Court of Canada released its decision in two related cases which have come to be known as "Werbeski." The Supreme Court has ruled that the when the Social Benefits Tribunal hears appeals related to social assistance and ODSP, they must consider and rule on related human rights issues when deciding the appeal.

The Case

Two Sudbury men - Norman Werbeski and Robert Tranchemontagne began a seven year legal battle when they were denied benefits under the Ontario Disability Support Program Act (ODSPA) even though they qualified under the ODSPA's definition of "person with a disability." This is because the legislation, passed by the Progressive Conservative government in 1997, specifically excludes persons whose sole disability is addiction to drugs or alcohol. Werbeski and Tranchemontagne challenged that exclusion on the basis that they were being discriminated against because of the nature of their disability, contrary to Ontario's Human Rights Code ("Code"). (Under the Code alcoholism and drug addiction are considered disabilities.) The Social

Benefits Tribunal (SBT) denied that it had the authority to consider the men's claims, stating that it did not have the jurisdiction to apply provisions of the Code to its own legislation. After the SBT refused to deal with it, the case went before the Ontario Court of Appeal which ruled that the men should instead file a complaint with the Ontario Human Rights Commission - a process that can take years to complete, and where there is no right to a hearing on the merits. As Grace Kurke, legal counsel for the Sudbury Legal Clinic, has noted, "In far too many cases, the SBT simply rejects appeals and refers people to the Ontario Human Rights Commission, where less than six percent of cases are ever heard." Werbeski and Tranchemontagne then asked the Supreme Court to order the SBT to hear their challenge.

As many of us are aware, people with disabilities frequently have their legal issues determined at tribunals, such as the SBT, the Consent and Capacity Board, the Health Services Appeal and Review Board, the Ontario Review Board, the Special Education Tribunal, and the Ontario Rental Housing Tribunal. In this case, The Supreme Court was asked to determine whether people can raise human rights arguments at any Ontario tribunal that has the power to consider legal issues, or whether all human rights matters may be raised only at the Ontario Human Rights Commission.

The Empowerment Council

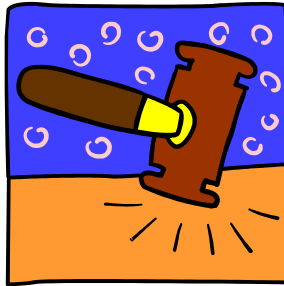
The Empowerment Council intervened and was represented by two legal aid clinics - ARCH

Disability Law Centre and East Toronto Legal Services. The Empowerment Council is composed of, and advocates on behalf of, persons who have been in the mental health and addictions systems. An autonomous body, it undertakes outreach, community development, systemic advocacy, education and other services designed to give a voice to persons with addiction and/or mental health issues on those matters that affect them. Because of its composition and mandate, the Empowerment Council understands the realities faced daily by persons with disabilities and the impact on such persons who are denied access to benefits that are available to others. The Empowerment Council argued that persons who find themselves before a tribunal, such as the SBT, and who have related human rights concerns should be able to raise them there, while they are already before the relevant tribunal. If they are not allowed to do so, and must instead start a separate human rights complaint, this could lead to harmful delays and uncertainty. As Jennifer Chambers, Coordinator of the Empowerment Council, has stated, "This is not a trivial matter. Access to timely justice can be about a person's liberty or even life or death. The supports people need to survive can not be doled out on a discriminatory basis."

The Ruling

On April 21, 2006, in a majority 4-3 decision, the Supreme Court ruled that when any tribunal handles appeal cases by citizens applying for benefits, specifically, disability benefits, tribunals must consider

provisions under provincial human rights codes before rendering decisions. The court stated that "In general, encouraging administrative tribunals to exercise their jurisdiction to decide human rights issues fulfills the laudable goal of bringing justice closer to the people." The SBT has been ordered to reconsider the case.



Reactions

The following are reactions to the decision:

"This is a very important decision for persons with disabilities. The majority of the Court made particular note of how hard it is for persons to have to wait for years to have their legal rights determined. The concerns of vulnerable people were heard in this case and that is a terrific victory indeed." - Lesli Bisgould, staff lawyer at ARCH Disability Law Centre.

"The Court grasped the importance of administrative justice for persons with disabilities and other vulnerable persons. This decision ensures that the most accessible forum is the one that must determine all of the legal issues associated with an appeal before an administrative tribunal." - Dianne Wintermute, Executive Director of East Toronto Community Legal Services.

"We are delighted with the result, as is the coalition of legal clinics who intervened in the case. Tribunals

have been clearly told people must be able to claim their human rights in a timely and accessible way." - Peter Chapin, Resident Barrister at Legal Aid Ontario's Clinic Resource Office and a lawyer for the appellants.

Adapted from The Empowerment Council's press release and backgrounder and Appellant's Media Advisory.



Garnishment: What You Need To Know

Garnishment is a way for a creditor to collect a debt that you have been ordered to pay. Here are some typical garnishment situations:

- * The Ontario Rental Housing Tribunal has ordered you to pay rent or damages to your landlord.
- * The Small Claims Court has ordered you to pay an outstanding debt for a purchase that you made or a service you received.

The parties to a garnishment are:

- * the **debtor**: the person who owes the money;
- * the **creditor**: the person the debtor has been ordered to pay the money to;
- * the **garnishee**: a person or organization that owes money to the debtor.

If you owe a debt to someone, they may send you a demand letter. This letter might set out the name of the

debtor and the amount that you owe. It should also give you a deadline for paying. If you do not pay this debt, the creditor may take you to court to get an order saying that you owe the debt and giving you a deadline for payment.

If the court or tribunal orders you to pay a sum of money and you do not pay, then the creditor can force you to pay the debt. One of the methods a creditor can use to make you pay the amount you have been ordered to pay is “garnishment”. The creditor may garnish the money in your bank accounts, or, if you work, your wages. In either case, your creditor must serve a Notice of Garnishment and a Garnishee’s Statement on your bank or your employer. The creditor must also serve you with a Notice of Garnishment. It is very important to note that your debt is now growing. You may be responsible for the interest, the court costs of the garnishment as well as the legal fees of the creditor.

Once your bank or your employer receives a Notice of Garnishment, they become the “garnishees”. The garnishee is legally bound to garnish you. This means your bank or your employer has been ordered to deduct money from your bank account or your wages and must give this money to your creditor.

If there is a reason that the garnishee cannot garnish you then the garnishee must complete the Garnishee’s Statement and return this document to the court within 10 days of receiving the Notice of Garnishment. For example, if the

creditor gives your former employer a Notice of Garnishment directing them to start deducting from your wages, your former employer must explain that you are no longer employed with them and must return the Garnishee’s Statement to the court or be held responsible for the debt.



The maximum amount that can be garnished from your wages is (in most cases) 20%. There are special rules for child support debts. Where the debt that is owed is child support, the rate of collection from wages is 50%. The only limit to the amount that can be garnished from your bank account is the amount of the judgement debt.

If you receive a Notice of Garnishment and wish to go before the court to give evidence that you cannot pay the debt or to offer to pay a lower monthly amount, you must file a motion to request a garnishment hearing. The motion has to be heard in the court that issues the Notice. If the debt is \$10,000 or less, the motion will be heard by the Small Claims Court.

There is no fee for a motion requesting a garnishment hearing. You must file this motion within 30 days after the Notice of Garnishment is sent. All of the Small Claims Court forms are free and can be

obtained either at a Small Claims Court directly or on line at the Ministry of Attorney General web-site at www.attorneygeneral.jus.gov.on.ca.

It is important that you take all of your documents with you on the day of your garnishment hearing. You should take proof of your income and expenses, any other debts that you are paying including other garnishments and any documents that relate to the debt that is the subject of the garnishment.

It may help to bring a statement from a credit counselling agency stating what your financial picture is. To locate a free nonprofit credit counselling agency in your area, contact the Ontario Association of Credit Counselling Agencies (OACCS). You can do this by going on-line to: www.oaccs.com, and clicking “OACCS Member Agencies” or call 1-888-7-IN DEBT (1-888-746-3328) to reach the OACCS Central Referral Service. You must have your witnesses and evidence with you on the day of your hearing. You may not get a second chance to present your evidence.

At your Motion on the Garnishment hearing the court may decide that you can make lower payments on the debts or suspend your payments for a period of time. The court may also determine any matters relating to the Notice of Garnishment or order parties to appear to provide evidence.

Fortunately, some income is protected from garnishment. Some examples of protected

income are Ontario Disability Support Program benefits, Canada Pension Plan disability benefits and Ontario Works assistance. This is not a complete list of protected sources of income. If you are not sure if your income is protected please call HALCO for more information.

If your income is protected you should notify your bank in writing that your income is protected and cannot be garnished. HALCO can assist you with a letter for this purpose that you can take to your bank.

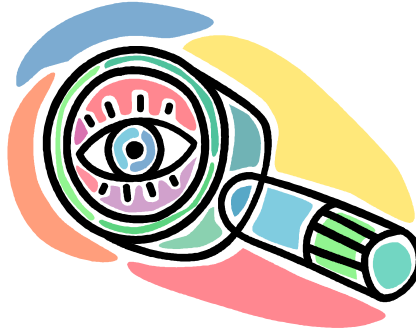
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Ombudsman Ontario Investigation – ODSP Complaints

More than 70 people have complained to the Ombudsman of Ontario about the lengthy delays in processing ODSP applications. Because of their complaints, the Ombudsman of Ontario, Andre Marin, has started an official investigation into this issue. ODSP recipients say that they lost benefits when the Ministry's delay in deciding their cases (in some cases, it took over 12 months) was combined with the ODSP legislation. This is because the ODSP legislation

only permits retroactive benefits to be paid for a maximum of a four-month period before the Ministry's decision. There is no time requirement for the Ministry in deciding cases. This means that recipients lose a month of benefits for every month beyond four that the Ministry takes to decide an application for benefits.



The ODSP Action Coalition (www.odspaction.ca) is asking ODSP recipients and applicants to submit any complaints they may wish to make to the Ombudsman's office. The types of complaints that are being submitted to the Ombudsman fall into one or more of the following categories: delays, lack of respect, poor communication, withholding information, inconsistency, ODSP staff not being knowledgeable about policies, procedures and regulations, lack of transparency, lack of fairness, lack of accountability, etc. If you are interested in submitting a complaint, please read on...

How to Complain to Ombudsman Ontario

Ombudsman Ontario investigates complaints about provincial government programs and services, such as ODSP. If Ombudsman Ontario finds a problem, they can make recommendations to fix it. If

the recommendations are not acted upon, the Ombudsman can report to the legislature. It is important to let the Ombudsman's office know how the treatment that you are complaining about has harmed you. Complaints can be made by:

Telephone, TTY, cassette recording

These complaints should provide a brief summary of the cause of the complaint. It may be beneficial to rehearse the phone call, TTY call, or cassette recording beforehand to see how the complaint will sound.

Fax, e-mail

Written complaints should also provide a brief story of the cause of the complaint. Ombudsman Ontario has forms that can be completed to make a written complaint.

In Person (for people whose first language is not English or French)

The Ombudsman's Office can set up an in-person appointment with an interpreter for people who prefer to make their complaint in a language other than English or French (including American Sign Language). To set up an in-person appointment, contact the Ombudsman's Office, briefly describe the complaint, and they will set up the appointment.

The Facts: Things to Remember!

Keep records of the facts:

- 1/. People who have been contacted about the problem.
- 2/. Dates of contact with people and organizations.
- 3/. Papers and letters relating to the complaint. (Cont'd on next page ▶)

Contact Information:

Ombudsman Ontario Access Centre
 English 1-800-263-1830
 French 1-800-387-2620
 TTY 1-866-411-4211
 Fax 1-866-863-2560
 E-mail -info@ombudsman.on.ca
 Website- www.ombudsman.on.ca



CALLING ALL VOLUNTEERS – INTERNATIONAL AIDS CONFERENCE AUGUST 13-18, 2006!!! JUNE 15 DEADLINE

The International AIDS Society and the Toronto Local Host are looking for 1000 local dedicated volunteers from Toronto and the surrounding region to help onsite at the XVI International AIDS Conference in Toronto in August 2006. Onsite volunteers at the Conference will receive free access to some of the Conference sessions and one free meal per day.

Volunteers will help plan the Conference, coordinate Toronto Local Host programme activities, greet visiting delegates, assist with registration, act as guides during the Conference, staff the Global Village and cultural activities, and perform

other crucial tasks. Volunteers will receive training and support from Toronto Local Host Secretariat volunteer coordinators.



Anyone interested in volunteering who is a resident in the Toronto area or able to secure transportation and housing should fill out a volunteer application form at the conference web site – www.aids2006.org (click on “volunteers” on the menu). The deadline for sending your registration in is **June 15, 2006**.



LOOKING FOR RESEARCH PARTICIPANTS – HONORARIUM PROVIDED

Are you **or do you know someone who is HIV positive & an immigrant, refugee, or person without status?** If you are from the African, Caribbean, South Asian, Southeast and East Asian, or Spanish-speaking communities, the Committee for Accessible AIDS Treatment (CAAT) would like to talk to you about:

*How your immigration experience has affected you? *How has HIV affected you? *What does mental health mean to you? *How do you take care of your mental health?

You will receive a small **honorarium** for taking part in the study. Information you give will be kept **private and confidential**. Your identity will **NOT** be shared with any government officials or anyone outside of the research team.

For more information, please contact: Y.Y. Brandon Chen - (416) 535-8501 x2041, or by email - YY.Chen@camh.net
 (You do not need to give your real name.)

This research study is being conducted by the Committee for Accessible AIDS Treatment (CAAT). Agencies that are supporting this study include: Asian Community AIDS Services (ACAS) • Alliance for South Asian AIDS Prevention (ASAAP) • Africans in Partnership Against AIDS (APAA) • Black Coalition for AIDS Prevention (Black-CAP) • Centre for Spanish-Speaking Peoples (CSSP) • University Health Network • St. Michael's Hospital • Centre for Addiction and Mental Health (CAMH) • Regent Park Community Health Centre • McMaster University • Toronto Public Health



CALL FOR PARTICIPANTS – HONORARIUM PROVIDED

“POSITIVE SPACES, HEALTHY PLACES” – COMMUNITY-BASED RESEARCH EXPLORING HIV, HOUSING & HEALTH

Help build a positive space for people living with HIV/AIDS in Ontario.

If you are living with HIV, then you know that where you live is just as important to your health as how you live.



There is a comprehensive research study aimed at improving the overall health and well-being of people living with HIV/AIDS (PHAs) across Ontario.

By participating in the HIV, housing and health study, you will be helping to shape the way PHAs live, for the better.

If you are HIV+ and living in Ontario, please call or email. Your

participation is completely confidential. An honorarium will be provided. To participate call 1-866-301-2548 (Toronto: 416-642-0181) or email: amrita@healthyhousing.ca

***The study is especially looking to talk with PHAs from Hamilton, London, Kitchener, York Region, Barrie, Peel, Peterborough, Durham, Kingston, Belleville, Sault St. Marie, North Bay and Sudbury.**



HALCO ANNUAL GENERAL MEETING – JUNE 15, 2006

Please join us on Thursday, June 15, 2006, from 7 – 9 p.m., for our Annual General Meeting! The meeting will be held here at HALCO - 65 Wellesley Street East, Suite 400 (Corner of Church and Wellesley, closest subway stop is Wellesley Station). Refreshments will be served.

We are very excited to have Dr. Evan Collins as our Guest Speaker for the evening. Dr. Collins is currently serving as Co-Chair, Community Programme Committee, with the XVI International AIDS Conference (to be held in Toronto August 13-18). Dr. Collins will be speaking to: **“Acting Local, Thinking Global: Toronto Hosts the International AIDS Conference, August 2006.”**

All are welcome to attend our AGM, however, only HALCO members (who have been members for at least 30 days prior to the AGM) are entitled to vote.

Please contact Catharine Allan at 416-340-7790 or 1-888-705-8889 for any inquiries. We wish to thank everyone for their continued support of HALCO and we hope to see everyone there!



THE LAST WORD...

**The following is a letter by Catherine Frazee concerning Human Rights Reform*

“NOW OR NEVER? AN OPEN LETTER TO MY COLLEAGUES IN THE SOCIAL JUSTICE MOVEMENT

Nearly 15 years ago the people of Ontario spoke about the pressing need for human rights reform. Individuals and representatives of organizations committed to the quest for social justice took the leap of faith that it requires to assemble resources, to prepare briefs, to attend hearings and to speak out.

In June of 1992, the independent Task Force appointed by the Government of Ontario and chaired by Mary Cornish expressed its gratitude to the members of the Ontario public who "gave generously" to their province-wide consultation. Their Task Force concluded that the problems chronicled in their report were "serious and urgent" and that "the current enforcement system for the protection of human rights needs to be radically altered to fulfill its mandate".

Was anyone listening?

A few. Staffers and commissioners at the beleaguered human rights commission, myself included, were listening. We were humbled by what we heard, as we too knew it was time for change. Our Human Rights Commission had been structured for a different kind of discrimination, a one-on-one contest between a clear offender and a clear victim. The institution that had stood as a beacon on our social landscape in 1961 had become backlogged and reactive. Public trust in the Commission's mission and vision was compromised by conflicting objectives -- in part, a legacy of legislative design better suited to keeping a lid on claims for redress than to addressing the deeper roots of social inequity.

Mary Cornish and her colleagues, Rick Miles and Ratna Omidvar, listened carefully. They engaged in a consultation process involving hundreds of community stakeholders, (135 written submissions and 750 oral presentations) conducted in seven different cities, with supportive documents prepared in 12 different languages, and designed to accommodate the unique needs and cultures of Aboriginal Ontarians and Deaf and Disabled Ontarians. Those consultations were honoured in the Task Force's 250-page final report, a report which described a Commission that had lost its way, a Commission that was "overwhelmed by individual claims that use up [it's] resources", a Commission therefore unable to "challenge systemic discrimination in a strategic and proactive way". The same report detailed a blueprint for reform, a

blueprint informed by the advisory and consultant contributions of some of Ontario's most highly respected human rights advocates: Bill Black, Beverly Johnson, Arnold Minors, David Lepofsky, Bruce Porter, Tom Warner, Mila Chavez-Wong and many others.

Until now, it would seem that no one else was listening. Until February of this year, when Attorney General Michael Bryant announced plans to introduce legislation this spring that would reform Ontario's human rights system. In the words of Globe columnist Murray Campbell, the government's proposals "mirror the recommendations" of the 1992 Cornish Task Force.

Reasonable people will disagree about the precise shape that change should take. Direct access to a tribunal, or an option of direct access; investigatory powers vested to a commission or a tribunal; advocacy services from a centralized commission or from community-based centres. We all have views on these questions, and good reasons to cite in support of these divergent views.

The issue of the moment is not the question of whose views will prevail on the nuts and bolts questions of human rights reform -- crucial though these questions may be. What matters at this moment is that we seem to have the attention of the government of the day, an on-the-record commitment and a timetable for reform this spring. I urge my colleagues in the social justice movement, for whom I have nothing

but the greatest of affection and respect, not to squander this opportunity.

Let us hold our politicians' feet to the fire to ensure that a newly structured system will direct an appropriate level of public dollars to the project of human rights enforcement. They have committed to a total human rights budget of \$15.1 million -- we can and should remain skeptical that \$1.2 million in new dollars will suffice. Good faith demands generous resourcing appropriate to the project of reform.

Our Attorney General has committed to provide "ongoing legal support and assistance", a "third branch of the human rights system, the commission being one, the tribunal being the second and the third being the provision of assistance or representation to complainants."

Let us hold his government to account, in no uncertain terms, to realize this commitment in the form of accessible, publicly funded, regionally situated expertise, along the lines of what Cornish described as "consumer oriented and community-driven advocacy services".

The government has committed to reforms that will "shorten the pipeline from complaint to resolution, and eliminate the detours to justice." Is that not music to our ears? Let us applaud this commitment, and as we do so, let us advocate for redeployment of the present Commission's skilled and committed staff, and recognition of

the vital role played by community clinics and organizations currently supporting the human rights struggles of Ontarians -- partners like the African Canadian Legal Clinic, the Centre for Equality Rights in Accommodation, and ARCH Disability Law Centre. Let us remind everyone that a human rights commission must emerge from this reform as nothing less than a full-bodied **champion** for human rights, a champion equipped to pursue leading edge strategies for the elimination of discrimination that leave no room for any doubt about who and what it stands for.

But please, let's not demand another public consultation that can become one more excuse for government inaction. We can have full, open and accessible public hearings on the basis of tabled legislation or a detailed pre-legislative proposal. But let's remember that every day of talk takes us one day further away from the moment of political resolve, one day further away from reforms now at least 15 years overdue, and still counting.

It is time for solidarity of purpose. The communities that we represent deserve nothing less. The principles that we stand for demand nothing less. It is time to seize the moment.

Catherine Frazee

Proud Disabled Citizen,
Former Chief Commissioner,
Ontario Human Rights Commission,
and Professor of Distinction,
Ryerson University School of
Disability Studies
April 5, 2006"



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