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Ontario Disability Support Program In Effect: What you should know

Did you know that Family Benefits no longer exists? On June 1, 1998, the Ontario Disability Support Program Act came into effect as part of the new Social Assistance Reform Act. The ODSP replaces the Family Benefits Act. The Ontario, Works Act, a replacement for General Welfare, came into effect on May 1, 1998.

So, you ask, what do I need to know about the ODSP? In this issue, we will talk about who gets "grandparented" onto the new program, what "grandparenting" means, general eligibility for the new program, and the "rapid reinstatement" rules under the ODSP. Finally, we will provide you with a quick guide to the things you need to know about how to appeal decisions affecting your benefits.

"Grandparenting" from Family Benefits

"Grandparenting" means being transferred to the new program without having to make a new application. If you were getting Family Benefits on May 31st, 1998, you may have been transferred to the new Ontario Disability Support Program.

Why is "grandparenting" important? Why would you want to keep your grandparented status? Under the new ODSP, any person who is grandparented has had their medical review date erased from the system. This means that as long as you keep your grandparented status, you will never be medically reviewed again.

In order to keep your grandparented status, you will have to continue to meet all of the requirements for eligibility in the new legislation. This includes the obligation to provide information as requested, report income, as well as any changes in residence or family size. The only information you will not be required to provide is new or updated medical information. This is true even if you go back to work.

Who gets "grandparented"?

Basically, you have been grandparented to the new program if you met three conditions on May 31st, 1998.

- either you received benefits from FB in the month of May, or had completed an application for benefits from FB by May 31, 1998 and are found to be disabled or permanently unemployable according to the old Family Benefits Act;

and

- you must have been eligible for FB because you were in one of the following groups of people on May 31st, 1998:

- a person who is blind or disabled or permanent unemployable and is 18 or older;

- a person who is between the ages of 60 and 64; or,

- a person who stays single and was single on May 31st, 1998 but who used to be the spouse of someone on FB and who has at least one dependent child living with them;

and

you must have kept your status as a grandparented person after June 1, 1998. You lose your status if you leave the ODSP and are not eligible for "rapid reinstatement".

What is "rapid reinstatement"?

"Rapid reinstatement" is an application process for the ODSP which does not require new medical information. Under the "rapid reinstatement" rules, you will only to show that you meet the financial eligibility rules.

If you are a grandparented recipient, you eligible for rapid reinstatement to the ODSP if:

- you have been off benefits for less than twelve months; **and**
- you are financially eligible; **and**
- you went off the ODSP because you earned too much money from a job or business **and for no other reason.**

If you were a grandparented recipient who went off the ODSP and you do not meet all three conditions, you will have to make a new application to the ODSP in order to get back on. This means you will have to submit new medicals and meet the new definition of disabled person.

If you are a new ODSP recipient or someone who has lost their grandparented status the rules for "rapid reinstatement" are different. In these cases, the "rapid reinstatement" rules will depend on whether or not you have been assigned a "review date".

When you make a new application to the program, your file is referred to the Disability Adjudication Unit (DAU). The DAU is a central office, located in Toronto. A DAU adjudicator will make a decision about whether you are disabled according to the ODSP definition. The DAU will assign a review date to your file unless your condition is not expected to improve. You are eligible for "rapid reinstatement" if you leave the ODSP for any reason, as long as your reapplication occurs before your next review date, or you are still found to be disabled on your review date.

If the DAU does not assign a review date, you will always be eligible for rapid reinstatement, and will never be medically reviewed or assessed again.

Applying for ODSP Benefits

Applying to the ODSP is different than accessing benefits under the old Family Benefits Act. Some people are automatically eligible for benefits on health grounds and do not need to be medically evaluated. If you are in the group of people who are automatically medically eligible, you are considered to be a member of a "prescribed class".

Who are the "prescribed classes" ?

The following people are automatically considered eligible on health grounds and make up the prescribed classes. They do not need to produce medical information to prove they are disabled.

- People who receive Canada Pension Plan Disability Benefits (CPP-D)
- People who are 65 and older who are not eligible for Old Age Security
- People who live in certain psychiatric facilities and in some special care homes

Your income must be less than a certain amount to be eligible for ODSP. The amount varies with family size and housing costs. There are also limits regarding the amount of assets (e.g. savings) you can have. The ODSP has rules about what is exempt as an asset or income. This means that they are not included when ODSP calculates your income and assets.

How Do I Apply?

You can make your application to the ODSP through the local Ontario Works (OW) "workfare" office. You can also apply directly at the local Ministry of Community and Social Services / ODSP office (these are the old Family Benefits offices). The basic rule regarding where to apply is based on whether or not you are in immediate financial need. If you need money right away, you should apply through the OW office. If you are not in immediate financial need, you will likely be referred directly to the ODSP office to make your application.

When you apply to ODSP, the very first thing the office will do is collect information from you. The information relates to your income and assets. This is to make sure you are financially eligible. Once this is determined, you will also have to show that you are eligible for benefits on the basis of your health status, unless you are a member of a prescribed class (see above).

Once you fill out an application form and you are determined to be both financially eligible and not a member of a prescribed class, your file will be referred to the Disability Adjudication Unit (DAU). The DAU is a centralized office in Toronto. A disability adjudicator makes a decision about whether you are disabled based on medical information. The DAU will mail a package of four forms out to you to be completed and returned. These forms are:

Health Status Report (HSR)

- mandatory form
- completed by a doctor, psychologist or optometrist
- provides medical information about your condition(s), treatment and prognosis

Activities of Daily Living Form (ADL)

- mandatory form
- completed by a doctor, psychologist, optometrist, occupational therapist, physical therapist, registered nurse practitioner or chiropractor
- about the ways in which your condition affects your day to day living

Consent to Disclose Medical Information Form

- mandatory form
- completed by you
- gives permission to your doctor to talk with the DAU

Self-Assessment Report

- optional, but must be signed and returned anyway
- completed by you, or an advocate
- allows you to provide information about your experience of your impairment(s)

You have 90 days from the day that the DAU mails out your forms to get them completed and returned to them. If they haven't received them within 60 days, they are supposed to send you a reminder letter. If you miss the 90 day time limit, they consider you to have withdrawn your application. This may cause very serious problems if you were on OW while waiting for ODSP. You may lose your OW or have to

participate in workfare. It is possible to request an extension of the 90 day time limit, but you will have to provide a good reason for the extension. If ODSP decides not to give you an extension, there is no way to appeal that decision.

Once your forms are returned to the DAU they will decide whether or not you are disabled. If they decide you are disabled, they will notify the ODSP office. The ODSP office will reverify your financial eligibility and you will begin receiving benefits. You should get benefits dating back to the day that your HSR, ADL and Consent to Release Medical Information forms were received by the DAU. If that date is more than four months ago, you will get back pay only for four months.

The DAU might set a review date for you. This means that on that date, you will be required to provide updated medical information to see if you still meet the definition of disability.

If, on the other hand, the DAU finds that you are not eligible on health grounds when you apply, or on your review date, they will notify you directly of this. They must provide reasons for their decision.

If this happens, you can appeal by writing a letter to the DAU and asking for an "internal review". You must do this very quickly - within 13 days of the date the denial letter was mailed to you (so keep the envelope!). The internal review letter should state

- that you disagree with the decision
- why you disagree
- that you would like an internal review of the decision

If the result of your internal review is still a denial, then you can appeal to the Social Benefits Tribunal (SBT). You cannot appeal to the SBT unless you have requested an internal review and it has been done, or the time limit for the DAU doing the internal review has expired.

Comings & Goings

It is with great sadness that the HIV & Legal Clinic has to bid adieu to our first articling student, Adwowa Rouse. Adwowa graduated in 1997 a law degree from Windsor and articulated with us for a year. When Adwowa started at the clinic on June 30, 1997, she brought with her extensive experience in community involvement and poverty law. We at the clinic are richer and better people being fortunate to work alongside with her. Under the pressure and demands of a poverty law

clinic, Adwowa maintained her professionalism by exhibiting intelligence, grace, and humour. We all know that the law profession gets slagged in many ways, but if there was ever a person who solidly exemplified all the positive qualities of what being a good lawyer is all about, it be Adwowa.

Cheers, Adwowa! The clients and staff thank you for all your hard work, and will always remember you.

Lavinia Inbar - Articling Student

Please. welcome our new articling student for 1998-99, Lavinia Inbar. Lavinia graduated in 1998 with a law degree from the University of Toronto. Lavina has completed coursework for a PH.D. in English Literature, and has won scholastic awards in her academic history. Lavinia also had volunteer experience working with children in the Cardiology Ward at the Hospital for Sick Children, has worked at the Advocacy Resource Centre for the handicapped and has assisted on many projects as a researcher, most notably a study at at U of T involving the intersections of women abuse and welfare. Lavinia is looking forward to working at HALCO, and sees this opportunity as a valuable building block towards her ultimate goal of a career in poverty law.

Welcome on board, Lavinia!

Planning for your Children: Guardianship Appointments

The Clinic often gets questions from concerned separated or divorced parents who want to secure the best possible future for their children in the event that they die. If you have sole custody of your children, you can appoint a person or persons in your will to have custody of your children and be guardians of their property on your death. This appointment is permitted by the Children's Law Reform Act, but it is effective for only 90 days after your death. In order for someone to obtain a permanent appointment, he or she would have to make an application to the court. If you have joint custody with someone else, that other parent will retain custody on your death.

Because the appointment in a will is only temporary, you may be concerned that a separated spouse or other party will be granted custody against your wishes. Even though the appointment in a will is only for 90 days, it is strong evidence of what you as the custodial parent would have wanted. You may also want to write out the reasons why you have chosen a particular guardian and why you did not choose

to appoint your separated spouse, for example. The written reasons are not legally binding but they will assist the court in making a determination about what is best for your children.

The uncertainty of the appointment of guardians has led some clients to consider making an application for joint custody with their intended guardian prior to death. For example, an HIV+ mother who did not want the biological father to apply for custody upon her death might make an application for joint custody now with her present partner, so that on her death her present partner obtains custody and not the biological father. Similarly, one can also make a joint application for adoption.

There are several factors that should be considered carefully before attempting either a custody or adoption application. First, both applications would have to be made on notice to the biological father in most cases. Consequently, the biological father may make a counter application for custody or to prevent the adoption. In a custody application, the father may seek custody or access. In support of his claim, he may argue that you as an HIV+ mother are unable to meet the needs of the children. By commencing litigation, you may have instigated a claim that he would otherwise not have initiated. The second factor to consider is that the joint application for custody if successful would still not prevent the father from making an application for custody at some later point. A court can always review decisions about custody if the court feels that it is in the children's best interests. If you are considering either of these options, you should review the pros and cons carefully with your lawyer before commencing any litigation.

Kelly D. Jordan is a Member of the Board of Directors of HALCO and a lawyer who practices with Watson Jordan in Toronto, Ontario.

Resources on the Net

Need some information about the new tenant Protection Act? Want to find out what the legislation says? Need to get a form so you can file an application?

No problem. The Tenant Protection Act is available for you to read on the Government of Ontario Website located at www.gov.on.ca. You can connect directly with the Ontario Rental Housing Tribunal (the body which hears all landlord and tenant applications). The website is located at www.ORHT.gov.on.ca.

If you are looking for information about the new Ontario Works Act, or the new Ontario Disability Support Program Act, the Policy Directive Manuals for both of these programs are available through the Ministry of Community and Social Services website. The MCSS site is available through the Government of Ontario site listed above.

For the truly adventurous, there are good sites with lots of information about the Canada Pension Plan and Employment Insurance. Information on both of these topics is available through the Human Resources and Development Canada website located at: <http://www.hrdc.dhrc.gc.ca>.

Finally, for an excellent resource for information about HIV/AIDS and the law, you can access research documents and reports produced by the Canadian HIV/AIDS Legal Network. Their site is located at: <http://www.aidslaw.ca>.

On Being A Litigant: Part 1

by **Robert G. Watkin**

"Gone with the Wind"

Exactly three years ago, I was forced to bring an action in the Supreme Court of Ontario, in large part focused on the discrimination I had experienced as a gay man. As a lawyer who had practised corporate commercial law for sixteen years, I thought I had at least a basic understanding of what would be involved in taking such a step. I also had no choice. My former partners delivered a letter abruptly informing me that they were terminating my insurance benefits. The only way I could try and stop them was to apply for an injunction. In a matter of a few short days some very critical decisions were taken and steps made. Three years later a great deal has happened and very little progress has been made.

On being asked to write this article I've had to look back over the events of the last three years and their effects on me and my role in them. I will try to pass on the benefit to you of what I have learned. What I have learned through my experience may give you a better understanding of what might happen if you do decide to sue. I will try to answer the questions: Why did I decide to sue? Why do I continue to do it? Would I do it again?

"One Flew Over the Cuckoo's Nest"

In 1994 when I was forced to stop working, I had been positive for at least seven years. I had been diagnosed with AIDS. I had been told that I had less than two years to live at least twice. I have been told this twice since. Yet the primary reason I left work was not the disease, but a depression so deep, penetrating and devastating that even now I don't like to think about it. If you are living with HIV or AIDS, you will understand the kind of traumatizing events that led to that moment in 1994 for me as you will have experienced many, if not all of the same kind of events in your own life. AIDS is a stigma disease. It has consequences for your life that go far beyond the effects of the disease itself.

My first visit with my lawyer was not to seek legal advice, but to obtain the independent opinion of a fellow lawyer about a fundamental career decision. His reaction came as a complete shock. At the time he told me I needed to get professional help immediately. It took me a month to absorb his reaction. He was right. I was experiencing a severe depression. With that depression, and as part of it, came surreal fits of uncontrollable rage. It was unpredictable what would trigger them. They were overwhelming in their intensity and they scared me.

If you have lived through an experience like mine, of whatever degree of intensity, which leads you to have to decide on litigation then, first and foremost, recognize that you are maybe dealing with some degree of depression. Recognize it and deal with it. Know the rage for what it is and get it under control. Don't act on it. Words spoken, acts taken and decisions made in the grasp of uncontrolled anger will come back to haunt you. Mine did and continue to do so. Even though I know I was uncontrollably irrational at the time, I still haven't forgiven myself for some of the things I said and did. Get your rage under some degree of control.

"Inherit the Wind"

Your lawyer is exactly that, your lawyer. He or she is not your psychological counsel or your emotional support. Your lawyer's purpose is to represent your interest once you are able to decide and express what that interest is. Hand holding isn't and shouldn't be a part of your lawyer's job description. His or her role is to guide your case through the maze of civil procedure and the laws applicable to your case and to give you the best representation possible within that context. Remember, as well, that he or she charges on the basis of time spent. Think carefully about whether it is money well spent before you call your lawyer for advice.

Your lawyer may be required to tell you things you don't want to hear. Be prepared for and expect it. Your lawyer will have to try to explain rules and principles of law that don't make any sense and seem at times to be ridiculous and created solely to frustrate you. Remember that your lawyer is only the messenger. He or she didn't make up the rules or the law. Remember that lawyers are subject to the same pressures and failings as the rest of us. He or she probably has a busy practice and, sometimes, a life outside of that practice. Try to develop some degree of tolerance and patience for this reality, as hard as that may be at some times.

What do you have a right to expect from your lawyer? You have the right to expect your lawyer to act in a professional manner, to at least try to explain to you what may seem to be completely illogical (rules of procedure, principles of law) in a way which gives you some understanding of it. You have the right to expect your lawyer to show some degree of knowledge about procedure and the law and the expertise to deal with it, and to deal with you and events, as they happen, in a timely manner. Your lawyer should return your calls in a reasonable time; explain things that are likely to happen in advance so you can understand and prepare for them; and do the things she or he has discussed with you when and how she or he said they would be done. You have the right to be treated with courtesy and respect. If you don't abuse your lawyer, then you have the right not to feel abused by him or her. You have the right to feel comfortable with your lawyer as a human being.

Unfortunately, you will not have the luxury of changing your lawyer for very long after your case starts. There is a general understanding in our legal system that changing lawyers midway through a case is seen as a sign of the weakness of your case. There are very few exceptions to this unwritten rule. You will have to make a final decision about your degree of comfort with your lawyer very early on in your case. Once made, you are for all intents and purposes stuck with your decision. Make it a good one. Try to see and speak to several lawyers before you decide on the one who is right for you.

"Whose life it is anyhow?"

The events which led up to your possible litigation are the story of your life. Once litigation starts, it is no longer your story. It is a series of events which others will interpret, select, shade and edit to suit their own ends. Your own lawyer will do it first to present those events in a way which gives rise to the application of particular laws in order to make a case on your behalf. The lawyer for the other side will do it to take apart your case or to build a case against you. The law of evidence

may not allow some of those events to be told at all or only to be told in a manner that robs them of the true effect and meaning they had for you. The person sitting in judgement will hear the different versions of those events in the way they are allowed to be presented and agree with one or the other of the presented versions, or even impose his or her own interpretation on those events. Each person interpreting those events tries to do so in light of the existing law, but inevitably does so in light of their own life experience and, sometimes, inherent bias, however unrecognized that bias may be for that person.

You will probably end up asking yourself who is on trial and for what. The fact is, whether you are the plaintiff or the defendant, you are. Events will be given emphasis that don't seem important to you. Words you have said or statements you have made will be isolated and dwelt upon all out of proportion to the context in which they were said or made. Events that are treated with critical importance during one stage of your action will be virtually ignored at another stage.

How do you react to all this? How do you cope? On a personal level, the answer is a complicated one. It is your story. Your life. It is hard not to be disturbed, hurt and sometimes very angry about how others interpret your story. Don't let those personal underlying feelings show. Try and be as detached as you possibly can. Cultivate that detachment. Work hard at it.

For the purposes of the action look to your lawyer for guidance. In many ways you are being required to perform a role. It is a peculiar kind of role but the artificiality of the litigation setting makes it one. In that sense your lawyer is your acting coach. He or she can't tell you what to say or how to say it. Your lawyer can, however, help you shape the method of your presentation and your demeanour while presenting your story. Over time you should acquire from your lawyer and your own experience a sense of when it is necessary to be dispassionate and when it is alright to feel angry and show it. It is a learning curve you will have to go through and, with experience, hopefully you will gain confidence in your ability to perform the role required of you. Some of us are just better players than others. Hopefully you will be better at it than the players on the other side.

Bob Watkin

[Click Here For Part Two Of "On Being A Litigant"](#)

1998 HALCO AGM First Announcement

The HALCO Annual General Meeting will be held on Wednesday, September 16, 1998 at the 519 Church Street Community Centre, 7-9 p.m. All members are encouraged to attend. In order to vote, members must have a valid membership for at least 30 days prior to the AGM. HALCO memberships are free, and valid for one (1) year. Individuals whose memberships need to be renewed will find a new membership form included with this newsletter. Please return the form to the office as soon as possible. Any individuals wishing to stand for election to the clinics Board of Directors are encouraged to contact Matthew Perry at 340-7790/1-888-705-8889 ASAP.

[Click Here To Go To Our Membership Form](#)

Update On PHIPA

It would appear that the Harris Government intends to continue with the process of bringing the Personal Health Information Protection Act (PHIPA) into effect. In a letter received by HALCO on June 29, 1998, Tim Hudak, Parliamentary Assistant to Health Minister Elizabeth Witmer indicated that the Ministry received approximately 200 written submissions in response to the draft PHIPA. In the letter, Mr. Hudak indicates that the Ministry is currently reviewing the submissions and using the suggestions to revise the draft legislation. It is clear, however, that the government fully intends to bring PHIPA into existence at some point in the future.

The draft PHIPA was released in November 1997 and requested submissions from interested parties. The HIV/AIDS Community Ad Hoc Committee on PHIPA drafted a [Position Statement](#) on the new legislation. The Position Statement was circulated among Ontario ASOs for endorsement. The Position Statement was submitted to Ministry of Health at the end of February, 1998 for consideration. The Statement was endorsed by 35 groups and organizations across the province.

A more detailed discussion of PHIPA is contained in the [Spring 1998](#) issue of halco news. Copies of the [Position Statement](#) are available by calling the clinic at (416) 340-7790 or 1-888-705-8889.

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