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**Date: March 30, 2006  
Re: Final Project Report**

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# ***Pathway to Progress*** **ODSP: Accountability, Reform & Systemic Change**

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Pro Bono Students Canada at the University of Western Ontario, Faculty of Law regrets that it cannot provide legal advice. This document contains a general discussion of certain legal and related issues only. Please consult with a lawyer for assistance with specific legal problems.

## Executive Summary

### *The CURA*

The Community University Research Alliance on Mental Health & Housing (“CURA”) is a participatory action research team based in London, Ontario which seeks to identify barriers to housing for those with mental illness and find solutions to these problems. The group is composed of members from various academic disciplines, community organizations, and government organizations. The CURA operates under funding from the Social Sciences & Humanities Research Council of Canada. The CURA’s work is centred around an intensive five-year process of data collection on every aspect of housing and everyday life with mental health survivors from all types of housing backgrounds in the London region. In addition, it has collected the opinions of many of the stakeholders in the housing process including consumers, landlords, social workers and front-line agency staff, shelter operators, and legal clinic lawyers to name a few.

### *The ODSP Project*

Over the past few years, the CURA has identified the law (including the rules and bureaucracy) surrounding the Ontario Disability Support Program (ODSP) as a major barrier to housing for people with mental illness. As a result, they have adopted the issue as one which requires policy analysis and advocacy and have taken steps to further that goal. Those steps have included reviewing the primary data collected to identify issues, conducting focus groups and interviews with various service providers, stakeholders, and consumers to identify problems and possible solutions, and organizing two annual projects in connection with the Pro Bono Students Canada student legal assistance program at Western Law. These projects have a goal of identifying areas for change and possible solutions for the CURA. The CURA will then present its findings to policymakers and advocate for appropriate change as necessary.

It is the CURA’s position that an effective strategy on mental health and housing cannot be developed unless there is an effective and accessible system of income support for those with serious and debilitating mental illness.

### *Project One: Reform & Accountability in ODSP*

The goal of Part One is to identify issues and develop solutions that stem from the need for better accessibility and increased accountability in the ODSP. In meeting these goals, we have identified problematic rules, regulations, and legislation of the program and, where appropriate, have developed solutions to those problems. We have also laid out a broad legislative statement in the form of a draft bill respecting a mechanism to increase accountability through a system of external review of the program.

Part One is divided into six sections. The priority recommendations include:

#### **Section 1: Applications: Accessibility, Support & Clarity**

- Removing the mystery from the system by creating an open and transparent process by which all potential applicants and current recipients receive information on the program in a form suitable to them.

### **Section 2: Applications: Disability Determination**

- Develop a clear, published tool that sets out the ODSP's decision-making criteria, and provide applicants and medical professionals with the tool when completing applications.
- Improve the Health Status Report, make the Self Report optional, and provide for full access to medical professionals without any cost to the applicant.

### **Section 3: Payments & Overpayments**

- Replace overpayment form letters with a meeting with a caseworker where the recipient has the overpayment clearly explained to them with supporting evidence and they co-operatively work to build a re-payment plan.

### **Section 4: Rates**

- Abolish all links between Ontario Works and ODSP. Create a temporary support provision for applicants to ODSP at much higher payment levels.

### **Section 5: Appeals**

- Eliminate the Internal Review and provide a system of legal representation to all persons pursuing appeals.

### **Section 6: Accountability**

- Implement a set of Service Protocols setting down deadlines for the provision of key ODSP services such as applications, decisions of the DAU, and eligibility for benefits decisions.
- Introduce an external oversight body and mechanism as recommended in the draft *ODSP Accountability Act*.

### ***Part Two: Systemic Change in ODSP***

The Ontario Disability Support Program (ODSP) has an excellent objective of providing financial assistance to eligible people with disabilities. However, ODSP is not achieving its objective because ODSP is an overly complicated program that does not always consider the unique circumstances of people with disabilities. ODSP is designed to severely restrict the number of people able to receive income supports, rather than assist people with disabilities to gain access to income supports. Furthermore, successful applicants do not receive an adequate level of income support.

In response to these systemic problems, and in order to improve ODSP, this paper makes three major recommendations:

- 1. Every applicant should have a caseworker provided by ODSP to assist them with their application and on-going reporting requirements.**
- 2. ODSP needs to change its attitude from an exclusionary program to a program that assists persons with disabilities get the support they need.**
- 3. The level of income support should be increased and linked to the Consumer Price Index.**

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## **Introduction & Overview**

Income security for people with disabilities is not an issue closely watched by many Ontarians. It is often an issue that only becomes relevant after a diagnosis of mental illness, an accident or disease causing physical disability, or perhaps when such afflictions affect someone close to us. It may surprise many Ontarians to learn that the system of income support provided to such people by the province suffers from many problems.

The Ontario Disability Support Program (ODSP) was instituted during the late 1990s in an effort to separate the disability branch from the welfare branch which was the subject of cutbacks and crackdowns. The political rhetoric suggested that the system would better serve Ontarians with disabilities by providing them with a dedicated system of support unlike the Family Benefits system that preceded it.

However, in the approximately eight year since its inception, ODSP has been plagued by administrative delays, ineffective organization, and overly complex rules and procedures which persist from the application process to the administration of benefits and the determination and collection of overpayments.

There are, at a minimum, two very good reasons why Ontarians should care about ODSP. The first is that inadequate rates and stress from encountering the system leads many into a state of poverty, barely able to afford the necessities of life and without hope of experiencing any of its luxuries. The second is that neglect of ODSP (along with all income support programs) has long-term impacts and costs for our society. Individuals living in poverty have a higher incidence of illness, worse overall health, and in the case of episodic mental illness, are at a greater risk of relapse. All of this contributes to higher health care costs and an increased burden on our overtaxed health care system. Inadequate shelter rates mean individuals are often forced to rely upon public housing, at an additional cost to our communities. Living at a subsistence level diminishes one's ability to work at full potential, hence reducing the likelihood of an individual reaching their maximum possible employability potential, leading to long-term dependence on the system. It is, we believe, a classic case of paying a little now or a lot down the road.

In its work since 2001, the Community University Research Alliance (CURA) on Mental Health & Housing has identified the ODSP system as an area of great concern. It has come to this conclusion through an intensive five-year process of data collection with mental health survivors from all types of housing in the London region. In addition, it has collected the opinions of many of the stakeholders in the housing process including consumers, landlords, social workers and front-line agency staff, shelter operators, and legal clinic lawyers to name a few. It is the CURA's position that an effective strategy on mental health and housing cannot be developed unless there is an effective and accessible system of income support for those with serious and debilitating mental illness.

It should be noted that a majority of the material in these reports relate to ODSP Income Support. The justification for this decision lies in the CURA's research data which suggests that only a fraction of individuals facing serious mental health and housing

issues will use Employment Supports. Certainly, looking at the reasons for this, along with a wider examination of that system is the basis of a worthy future project.

This is the second year of involvement for Western Law's branch of Pro Bono Students Canada in the CURA's ODSP policy project. This year, our projects are divided into two parts, each with a specific goal. Part One deals with policies that will help improve accessibility and accountability within ODSP. Part Two presents three key areas of systemic change within ODSP: the service delivery model, exclusionary attitudes within the system, and developing an effective policy to manage income support rates.

It is our hope that our collective effort will bring positive changes to the lives of those living on or applying to ODSP. Many of the actions required to make these changes require the co-operation of the provincial government. It is our hope that these reports will provide them with insight into the fundamental importance of this change.

## **History & Background of ODSP**

The rationale behind Ontario's social services system is largely a twentieth century concept that has undergone radical change since its post-WWII inception. In Ontario today, persons who suffer from serious disabilities which prevent them from holding employment and otherwise do not have sufficient financial resources are eligible for government support under the *Ontario Disability Support Program*.

The ODSP is a relatively new system. It was created and implemented in 1997-1998 by the Conservative government of Mike Harris. Understanding the political background to its introduction is helpful in understanding the underlying tone and functionality of the system as it exists today.

The Harris government was elected in 1995 with a neo-conservative platform designed to shrink the size of government, eliminate wasteful spending, and reduce the individual's reliance on the provincial government. These political agendas had been prevalent throughout many of Western countries during the time and many Canadian provinces and to an extent, the federal government, also went through a period of management based upon these principles. It has often been theorized by political scientists that neo-conservative philosophies are most popular during times of economic stagnancy and recession. Indeed, in 1995, Ontario was in the midst of a period of economic turmoil and the provincial government had both a considerable deficit and debt.

Upon taking office, one of the priorities of the Conservative government was social assistance reform. The government replaced the *Family Benefits Act* which provided for social assistance for all cases, with two separate pieces of legislation: the *Ontario Works Act* and the *Ontario Disability Support Program Act*. The rationale for this decision was that the government had campaigned on reducing the welfare benefits given to Ontarians and removing from the program all individuals able to work. In doing so, it was the government's wish not to affect those who were unable to work due to disability. Thus, two parallel systems of social assistance were created. Many critics have suggested that this move has led to a serious polarization of those who are deserving of social assistance benefits and those who are not. The result, it has been suggested, is a stigma associated with both programs.

Section 1 of the *Ontario Disability Support Program Act* sets out the purposes of the program; ODSP:

- (a) provides income and employment supports to eligible persons with disabilities;
- (b) recognizes that government, communities, families and individuals share responsibility for providing such supports;
- (c) effectively serves persons with disabilities who need assistance; and
- (d) is accountable to the taxpayers of Ontario.

These purposes clearly outline the government's chosen dual purposes of providing financial support and, just as importantly, controlling and possibly reducing the costs of the program.

It has been suggested that the cumulative effect of the legislation was to create a system of barriers which must be surpassed prior to an individual receiving benefits. In practice, it seems that the more barriers that exist, the more likely individuals will fail to succeed in their applications simply through frustration, by choosing not to continue an application when they reach a hurdle.

In 2003, the people of Ontario elected a Liberal government to replace the Conservatives. In their campaign promises, the Liberals promised to adopt a kinder, gentler approach to governing, a pledge which extended to the provision of social assistance. In the interim, severe fiscal pressures appear to have restricted the ability of the new government from taking large-scale new measures in social assistance. They did however, begin by implementing a 3% increase in social assistance benefits, the first in over a decade.

The Minister of Community & Social Services, the Hon. Sandra Pupatello also commissioned a report on the *Employment Assistance programs in Ontario Works & the Ontario Disability Support Program* which was prepared by her Parliamentary Secretary, Deb Matthews. The report was well-received but its scope was not wide enough to include an examination of Income Support. Considering the policy announcements from the government in the past year, it is clear that the government prefers to focus its attention on the Employment Support program, a system which involves less than 10% of the total ODSP client base.

As this note is written, the media continue debate the controversy around the current government's commitment to end the claw-back of the National Child Care Supplement from ODSP recipients. The recent Ontario budget took only a small step in reaching this goal. For those who rely upon the system, this is distressing news and demonstrates the government's commitment to controlling expenditures at all cost. It is also indicative of the amount of advocacy that needs to be done to demonstrate to the government the importance of reforming ODSP and providing adequate income support to Ontarians.

## **PART ONE:**

# **Reform & Accountability in ODSP**

## **Introduction to Part One**

The goal of Part One is to identify issues and develop solutions that stem from the need for better accessibility and increased accountability in the ODSP. In meeting these goals, we have identified problematic rules, regulations, and legislation of the program and, where appropriate developed solutions to those problems. We have also laid out a broad legislative statement in the form of a draft bill respecting a mechanism to increase accountability through external review of the program. This project builds upon previous CURA projects that have identified key problematic areas of the legislation, regulations, and policy directives by tracing the identified ODSP recipient's and stakeholders issues back to the specific offending provisions. Although in many cases, the solutions in this report do not go as far as rewriting the regulations, we have presented a proposed framework upon which new regulations can be based. This has been done with the belief that the legislators and policymakers to whom the CURA will address its concerns will have the resources to translate the general solutions into specific legislation.

The analyses for each of the two main areas of this project were carried out as follows. Issues affecting our target areas within ODSP were taken from the previous report. From there, a search of the legislation, regulations, and rules was undertaken to determine what language, if any, was possibly contributing to the problems observed in the system. Suggestions of improvement were provided, as well as ways in which new or reworded regulations could be implemented in order to avoid many of the resultant problems observed today. As many sections of the legislation and underlying regulations were identified as needing to be replaced or drastically reworked, a legislative draft of an *ODSP Accountability Act* was created not only to bolster the effectiveness of the reworked provisions, but to guide any new provisions that would be created in order to address many of the ongoing problems caused by the current legislation. The goal of the two parts of this project is to ensure that the system is open, transparent and accountable during key stages of the process and to ensure that the assistance provided by the system is more effectively and cooperatively delivered to those who need it.

The paper attempts to move forward with many of the problem areas of ODSP as outlined in the 2005 *Pro Bono Students Canada* report to the CURA. One of the uses of this information will be to assist the CURA in an advocacy role with various levels of government specifically on the issues facing ODSP. Another will be to provide the basis for it to direct research and develop future policy positions with respect to specific ODSP reform proposals.

We submit this project cognizant of the fact that there is still much work to do in developing long-term strategies for the reform of ODSP. The bureaucratic system that surrounds ODSP is complex and gaining an understanding of it requires conquering a steep learning curve. The interest groups that have and continue to advocate for change in the system must be commended and supported.

We would like to thank Dr. Cheryl Forchuk and CanVoice, Co-Directors of the CURA, for their support of our efforts on this project, as well as Diane Ewer of Little, Inglis & Price for her assistance.

Respectfully Submitted,

On Behalf of Pro Bono Students Canada  
Faculty of Law, University of Western Ontario

Per: David Lyons, Mike Kennedy, Ronan Lougheed

## **Current Issues & Recommendations for Reform**

### Report Sections

1. Applications: Accessibility, Support, Clarity
2. Applications: Disability Determination
3. Payments & Overpayments
4. Rates
5. Appeals
6. Accountability

## **Definitions**

*Note: The following abbreviations used herein are defined as follows:*

**ODSP Act or The Act:** *Ontario Disability Support Program Act, 1997*

**OW:** *Ontario Works*

**GR:** *ODSP General Regulation (Ontario Reg. 222/98)*

**PD:** Policy Directive (Income Support) of the Ontario Disability Support Program (web)

**DAU:** Disability Adjudication Unit of the Ontario Disability Support Program

**MCSS:** Ministry of Community & Social Services

**The Director:** Director of Ontario Disability Support Program (defined in s.2 of The Act)

**Applicant:** Any individual making application for support under *ODSP*.

**Recipient:** Any individual receiving support under *ODSP*.

**Disability:** A person meeting the definition found in s.4 of *The Act*.

**DDP:** Disability Determination Package

**HSR:** Health Status Report is a form that is part of the *DDP*, completed by a prescribed medical practitioner in accordance with *GR* s.46 and is required under *PD* 1.1; 1.2.

**ADLI:** Activities of Daily Living Index, a form that is part of the *DDP*, completed by a prescribed professional in accordance with *GR* s.46 and required under *PD* 1.1; 1.2.

**Self Report:** An optional report completed by the Applicant, that is part of the *DDP*. It is often used in conjunction with the individual's functioning as reported on the *ADLI* completed by a prescribed health professional.

**Tribunal:** Social Benefits Tribunal as defined in *The Act*.

**Caseworker:** A front-line employee of the Ontario Disability Support Program who's primary job is to work with Applicants and Recipients in the administration of the system.

## **Section One:** **Accessibility, Support & Clarity**

### **Issue: Open & Transparent Communication of the Application Process**

The website for MCSS which houses all information about ODSP is difficult to follow and lacks all the necessary information. The website should have a simple, easy to follow process that sets out the steps involved in an ODSP application and the approximate timeline for each step. (In conjunction with the recommendation on Protocols)

### **Current Situation:**

Users of the website receive only general information from the website. Only forms for the Employment Supports program are available online. The ODSP Handbook has much of the application process outlined; however, it is not immediately clear to the user that it contains such information.

### **Affected Legislation:**

*PD: 1.1*

### **Recommendation:**

- PD 1.1 states the “Standards” for the application process and outline that “everyone has the right to make an application for income support”. This should be amended to include:
  - (i) Everyone has the right to access information about ODSP in any reasonable manner they choose, including from an ODSP office, by mail, by telephone, or by the internet.
- Upgrade the ODSP website. Give it a web address that is easy to access and remember. [E.g.: *odsp.gov.on.ca*] Provide clear instructions to potential applicants [E.g.: If you want information on applying for ODSP, click here]. The website should be designed to the best practice standards for providing government services over the internet in Canada.

### **Rationale:**

The application process should not be a mystery. It should not be intimidating for potential Applicants who suffer from a variety of debilitating conditions to get information on the program and understand the application process they must enter. It should be clear, simple and provide all the information necessary along with further resources should the Applicant have questions.

### **Issue: Alternative notification process for ODSP decisions**

It is important to provide a method of alternative notification of the status of ODSP applications thereby recognizing the instability and often unanticipated moves of persons facing serious economic hardship and suffering from serious mental illnesses.

**Current Situation:**

Aside from the initial meeting with the Caseworker, most documents, forms and decisions get mailed to the last address submitted to ODSP, often with automatic deadlines which assume receipt after a stated number of mailing days. (e.g. PD 13.1 *re Notice of Decision*)

**Affected Legislation:**

GR: 14; 16; 56(1)

PD: 1.2; 13.1

**Recommendation:**

- GR Section 56(1) should be amended to require Caseworkers to take all reasonable steps necessary to communicate decisions to applicants/recipients. Such steps, over and above mailing documents, might include phoning or emailing the client or contacting a stated next of kin/alternative contact.
- Having a next of kin/alternative contact would require amendment to GR s.14 as well as consents to contact and disclose information under GR s.16.
- Amend PD 1.2 re notification of determination by DAU
- Amend PD 13.1 re written notice of decisions and timelines.

**Rationale:**

Currently, many important documents and decisions with time-sensitive deadlines are sent by mail to the last known address of the applicant/recipient. If there is no response within the set deadlines, the file will be put on hold or closed and the result is the individual may lose benefits or may have to re-file their entire application, enduring further lengthy delays in the process. The only exceptions are discretionary exemptions that may be granted upon request to the Director.

***Supporting Policies in Part II***

- Providing Caseworker throughout application process for all applicants
- Allowing Caseworkers to answer questions in process of completion of DDP's

## **Section Two:** **Applications – Disability Determination**

### **Issue: Availability of clear guidelines used by the DAU**

The decision-making criteria must be based on sound and widespread medical opinion and should be made publicly accessible including their rating and weighting systems for assessing various evidence.

### **Current Situation:**

The DAU issues a decision to the Applicant, providing written reasons to the Applicant as to their determination. No criteria or standard exists as to the content of these reasons.

### **Affected Legislation:**

*GR: 47; 56*

*PD: 1.2; 13.1*

### **Recommendation:**

- PD 1.2 should be amended to include the following:
  - Each decision of the DAU will include the name and qualifications of the individuals making the decision,
  - Forming part of PD 1.2, a new document shall be designed for which a suggested title is the *Diagnostic Assessment for the Determination of Disability (“DADD”)*. The DADD shall be designed and implemented by the DAU. This document will set out the method by which the determination of disability is made, including the criteria for the determination. It will be used by the DAU in the determination of the Disability status.
  - A sample DADD shall be included in the Disability Determination Package sent to Applicants (and given to their medical practitioners) as well as made publicly available on the MCSS website.
  - All decisions of the DAU will include a completed DADD indicating how the individual’s application was assessed and, in the cases of denials, what areas were found to be insufficient.

### **Rationale:**

The stated reasons of the DAU in assessing applications are often confusing to applicants. The reasons are often compressed and contain language difficult to understand. Often, the Applicant feels the medical practitioner who completed the HSR must have caused the denial while the practitioner felt they described the condition to the best of their ability. Using a DADD would allow applicants, as well as their advocates and medical professionals, to more clearly understand how their application failed to meet the criteria of the DAU. It would also provide better initial disclosure to the applicant should the individual wish to appeal to the Social Benefits Tribunal.

**Issue: Inadequacy of the Health Status Report for assessing mental illness**

The HSR is a general form for all types of illnesses and conditions which give rise to a potential Disability. Such a form is inadequate in assessing mental illness and how it gives rise to Disability status.

**Current Situation:**

Anyone not exempted from the Disability Determination process under PD 1.2 is required to submit a completed HSR as part of the DDP. The same HSR is used regardless of the type of condition affecting the Applicant.

**Affected Legislation:**

*PD* 1.1; 1.2 (generally)

**Recommendation:**

- Amend the Health Status Report. The form should contain specific sections for the assessment of physical impairments, mental impairments/disorder, and a section that deals with situations when both impairments are present.

**Rationale:**

The current forms used in the DDP are not adequate. Mental health professionals complain that the form is too general and makes it more difficult to assess disabilities arising from mental health issues.

**Issue: Use of inconsistencies by DAU in the Activities of Daily Living Index & Self Report forms**

The optional Self Report can be used against an applicant if there are inconsistencies between the Applicant's perceived level of functioning and the perception of the health professional completing the ADLI.

**Current Situation:**

Many advocates and professionals working with applicants feel the Self Report is only beneficial to applicants who complete it with the knowledge and cooperation of the individual completing the ADLI.

**Affected Legislation:**

*GR*: s.46 (as to the prescribed professionals)

*PD*: 1.1; 1.2 (generally)

**Recommendation:**

- Eliminate the Self Report form. Indicate on the ADLI that it should be completed by the prescribed professional with the cooperation and input of the Applicant. The ADLI should contain a statement which indicates that where an Applicant disagrees with the assessment of the prescribed professional, the Applicant may submit a separate written statement of the reasons for disagreement.

**Rationale:**

This change eliminates any potential for a denial of benefits by the DAU based upon inconsistencies between the ADLI and Self Report while providing Applicants the right to disagree with their ADLI, should they wish.

**Issue: Fees for the completion of ODSP application-related health forms**

The reality of today's health care environment is that medical professionals are overburdened with patients and taking the time to complete the Health Status Report and Activities of Daily Living Reports is an expense in their practice which they often pass on to patients, even if OHIP provides partial payment.

**Current Situation:**

Applicants may face fees for completing reports per page, photocopying records, contacting specialists etc, which may limit their ability to have the DDP properly completed.

**Affected Legislation:**

GR: 46 (as to prescribed health practitioners)

PD: 1.1; 1.2 (generally)

*Health Insurance Act, R.R.O. 1990, Reg. 552 & Schedule of Benefits for Physician Services under the Health Insurance Act*

**Recommendation:**

- The OHIP *Schedule of Benefits for Physician Services under the Health Insurance Act* needs to be amended to clearly provide for payment for all of the consultation, assessment and the completion of forms.
- In the alternative, the DDP should include a voucher for applicants to present to the medical practitioner with instructions on how to bill ODSP and the legislation should be amended to allow for these payments.

**Rationale:**

Even small fees of \$20-\$50 can be a severe burden on an individual with limited or no means and may serve as a barrier to the completion of the DDP. Allowing for direct billing of all fees by medical professionals removes this burden from applicants.

**Issue: Access to medical practitioners for the completion of the health forms**

Individuals without a family physician, psychiatrist, or other primary care practitioner face a difficult search to find a qualified individual to complete their assessments.

**Current Situation:**

Applicants may not have access to primary care practitioners or specialists needed to complete the DDP. In many communities province-wide, such services are in a critical shortage. Often, walk-in clinic and emergency room doctors will not get involved in the process citing a lack of patient history and time constraints.

**Affected Legislation:**

*PD: 1.2*

**Recommendation:**

- Amend PD 1.2 to include a provision that each ODSP office, in cooperation with the Ministry of Health, must make provisions to provide access to medical practitioners for the purposes of assessment and completion of health forms. This could be done by way of periodic clinics or referrals. There could be a provision requiring applicants to present basic evidence that they have made reasonable alternative efforts to find such assistance and have been unsuccessful.
- PD 1.2 should be amended to allow for extensions of time in filing a DDP in cases where an applicant has made reasonable unsuccessful attempts to secure the assistance of a primary care practitioner.

**Rationale:**

This provision is especially critical due to the acknowledged shortage of family physicians in Ontario and the cost and lack of coverage of outpatient mental health treatment.

***Supporting Policies in Part II***

- Extension of time for submission of DPP's
- Amendments to reflect an inclusive attitude within the Act
- Removal of restrictions on dependency-based disabilities
- More inclusive preamble to the Act

## **Section Three:** **Payments & Overpayments**

### **Issue: Overpayment letters**

The issuance of overpayment letters is a source of great stress and confusion to Recipients. Often, the language is confusing and technical and no evidence is provided unless the Recipient requests it.

### **Current Situation:**

The ODSP establishes an overpayment has occurred, and if it is over \$2.50, it will send the Recipient a letter by mail, setting out the overpayment, the reasons for it and the method it will use to collect the overpayment.

### **Affected Legislation:**

Act: 16

GR: 51

PD: 11.1

### **Recommendation:**

- PD 11.1 should be amended to state that overpayment letters are delivered by a Caseworker who will explain the source of the overpayment, present evidence of the overpayment, and develop a plan to rectify the overpayment based on the individual's circumstances.
- S.16(2) should be amended to include a provision that requires the meeting with the Caseworker prior to the Overpayment Notice becoming final.

### **Rationale:**

Every Recipient should have the right to have overpayments explained to them and have the opportunity to review the evidence of the overpayment. Such a provision may also increase the effectiveness of repayments.

## **Section Four:** **Rates**

### **Issue: Provision of temporary interim support via OW**

Providing OW to ODSP applicants with immediate financial need is inappropriate. The level of support is inadequate and it is delivered through a system that causes stigma and marginalization.

### **Current Situation:**

Applicants with immediate financial need apply through an OW office. They submit an ODSP application and are given OW benefits in the interim. These benefits are less than 60% of the regular full ODSP benefit to an individual.

### **Affected Legislation:**

*PD: 1.1*

### **Recommendation:**

- Amend PD 1.1 to remove the requirement that Applicants in financial need apply through an OW office.
- Create a method of temporary approval whereby a simple medical history form signed by a medical practitioner and eligibility test will be used to determine whether the Applicant qualifies for *prima facie* support.
- In cases where eligibility exists, ODSP support should be paid at a level at or no less than 80% of full ODSP benefits. Provisions should be included to bind the Applicant contractually to repay the excess benefits (excess over what the applicant would receive through OW, if eligible) should the Applicant's application be refused and the Director believes there was evidence of fraud or the Applicant otherwise abused the application process.

### **Rationale:**

This change provides a more reasonable level of support to legitimate ODSP Applicants and removes the burden of navigating two systems.

### ***Supporting Policies in Part II***

- Amendment to the purposes of the Act to include a standard of support
- Proposal to increase rates and ensure future increases reflect inflation

## **Section Five:** **Appeals**

### **Issue: Internal Review is unnecessary and should be made optional**

The Internal Review step is needless bureaucracy which serves to delay the Applicant's right of appeal. It should be eliminated with an amendment that provides a review at the request of the Applicant.

### **Current Situation:**

Under s.22(1) of the Act, all Applicants must request an Internal Review of their denial prior to appealing to the Tribunal.

### **Affected Legislation:**

*Act:* 22, 23(1)

*GR:* 56; 58; 59; 60

*PD:* 13.1; 13.2

### **Recommendation:**

- Amend s. 22 of the Act to make the Internal Review an optional request at the discretion of the Applicant should they wish to have new medical evidence reviewed by the DAU.
- Amend s.22 and 23 to update the timelines allowing Applicants to appeal directly to the Tribunal.
- Amend s.22 to include a statement that the Tribunal shall consider an appeal without regard for whether a decision has been subject to Internal Review.

### **Rationale:**

Applicants will not be subjected to further delays in filing appeals by a process which is duplicitous and rarely results in a change in decisions. The process is saved to allow for a review in cases where new medical evidence has come to light (the only current situation where an Internal Review is likely to produce a different result).

### **Issue: Representation of Appellants to the Tribunal**

The appeal to the Tribunal represents a major decision for applicants. While legal aid clinics provide much of the representation today, a more formal system to ensure access to representation is necessary.

### **Current Situation:**

Applicants receive instructions on the appeal process in their decisions. They must seek out legal advice if they choose and can otherwise attend the Tribunal self-represented.

### **Affected Legislation:**

*PD:* 13.2

**Recommendation:**

- All decisions denying benefits should clearly set out the rights of appeal. They should also contain a statement that recommends the Applicant seek out legal assistance from their lawyer or local legal clinic and provide instructions on how to contact a clinic.
- The Director should make arrangements with the Attorney General of Ontario for the provision of Duty Counsel at all Tribunal hearings for unrepresented individuals.

**Rationale:**

Proper representation of appellants is a crucial step in ensuring due process. Often, applicants are not aware of the importance or availability of legal assistance in their appeal. The Ontario Bar Association in its response to the Law Society of Upper Canada's *Report on Sole Practitioner & Small Firm Issues*, recommended that the Law Society and the Bar Association work to lobby the Ontario Government to provide duty counsel to be appointed for unrepresented individuals at hearings and tribunals.

## **Section Six:** **Accountability (I)**

### **Issue: Creation of Protocols for application processing & decision making**

Currently, there are very few published standards for the processing of ODSP applications. As such, application times vary widely leading to uncertainty and stress for Applicants.

### **Current Situation:**

PD: 1.1 requires an application be taken within 21 days of the Applicant's request. Processing timelines for decisions of the DAU can vary widely. Many advocates suggest 8-12 months waiting time on the DAU is possible in some cases.

### **Affected Legislation:**

Act: generally – Part IV (Administration of the Act)

PD: 1.1; 1.2

### **Recommendation:**

- Develop and implement a set of Service Protocols for Applicants & Recipients.
- Amend Part IV of the Act to include the following section:
  - (i) The Director is responsible for the efficient administration of the Program. The Director shall set annual Service Protocols for, at a minimum, the following Services and Decisions of the Ontario Disability Support Program:
    - Meetings with an ODSP caseworker to complete the Financial Eligibility Portion of an Application for Income Support
    - Decisions of the DAU re s.4(2) determinations in Applications for Income Support
    - Any decision re eligibility for a Benefit under Part VI of the General Regulations
  - (ii) The Service Protocols listed above shall include a stated number of calendar days as an acceptable maximum for the provision of each Service or Decision.
  - (iii) An Applicant, who has made a request for a Service or made an application that is pending a Decision, shall have the right to request an External Review of the provision of a Service or Decision on the calendar day following the last day of the stated acceptable Service Protocol as set by the Director.
  - (iv) An External Review in part (iii) above shall be made to the Ombudsman of Ontario or some other external body as the Director shall appoint.
  - (v) An External Review may impose conditions on the Director as to the provision of the subject Service or Decision which may include: the delivery of the subject Service or Decision forthwith, the payment of costs of the complainant; and, in the case of Decisions with a right of appeal to the Tribunal, the External Review may submit a report of its findings for

consideration by the Tribunal should the Applicant wish to pursue an appeal.

**Rationale:**

The provision of all government services should be subject to review. Applicants and Recipients deserve to have clearly stated minimum Service Protocols on key matters in the administration of ODSP.

## **Section Six:** **Accountability (II)**

### *Introduction*

The following document is a draft bill. Its general substance, format and style are designed for theoretical adoption within the Legislature of Ontario. It is framed in that manner in order to allow for the creation of a discrete oversight body specifically for ODSP, a system which does not presently exist.

There is fundamental importance to many of the decisions of ODSP in the lives of applicants and recipients. Denial or suspension of benefits can be a severe blow to an individual's hope of self-sufficiency. Such decisions add stress and turmoil to personal situations which are often already very difficult.

All individual citizens who access government services deserve accountability. This bill proposes to create a system of external accountability. It is hoped the result will be a more supportive and less restrictive system for all who wish to access it.

## *An Act to promote accountability within the Ontario Disability Support Program*

### **Preamble**

Section One of the Ontario Disability Support Program Act (“the ODSP Act”) sets out the purposes of the legislation to include “providing income and employment supports to eligible persons with disabilities” and to “effectively serve persons with disabilities who need assistance”.

Since its inception, the system of support developed by the ODSP Act has often failed to deliver this support “effectively” and therefore is failing to abide by the intent of the legislature of the Province of Ontario.

The government of the Province of Ontario has not adequately addressed the systemic delivery problems within the Ontario Disability Support Program that include, but are not limited to: significant delays in processing and determining applications, providing interim support through the Ontario Works program at a rate that is grossly insufficient, a lack of support for applicants and potential applicants in navigating the application process, and the enforcement of rules in a punitive and high-handed manner.

The result of these problems include undue hardship, stress, and poverty, the result of which is the marginalization of recipients to a point where recipients often become dependent upon the system to afford a life of bare subsistence.

### **Definitions**

1. In this Act,

“Applicant” means a person who applies for income support from the Ontario Disability Support Program or on whose behalf such an application is made

“Disability” means,

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,

- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; (“handicap”)

“Commissioner” means the Ontario Disability Support Program Commissioner as provided for in this Act.

“Recipient” means a person to whom income support from the Ontario Disability Support Program is provided.

“the Program” means the Ontario Disability Support Program.

## **2. Applicant’s Right of Access**

a) Every person in the province of Ontario has a right to access from the Program, detailed information on eligibility, applications, deadlines, rules, processing times, available support, additional services or benefits that an applicant or recipient may be eligible for, and privacy by means of communicating with any office of the Program and by other means of communication chosen by the Program, which shall, at least, include communication by telephone and via the internet.

b) Every person in the province of Ontario has a right to make application to the Program.

c) The rights of access provided in paragraphs (a) and (b) above shall include providing assisted access to all persons with a Disability.

d) Any response to a request for information from the Program on available benefits or support will include a list of all possible benefits available to the requesting party and the procedures necessary to access the benefits.

e) Any failure to provide access and information that has had a prejudicial effect on the Applicant’s ability to access the Program is grounds for the Applicant to file a complaint to the Commissioner under the procedure stated herein.

## **3. Recipient’s Right of Access**

a) Every Recipient has a right to access from the Program information on eligibility, available support, additional services or benefits, rules, processing times for requests, and privacy by means of communicating with any office of the Program and by other means of communication chosen by the Program which shall, at least, include communication by telephone and via the internet.

b) The rights of access provided in paragraph (a) above shall include providing assisted access to all persons with a Disability.

c) Any response to a request for information to the Program on available benefits or support will include a list of all possible benefits available to the requesting party and the procedures necessary to access the benefits.

d) Any failure to provide access and information that has had a prejudicial effect on the Recipient's ability to access the Program is grounds for the Recipient to file a complaint to the Commissioner under the procedure stated herein.

#### **4. Right to Decisions & Appeal**

Every decision of the Program, including but not limited to, the determination of the initial Application and any appeals, and any administrative decision affecting the individual's ability to access support or any benefits from the Program, shall include written reasons for the decision and if the decision is detrimental to the individual's ability to receive support from the Program, shall outline any steps that may be taken by the individual to rectify and resubmit their request, or if unavailable, shall clearly state the ability of any means of appeal and the relevant timelines for that procedure.

#### **5. Right to Respect & Dignity in the Provision of Services**

Every individual has the right to be dealt with by the Program:

- i. in a manner that ensures courtesy and respect of individuals,
- ii. in a manner that is fair and equitable,
- iii. in a manner that recognizes individual dignity and privacy,
- iv. in a manner that recognizes individual needs and preferences, including those based on ethnic, spiritual, linguistic, familial, and cultural factors,
- v. in a manner that recognizes and provides full access and accommodation to individuals with a Disability in a manner that is consistent with the *Ontarians with Disabilities Act, 2001*,
- vi. in a manner that recognizes and provides full access and accommodation to individuals with mental illness or disability.

#### **6. Right to Complain without Reprisal**

Every individual may take all reasonable steps in:

- i) questioning staff of the Program,
- ii) raising concerns about the administration of the Program,
- iii) requesting review of a decision or issue affecting their right to access the Program by a supervisor or by the Director,
- iv) making a complaint under this Act or any other legislative or regulatory system, without fear of interference, coercion, discrimination or reprisal.

#### **7. Office of the Commissioner of the Ontario Disability Support Program**

a) The Office of the Commissioner shall be created to provide oversight in the administration of the Program.

b) The Commissioner shall be responsible for ensuring the Program is:

- i) abiding by all rules, regulations, and legislation governing the Program,
    - ii) observing the rights set out in this Act,
    - iii) providing services in a manner that is fair, equitable, and respectful of the individual.
  - c) The Commissioner shall carry out their mandate by:
    - i) accepting, investigating, and reporting on complaints as outlined in section 8 below,
    - ii) seeking out and reporting on potential changes and improvements to the Program
    - ii) reporting annually to the Minister responsible for the Ontario Disability Support Program and to the legislature of Ontario as to the results of their work in carrying out their duties outlined in this Act.
  - d) The Commissioner shall be appointed by the Lieutenant Governor in Council on the address of the Assembly.
- 8. Complaints to the Commissioner**
- a) Any person may file a complaint with the Commissioner.
  - b) A complaint must be based upon one of the following grounds:
    - i) the Program has failed to follow its governing rules, regulations, and legislation in the administration of the Program,
    - ii) the Program has failed to observe any right set down in this Act,
    - iii) any other basis with the express approval of the Commissioner.
  - c) Any complaint to the Commissioner surrounding an issue over which the Program is still actively considering a decision or over which there remains a right of appeal to the Social Benefits Tribunal shall be held and a file not opened until the decision is complete and any rights of appeal have been exhausted.
  - d) The Commissioner has the power to investigate complaints as if they were acting in the place of the Ombudsman of Ontario and in accordance with the powers and obligations prescribed by the *Ombudsman Act, (R.S.O., 1990 Chap. 06)*
  - e) The Ombudsman of Ontario shall retain investigative authority over the Program but shall delegate that authority to the Commissioner to investigate matters that fall within the grounds of this section.
  - f) The Commissioner will make a preliminary investigation of a complaint to ensure that it meets the required grounds and that there is *prima facie* evidence that supports the complaint. The Commissioner will then report to the complainant the results of the preliminary investigation, including, whether or not the complaint warrants further investigation.
  - g) Upon concluding all investigations, the Commissioner will issue a report of findings to the following parties:

- i) the complainant
- ii) the Minister responsible for the Ontario Disability Support Program
- iii) the Director of the Program
- iv) any other staff member of the Program to whom the findings would be pertinent.

h) The Commissioner may make an order to the Director of the Program requiring the Program to reconsider a decision or action which affected the complainant.

#### **9. Limits on the decisions of the Commissioner**

The Commissioner does not have the power to investigate, report or make orders over any decision of the Social Benefits Tribunal or any court of law.

#### **10. Commencement**

This Act comes into effect on a day to be named by proclamation of the Lieutenant Governor.

#### **11. Short title**

The short title of this Act is the *ODSP Accountability Act, 2006*.

## **Conclusion to Part One**

It is clear that there are numerous problems affecting various aspects of the *Ontario Disability Support Program*. In order to improve ODSP, various modifications and additions will need to be made to the regulatory framework behind the Program. This includes the regulations, the Act itself, and the Policy Directives.

Much of the work required to improve ODSP is not necessarily legal, but rather political. It is therefore beneficial that most of the changes are directed towards the regulations and rules since any modifications do not have to be passed by the Provincial Parliament. However, political will is still required to effect these changes.

It is beyond the scope and mandate of this project and the *Pro Bono Students Canada* program to advocate for the adoption of these proposals. We are hopeful that the CURA will find these proposals useful and will adopt them and move forward advocating change within ODSP.

It is hoped that this paper will provide not only insight into the severity of the problems affecting ODSP, but also provide a basis for establishing possible solutions. While the recommendations contained in this paper do not encompass definitive answers to all of ODSP's problems, it provides a starting point for a discussion of reform within ODSP. Perhaps most importantly, the paper establishes that change is possible and that the numerous problems which inflict the Ontario Disability Support Program are not without resolutions.

## **PART TWO:**

# **Systemic Change in the ODSP Delivery Model**

## **Introduction to Part Two**

The goal of part two is to identify ways in which systemic changes to the Ontario Disability Support Program (ODSP) can be implemented through amendments to the ODSP legislation, regulations, and policy directives as well as modification to the attitudes of ODSP service providers. For the sake of clarity, this part is broken down into three parts. First, we looked at ways to reform the ODSP system from its current business-centered model to a client-centered model. Our position is that the ODSP would operate in a more efficient manner if every applicant and recipient is assigned a caseworker to take them step by step through the application process. Second, we have investigated ways to change the attitudes of ODSP service providers. The ODSP legislation itself has exclusionary and possibly discriminatory provisions built into it, which can negatively affect applicants and recipients. The final area of focus in part two involves the current income level supports. Based on our analysis we have found that the ODSP Act does not guarantee a healthy level of income support and as well, there are possibly negative implications to the fact that in the event of an overpayment, the ODSP can demand repayment which may lead to severe cash flow issues.

The analysis for each of the three parts was carried out as follows. A problem area in the current legislation, regulation or policy directive was identified and an amendment or addition proposed. The rationale behind the amendment is discussed to explain how the amendment will improve the service delivery of ODSP. In addition to the amendments, consideration is given to supporting policies that complement the amendments. The reason for the supporting policies is that not all problems with ODSP are amenable to change only by way of legislative enactment. As well, unresolved considerations relating to the problem areas are discussed. These are usually included due to difficulties in obtaining complete information that would assist in a decision to implement a particular recommendation. Internal information on ODSP is not always readily available, which is one constraint on part two.

The paper attempts to touch upon some of the main problem areas of ODSP. It does not discuss all problems and there are areas for further research. More changes than those outlined here are needed in order to strengthen the delivery of ODSP services. However, the areas covered by the paper have been identified as high priority areas by the Community-University Research Alliance. One clear message to be taken from the paper is that ODSP is in need of reform and its possible to improve the program.

## **Acknowledgments**

The preparation of part two of this project involved a number of contributors who have influenced the final draft.

First of all, we would like to thank the Community-University Research Alliance (CURA) and all its members for their input and direction. Part two was written in support of their efforts toward social change.

Thanks to all the community members and interested parties who took time to read and comment on the successive drafts.

Thank you to the authors of part one who reviewed part two and provided feedback and guidance.

Finally, thanks to our lawyer, Andrew Bolter for his review of our project.

## **Section One:** **Shift from a business model to client-centered model**

### **Issue: The ODSP would operate more efficiently if each applicant/recipient was assigned a caseworker**

Many clients will benefit greatly if the ODSP incorporates caseworkers into their delivery model. The caseworker will be there to provide assistance to the client at all stages of the application process, and beyond. Once an applicant is assigned a caseworker, this caseworker should be that applicant's main point of contact with ODSP throughout the application process. The same caseworker should also continue to be the main point of contact after the client has qualified for the program. Any additional costs of changing to a caseworker delivery model would be offset by numerous benefits to the applicant, to the program, and to society as a whole.

The implementation of a system of a client-caseworker relationship will ensure efficient and effective use of ODSP resources. ODSP clients will not have to spend time re-explaining their situation and waiting for the ODSP staff to get caught up on their circumstances. The caseworker will be familiar with their particular clients, and they will be better able to serve them. The client-case worker relationship will also serve to boost client's confidence in the system as they will feel much more comfortable dealing with the same person each time they contact the ODSP office. The present system is frustrating for the individual, and time consuming for the ODSP staff.

It should be noted that not all applicants and recipients of ODSP supports require a caseworker. But this would be a great support to those who have difficulty completing applications and meeting ongoing reporting requirements. Historically a caseworker was provided and it fostered a much more supportive environment. Caseworkers should be assigned to anyone who wishes to have one.

By ensuring that all qualified applicants receive ODSP support, the caseworker will create an overall savings in costs to society. This will include immediate savings such as less reliance on shelters and food banks, as well as longer term savings in health care costs, and from a reduction in crime.

There are five aspects of the program that must be amended to reflect the role of caseworkers within the ODSP.

### **Sub-Issue 1: Financial Assessment**

#### **Current Policy Directive**

ODSP Policy Directive 1.1 reads as follows:

*Intent of Policy: To provide a prompt and comprehensive response to requests for income support and to ensure the information and verification necessary to establish eligibility for income support is provided.*

### **Proposed Amendment**

*Intent of Policy: To provide a prompt and comprehensive response to requests for income support, by assisting applicants through the application process, and by ensuring that all information and verification necessary to establish eligibility for income support has been provided.*

Also, to be added as a new point under Application of Policy: Standards (on page 2).

*An applicant will be assigned an OSDP caseworker. The caseworker will provide assistance, as required, during this stage of the application.*

### **Rationale**

Applicants who are not in need of emergency financial assistance apply for ODSP support directly through the ODSP office. The applicant must assemble a wide variety of information in order to undergo a financial assessment with the member of ODSP staff. The current wording of both the intent and the standards of Policy Directive 1.1 portray the role of ODSP staff as a computer-like fact-checker. ODSP workers are currently restrained from giving much assistance to clients in the filling out of the introductory papers that provide proof of eligibility. As a result, many clients have their application refused the first time, simply because they could not answer the required questions in the manner required by ODSP. The caseworker should play a more hands-on role, offering assistance and guidance if the applicant so requires in procuring the information, and in completing the forms. The caseworker will be able to better advise the applicant on both the financial and the medical criteria that must be fulfilled to qualify for support. Having a caseworker assist the applicant in this manner will result in more properly screened applications, and will help speed up the review process.

### **Sub-Issue 2: Disability Adjudication Process**

#### **Current Policy Directive**

ODSP Policy Directive 1.2: Disability Adjudication Process

*Applications Made through ODSP Offices, page 2: Once financial eligibility has been established, a referral is made to the DAU and a DDP is provided to the client.*

#### **Proposed amendment**

*Applications Made through ODSP Offices, page 2: Once financial eligibility has been established, a referral is made to the DAU and a DDP is provided to the client. The applicant will have the option of discussing the DDP with their caseworker. The client's*

*health professional will be able to obtain clarification regarding the DPP from that applicant's caseworker and from the applicant directly.*

### **Rationale**

According to the Income Security Advocacy Centre, the Disability Determination Package (DDP) is the most significant challenge to ODSP applicants. "In the 2000/2001 fiscal year, almost 40% of applicants referred to the DAU did not, ultimately, submit a DDP package".<sup>1</sup> These are individuals who have started an application process with the ODSP, and have been deemed to qualify financially for the program. This statistic is evidence of a very serious problem within the system. Presently, there is no support or assistance offered to applicants during this part of the process.<sup>2</sup> Caseworkers should be available for consultation during this period of time.

Furthermore, there is evidence that the forms are even confusing for the health professionals, and as such are difficult for them to complete.<sup>3</sup> The current instructions provided within the DDP must be improved, so as to make the forms easier to understand. The applicant's caseworker should also be available as needed to answer general questions and provide general instructions to the medical practitioner.

One individual with whom we spoke to indicated that his DPP was filled out by his doctor. After reviewing what his doctor had written, he realised that the doctor did not have any understanding of his daily life situation and the challenges he was facing. When the DPP was filled out by both the applicant and the doctor together, a much more accurate DPP was the result.

### **Current Policy Directive: ODSP Policy Directive 1.2**

*Applications Made through Ontario Works, page 3: Once financial eligibility has been established, a referral is made to the DAU and a DDP is provided to the client.*

### **Proposed amendment**

*Page 3: Once financial eligibility has been established, a referral is made to the DAU and a DDP is provided to the client. At this point, the applicant will be assigned an ODSP caseworker. The applicant will have the option of discussing the DDP with their caseworker. The client's medical professional will be able to obtain clarification regarding the DDP from that applicant's caseworker and from the client.*

### **Rationale**

Since individuals applying through Ontario Works do not acquire an ODSP caseworker during the financial assessment stage, it is important that they be assigned one at this

<sup>1</sup> Income Security Advocacy Centre, "Denial by Design... the Ontario Disability Support Program" (2003) 11.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid* at 12.

point. The main rationale for having a caseworker during this stage of the application is outlined above.

**Current Regulation: Reg. 222/98 ss. 5(3), 5(4), 16(5)**

*S. 5(3): If a review date for a disability determination has been set under subsection (1), the information requested under paragraph 1 of section 47 must be provided within 90 days after the request is made unless an extension has been granted by the Director.*

*S. 5(4): If the information described under subsection (3) is not provided within the 90-day period or within the extended time period, the recipient or the spouse included in the benefit unit is not eligible for income support.*

*S. 16(5): An application referred to in subsection 14 (1) that has not been completed within 90 days after a request under paragraph 1 of section 47 has been made shall be deemed to be withdrawn unless the Director approves a greater period of time for its completion.*

**Proposed amendment**

*S. 5(3): If a review date for a disability determination has been set under subsection (1), the information requested under paragraph 1 of section 47 must be provided within 180 days after the request is made unless an extension has been granted by the Director.*

*S. 5(4): If the information described under subsection (3) is not provided within the 180-day period or within the extended time period, the recipient or the spouse included in the benefit unit is not eligible for income support.*

*S. 16(5): An application referred to in subsection 14 (1) that has not been completed within 180 days after a request under paragraph 1 of section 47 has been made shall be deemed to be withdrawn unless the Director approves a greater period of time for its completion.*

**Rationale**

The current 90-day time limit places an unfair burden on the applicant. One particular concern is that applicants may have poor access to doctors, particularly in under-serviced parts of the province.<sup>4</sup> This would further compound the already existing problems surrounding the complexity of the DDP. It stands to reason that the large number of applicants who don't end up submitting a DDP have been impacted by this short timeline. Since the ODSP double-checks the finances of an applicant after a successful disability determination, there is no institutional need to receive the DDP so soon after the original financial assessment. The timeframe should be expanded from 90 days to 180 days, in order to provide the applicant with more time to submit the DDP.

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<sup>4</sup> Memorandum from David Lyons *et al*, (March 24 2005) *Examining the Ontario Disability Support Program: Issues and Solutions* at 11.

## **Current Policy Directive: ODSP Policy Directive 1.2**

Summary of Legislation, page 1: *The applicant must have a Disability Determination Package (DDP) completed and returned to the Disability Adjudication Unit (DAU) within 90 days.*

## **Proposed Amendment**

Summary of Legislation, page 1: *The applicant must have a Disability Determination Package (DDP) completed and returned to the Disability Adjudication Unit (DAU) within 180 days.*

## **Rationale**

Same as above.

## **Supporting Policies**

The legislative and policy changes noted above will have to be accompanied by a modification to current ODSP staff training practices. Training should be provided so as to prepare ODSP staff to be more responsive and involved in the applications of their clients. Increased disability awareness training should also be a part of this training regime.

## **Unresolved Considerations**

The following questions and considerations focus on the additional costs associated with hiring extra caseworkers, as well as the training and education that these caseworkers would require.

How much more time would ODSP staff have to spend with each applicant, and how many more staff would need to be hired to meet this demand? What qualifications and training do current staff have, and what (if any) enhanced qualifications and training would be required to do the job of a caseworker? Is it a matter of formal education (such as a Bachelor of Social Work or Masters of Social Work), or a matter of on the job training? Could current members of ODSP staff be integrated into a new delivery model?

It is essential that a provincial-wide standard be met for ODSP caseworkers. These are important logistical matters that must be taken into account in moving forward on this matter.

## **Section Two:** **Changing attitudes of ODSP service providers**

### **Issue: The ODSP Act has an exclusionary attitude**

#### **Current Legislation, Regulation, or Policy Directive**

ODSP Act, section 5(1) – relating to eligibility for income support

*No person is eligible for income support unless,*

#### **Proposed Amendment**

Change the language quoted above to:

*A person is eligible for income support when,*

#### **Rationale**

This amendment is a minor adjustment, yet it would involve a shift from exclusionary language to language that supports the inclusion of people meeting the criteria set out in the act. While it results in no substantive change to the requirements for a person to be eligible, the aim of the change reflects the discussion below.

#### **Supporting Policies**

ODSP should actively advertise the availability of ODSP income supports to potential recipients. It is a right of all Ontario residents who are eligible for income supports to receive them. Many eligible people currently do not know about the ODSP program and should be made aware of it. As one anonymous front-line ODSP worker told us, if everyone eligible for ODSP applied, they would be overwhelmed and not be able to handle applications in a timely manner.

Aside from actively advertising the availability of ODSP income supports in general, ODSP should make all recipients aware of any potential services that they are entitled to. Access to information has been problematic with ODSP, for example with regards to special devices and assistive devices. Part One: Reform & Accountability in ODSP includes in Section 6 a draft bill. Section 2 of that draft bill outlines an access to information requirement for recipients.

#### **Unresolved Considerations**

What is currently done in the way of advertising the availability of ODSP assistance?  
How well partnered is ODSP with disability organisations? What are the best methods

for improving advertisement of ODSP supports? What other policy options are available to support a more welcoming attitude on the part of OSDP when taking in new clients?

Section 16 of the Ontarians with Disabilities Act, 2001 sets out an accessibility policy requirement for government agencies. It states the following:

*S. 16(1) Every agency shall prepare an accessibility policy.*

*S. 16(2) The accessibility policy shall address the provision of services to persons with disabilities in the policies, programs and practices of the agency.*

For 2005-2006, the Minister of Community and Social Services, Sandra Pupatello, lays out such an accessibility plan. It discusses at one point Awareness, Access and Accountability (AAA) training that over 300 employees received. All new employees receive this within 90 days of being hired. It would be useful to know exactly what this training involved, the impact it has had, how standardised it is, and who has not yet received it. In any case, this sort of training sounds like a step in the right direction towards improving accessibility.

**Issue: The ODSP Act has a discriminatory approach to people dependent on or addicted to alcohol and drugs**

**Current Legislation, Regulation, or Policy Directive**

ODSP Act, section 5(2) – relating to eligibility for income support

*A person is not eligible for income support if,*

*(a) the person is dependent on or addicted to alcohol, a drug or some other chemically active substance;*

*(b) the alcohol, drug or other substance has not been authorized by prescription as provided for in the regulations; and*

*(c) the only substantial restriction in activities of daily living is attributable to the use or cessation of use of the alcohol, drug or other substance at the time of determining or reviewing eligibility.*

ODSP Act, section 5(3) – relating to eligibility for income support

*Subsection (2) does not apply with respect to a person who, in addition to being dependent on or addicted to alcohol, a drug or some other chemically active substance, has a substantial physical or mental impairment, whether or not that impairment is caused by the use of alcohol, a drug or some other chemically active substance.*

**Proposed Amendment**

Remove section 5(2) and section 5(3) altogether.

## **Rationale**

A dependence on alcohol or drugs has been associated with issues of mental health and disability, not as something entirely independent. This broad exclusion does recognise that alcohol and drug addiction or dependence may be a disability in itself. Section 5(2) makes it clear that anyone addicted to drugs and alcohol is ineligible for income supports. Where an addiction or dependence is combined with a physical or mental impairment, a person then becomes eligible under s. 5(3).

These sections are most likely included to reflect a policy choice of excluding people addicted to drugs and alcohol from receiving supports. It essentially reinforces a societal stigma against such people, who comprise a group that may be in great need of support. Unless clear scientific evidence is brought forth demonstrating that alcohol and drug addiction/dependence are not forms of mental disability, there is no place for these exclusionary sections in the legislation.

## **Supporting Policies**

When an individual applies for income supports and notes an addiction/dependence, ODSP should provide referral services to drug and alcohol rehab services.

## **Unresolved Considerations**

How many applicants are there for income supports citing only alcohol and drug related challenges as their disability?

## **Issue: ODSP is not accountable to applicants and recipients**

### **Current Legislation, Regulation, or Policy Directive**

The ODSP Act outlines its purposes in section 1, which read as follows:

*The purpose of this Act is to establish a program that,*

- (a) provides income and employment supports to eligible persons with disabilities;*
- (b) recognizes that government, communities, families and individuals share responsibility for providing such supports;*
- (c) effectively serves persons with disabilities who need assistance; and*
- (d) is accountable to the taxpayers of Ontario.*

### **Proposed Amendment**

In addition to the enumerated purposes, a further purpose should be added:

*(e) is accountable to the applicants and recipients of ODSP and is transparent in its decision making.*

## **Rationale**

Receiving ODSP supports is a right for all eligible Ontarians. It is important to make the ODSP system accountable to those who rely on it. Too much focus on accountability to the taxpayers of Ontario is one of the key reasons why the ODSP has become exclusionary. It has resulted in the creation of irrational barriers that purport to be in place to avoid, in part, fraudulent use of the ODSP system.

There needs to be a balance between accountability to taxpayers and accountability to those people relying on ODSP.

## **Supporting Policies**

Accountability and transparency are the focus of Part One: Reform & Accountability in ODSP. Supporting policies are discussed in great detail there.

## **Issue: ODSP does not treat individuals living with a partner or family member as individuals**

### **Current Legislation, Regulation, or Policy Directive**

ODSP Policy Directives 2.3 Spouse/Same-sex Partner, 6.1 Basic Needs Calculation, 6.2 Shelter Calculation all discuss situations where there are two people living together as partners in a “marriage-like” setting or as close relatives for a period of 3 months or longer.

People who fit into one of these categorisations have limits on the amount of income support they can receive for their basic needs and shelter, among other things.

### **Proposed Amendment**

There should be no limits on income supports for basic needs and shelter for cohabitating individuals.

### **Rationale**

While in most circumstances, cohabitating individuals pool their money and care for one another (they may be obligated to do so by law), there is no guarantee that this will happen.

Limiting income supports in this fashion was a policy decision taken to avoid couples from receiving double payments on items like shelter where this is shared. These limitations create a forced dependency, which may be fine in some circumstances, but fails in all circumstances to acknowledge the dignity of individuals. Recipients should not be forced into dependency situations based alone on their decision to live with another individual.

## **Section Three:** **Increasing the level of income support**

### **Issue: The ODSP Act does not guarantee a healthy level of income support**

#### **Current Legislation, Regulation, or Policy Directive**

ODSP Act:

S. 1. *The purpose of this Act is to establish a program that, (a) provides income and employment supports to eligible persons with disabilities;*

S. 11. *The amount of income support to be provided and the time and manner of providing that support shall be determined in accordance with the regulations.*

Ontario Regulation 222/98:

Part V – relates to the specific calculation and payment of income support

S. 31(2) of the General Regulation to the ODSP Act

#### **Proposed Amendment**

Change the language of s. 1(a) to:

*provides income and employment supports to eligible persons with disabilities that allow the eligible person to maintain a healthy standard of living;*

A definition of a “healthy standard of living” should be defined within the Act. Since s. 2 of the Act contains a list of definitions, this new definition could be included there.

Proposed definition:

*“Healthy standard of living” means that a person’s basic needs, including shelter, food, and utilities, as determined with reference to the standard of living for the average Ontario resident, are met such that a person is able to participate fully in society.*

Raise the base income supports on an annual basis to match the increase in the Consumer Price Index.

Adjust the Maximum Shelter Allowance in Ontario Regulation 222/98, s. 31(2)2 to reflect the current real world values.

#### **Rationale**

The level of income support provided by ODSP is currently too low. In 1995, social assistance rates were reduced by 21.6%. Since 1995, the Consumer Price Index has

increased by 19.8%, resulting in a combined shortfall for the ODSP client of 41.3%.<sup>5</sup> In the May 2004 provincial budget, there was a 3% increase in social assistance benefits, the first increase in over a decade. Note that this increase was just slightly above the inflation level for that particular year (2.7%). The present income supports do not allow a person on ODSP to maintain a healthy standard of living.

This proposed amendment would ensure that at least a minimum standard of living is provided to eligible persons. The current income support levels for persons on ODSP are as follows:

Under the ODSP, the maximum amount a single person with no dependents can receive is \$959/month or \$11,508/year. The maximum amount given for a couple, where one spouse is disabled and the other is not, is \$1460/month or \$17,520/year. (Source: ODSP Handbook). These figures do not fit squarely with the Low-Income Cut-Offs of all community sizes (with the exception of rural areas).

<b>Before-Tax Low-Income Cut-Offs (LICOs), 2003</b>					
Population of Community of Residence					
Family Size	500,000 +	100,000 - 499,999	30,000 - 99,999	Less than 30,000	Rural
1	\$19,795	\$16,979	\$16,862	\$15,690	\$13,680
2	\$24,745	\$21,224	\$21,077	\$19,612	\$17,100

*Source: Prepared by the Canadian Council on Social Development using Statistics Canada's Low Income Cut-Offs, from Low income cut-offs from 1994-2003 and low income measures from 1992-2001 Catalogue # 75F0002MIE No. 002 March 2004. [http://www.ccsd.ca/factsheets/fs\\_lico03\\_bt.htm](http://www.ccsd.ca/factsheets/fs_lico03_bt.htm)*

In the ODSP Income Support Policy Directive 6, “basic needs” is calculated according to: family size, age of dependents, geographic location, and the individual circumstances of the benefit unit.” However, even if the maximum amount of income support is received, this amount is not sufficient to ensure that a person can live at a healthy standard of living and meet their “basic needs.”

The following chart from Settlement.org (a website funded by Citizenship and Immigration Canada and the Government of Ontario) indicates **the average monthly expenditures** of a person living in Ontario:

<b>Item</b>	<b>Cost/month</b>
<b>Housing</b>	\$750-1500 (for a one or two bedroom apartment)
Insurance	\$20-30

<sup>5</sup> ODSP Action Coalition “Background information for creating ODSP Legislation Petition”.

<b>Utilities</b> electricity or natural gas hydro telephone cable TV	(some of these might be included in your rent) \$50-100 \$30-50 regular service: \$30 - long distance: \$20 (depends on usage) \$30
<b>Food</b>	\$300-500
<b>Clothing</b> - dependent on what you have now that is weather appropriate.	\$100 - 200 (If you need to buy winter clothing, etc., you'll most likely spend around that time of year)
<b>Household incidentals</b> (newspapers, bank service charges, etc.)	\$40-50
<b>Transportation</b> Public transportation	\$90/adult
<b>Other Expenses/Entertainment</b>	\$100
<b>TOTAL</b>	<b>\$1650 - 2310</b>

Source: [http://www.settlement.org/sys/faqs\\_detail.asp?faq\\_id=4000204](http://www.settlement.org/sys/faqs_detail.asp?faq_id=4000204)

The above chart involves average monthly expenditures. Many of these items are not covered by income supports from the ODSP and do not fall under the heading of “basic needs”. However, even when only “basic needs” factors are taken into account, ODSP income supports still do not provide adequate financial support to cover the necessities.

Item	Cost/month
<b>Housing</b>	\$750-1500 (for a one or two bedroom apartment)
<b>Utilities</b> electricity or natural gas hydro telephone	(some of these might be included in your rent) \$50-100 \$30-50 regular service: \$30
<b>Food</b>	\$300-500
<b>TOTAL</b>	<b>\$1160-2180</b>

The range of the maximum ODSP income supports available to an individual (\$959/mo) clearly falls below the lower range for the average amount required to meet the basic needs required for a healthy standard of living. Many items that are necessary for the

healthy standard of living are not covered by the ODSP and must be paid for by the ODSP client. For example, the ODSP does not consider a telephone to be a necessity and is generally paid for out of the client's food allotment. This is unacceptable considering the health importance of an adequate food intake.

Compare for example, the maximum amount payable for shelter to persons on ODSP to the average cost of rent in various cities across Ontario:

<b>Benefit Unit Size</b>	<b>Maximum Monthly Shelter Allowance</b>
1	\$427
2	\$672
3	\$729
4	\$792
5	\$853
6 or more	\$885

*Source: s. 31(2) of the General Regulation to the ODSP Act (Ontario Regulation 222/98).*

The following chart from Settlement.org lists the average monthly cost of rent for select cities across the province:

<b>Average Rent by Metropolitan Area Privately Initiated Three Apartment Units and Over</b>		
	<b>One-Bedroom</b>	<b>Two-Bedroom</b>
<b>Ontario Region</b>	Oct. 2005	Oct. 2005
Hamilton	\$646	\$791
Kingston	660	807
Kitchener	677	811
London	620	775
Oshawa	753	855
Ottawa	762	920
St.Catharines – Niagara	624	736
Greater Sudbury	544	668
Thunder Bay	556	689
Toronto	888	1,052
Windsor	650	780

*Source:* [http://www.settlement.org/sys/faqs\\_detail.asp?passed\\_lang=EN&faq\\_id=4000180](http://www.settlement.org/sys/faqs_detail.asp?passed_lang=EN&faq_id=4000180)

The maximum amount of money given for shelter is insufficient to cover the average rental costs in the situation of a one person benefit unit. The \$427/month is clearly not sufficient to enable a recipient of ODSP to meet the average rental rates. It is essential that the maximum amount of income support available to people on ODSP be enough to guarantee that they will be able to live at a healthy standard of living. The current maximum amounts do not allow for this.

### **Supporting Policies**

It is important to link the amount of income support to the Consumer Price Index and adjust income support levels to reflect inflation annually. This amount should also be reviewed in light of changing economic conditions affecting the costs of housing and utilities which fluctuate more than inflation.

Finally, an important policy consideration to include is to prevent the downward adjustment of the amount without good reason.

Bill 30 was introduced in the provincial legislature and it addresses many of these matters. It was introduced by Shelley Martel (of Nickel Belt) and given a first reading, but has not been followed up on since. It is an excellent example of how practical and easy it would be to enact legislation designed to improve the level of income supports. Bill 30's focus is on annual adjustments for inflation. Similar bills could be presented to increase the level of income support more generally to ensure a healthy standard of living for ODSP recipients.

### **Bill 30, 2003 – ODSP Amendment Act (Fairness in Disability Income Support Payments)**

An Act to amend the Ontario Disability Support Program Act, 1997 to require annual cost-of-living adjustments to income support payments

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. (1) Subsection 55 (1) of the Ontario Disability Support Program Act, 1997 is amended by adding the following paragraph:

4.1 requiring that the amount of income support provided be indexed to the cost of living as described in subsection (3.1);

(2) Section 55 of the Act, as amended by the Statutes of Ontario, 2002, chapter 18, Schedule D, section 2, is amended by adding the following subsections:

Indexing amount of income support

(3.1) A regulation made under paragraph 4.1 of subsection (1) may provide that the amount of income support provided be adjusted on April 1 in each year by multiplying it by the indexing factor for that year.

#### Indexing factor

(3.2) The indexing factor for a year is the percentage change in the Consumer Price Index for Ontario for prices of all items between the month of January in that year and the same month in the previous year, as published by Statistics Canada.

#### Commencement

2. This Act comes into force on the day it receives Royal Assent.

#### Short title

3. The short title of this Act is the Ontario Disability Support Program Amendment Act (Fairness in Disability Income Support Payments), 2003.

#### **Unresolved Issues**

A huge consideration here is how much these changes will cost. As we do not have information as to the current funding of ODSP, it is not possible to assess how much the maximum amount of income support can realistically be increased. This increase in funding also begs the question of how to muster up the political will to improve funding.

## **Conclusion to Part Two**

Taken all together, the OSDP Act, Regulation and Policy Directives represent a thick body of legislation and procedures. ODSP is a bureaucratic program and it is difficult to understand its true nature. However, from the information made available by the ODSP website, various OSDP working groups and affected individuals, it has become clear that the program is not functioning to the best of its potential, despite being an important program in Ontario's social assistance.

Systemic change of ODSP is important. This paper has outlined three important areas in which such change is possible: assisting the disabled when required in their dealings with ODSP, changing the attitudes of ODSP and increasing the levels of income support. For each area, legislative or policy change needs to be accompanied by supporting policies in order to give effect to the legislation and make it possible for the changes to have an impact.

Much of the work to be done in this area is not necessarily legal, but rather political. Political will is required in order for most of the changes proposed here to arise. For instance, only the provincial legislature can amend the ODSP Act, through the implementation of bills such as Bill 30 noted in the income support section.

It is hoped that this paper will serve as a discussion piece to move the political discussions forward by raising important issues relating to ODSP service delivery. While the paper does not include all possible improvements that would make OSDP a better service to Ontarians, it raises significant issues that call for more research as well as immediate reform of the Ontario Disability Support Program.