

# Ontario Disability Support Program - Employment Supports Directives

## 6.6 - Subrogation

### Summary of Directive

To describe the circumstances under which the ministry has a right to be subrogated for damages and the procedures to be followed.

### Legislative Authority

[Section 8 of the Ministry of Community and Social Services Act](#)  
[Section 52 of the ODSP Act](#)

### Intent of Policy

To ensure the ministry's right to be subrogated to a person's claim for any damages or compensation, where appropriate. To ensure that cases which may qualify for subrogation are identified and pursued.

### Application of Policy

### Definition of Subrogation

Subrogation allows the ministry to recover monies paid under ODSP Employment Supports for goods and/or services to a client where the client is taking court action against a third party due to a wrongful act, negligence or breach of contract.

It is the ministry's policy that past and future costs are the responsibility of the party held legally responsible for the client's disability, subject to liability or insurance policy limits.

### Process

- The applicant/client must notify the Director of ODSP of any legal actions pending. **Income Support recipients** will disclose this as part of the application process for ODSP after which the necessary forms are completed (i.e. "Expected Compensation or Settlement Referral" form, Assignment, Authorization and Direction form, and Agreement to Reimburse form) and forwarded to the ministry's Legal Services Branch.

- **For non-Income Support recipients**, the Employment Supports Specialist will contact the client to obtain details regarding the incident and determine whether he/she intends to sue or is in the process of suing.
  
- The "Expected Compensation or Settlement Referral" form must be completed with the additional information and copies of relevant documents attached. The Employment Supports Specialist forwards these documents to the ministry's Legal Services Branch.
  
- The Employment Supports Specialist will forward the following information to the ministry's Legal Services Branch, where it is readily available from the client:
  - name, address and phone number of the client;
  - name, address and phone number of client's lawyer;
  - date, circumstances and nature of the incident giving rise to the disability;
  - copies of pertinent reports (e.g., police, medical, etc.);
  - details regarding any civil proceeding already underway;
  - copies of available court documents;
  - the value of goods and services already provided;
  - the approximate value of goods and services likely to be provided in the future; and,
  - details of any proposed settlement.
  
- The client's lawyer should be contacted only to determine the lawyer's name and address or to determine the status of legal action. Where the client's lawyer wishes to discuss any issues related to subrogation, the Employment Supports Specialist must direct the lawyer to the ministry's Legal Services Branch.
  
- Where additional/missing information is required, the ministry's Legal Services Branch will contact the client's lawyer.

## **Court Testimony**

Where the Employment Supports Specialist is asked to appear as a witness in a civil suit, he/she must ask to be subpoenaed. The client's file must also be subpoenaed before it can be used in court. However, it should be noted that the subpoena does not authorize release of file information prior to the court appearance.

## **Lawyers' Requests for Personal Information**

The Employment Supports Specialist must ensure that all requirements under the **Freedom of Information and Protection of Privacy Act (FIPPA)** are satisfied. To release information on file prior to Court, the following procedures apply. In general, all communication relating to a subrogation or potential subrogation matter must take place between the ministry's Legal Services Branch and the client's lawyer.

Requests **not made** under **FIPPA**:

Where a lawyer's request for information about a client relating to a subrogation or potential subrogation matter is not made expressly under *FIPPA*, the request is referred to the ministry's Legal Services Branch which is responsible for handling these requests.

Requests **made** under *FIPPA*:

Section 42 of the *Freedom of Information and Protection of Privacy Act* states:

"An institution shall not disclose personal information in its custody or under its control except,

- (b) Where the person to whom the information relates had identified that information in particular and consented to its disclosure."

A lawyer who requests client information under *FIPPA*, relating to a subrogation, or potential subrogation matter, must provide the local office with the signed consent of the client for disclosure of information. The matter is then referred to the designated decision-maker who is authorized to release the information. A copy of the request for information and any related correspondence is forwarded immediately to the Director of the Legal Services Branch.

## **Related Directives**

None