

Ontario Disability Support Program - Income Support Directives

12.1 - Controlling Fraud

Summary of Policy

The Director has authority to establish a fraud control unit to investigate eligibility of present and past applicants and recipients.

A Caseworker has the authority to investigate a person's past and/or present eligibility for assistance. An ODSP Manager may delegate the authority to apply for a search warrant and act under it.

Offences and penalties are set out in the *Ontario Disability Support Program Act*, *Provincial Offences Act* and *Criminal Code of Canada*.

Legislative Authority

[Sections 45, 46 and 59 of the ODSP Act](#)
[Section 76 of the Provincial Offences Act \(POA\)](#)
[Section 380 of the Criminal Code of Canada](#)

Summary of Directive

The eligibility review process ensures that people only receive the correct amount of assistance under the *ODSP Act*. This directive sets out the steps to be taken where it is suspected that a person is receiving assistance that he or she is not eligible for.

Intent of Policy

To control social assistance misuse and fraud through effective procedures to assess and investigate allegations of ODSP fraud and confirm eligibility of applicants and recipients.

Application of Policy

Standards

Proper processes and procedures must be in place to assess and investigate eligibility for income support where allegations of fraud have been made. The

Complaint Assessment Reference Guide should be used for reference purposes where appropriate.

All allegations of fraud concerning the ODSP must be entered into the Social Assistance Management System (SAMS) according to existing procedures.

Assessment and Investigation of Allegations of Fraud

Allegations of fraud may be received by an ODSP office from various sources, (e.g. calls to the Welfare Fraud Hotline from members of the public, discrepancies identified through file reviews or information sharing).

Upon receipt of an allegation, the Regional Director must designate staff to complete an assessment in a timely manner. This involves verifying that the information in the complaint is not known and is relevant to eligibility. Where appropriate, an interview with the recipient is arranged.

Upon completion of the assessment, a determination must be made as to whether the case should be investigated further. If so, a comprehensive eligibility investigation must be conducted. This includes the verification of relevant information by obtaining original or certified copies of documents that will assist in making a decision regarding eligibility. It must be noted that the names of all complainants (where provided) are to be kept confidential and maintained in the file. Complainants must be notified that their names may be released should the matter proceed for prosecution.

Once the investigation is complete, the Caseworker must prepare a written report for review by the ODSP Manager. The report must contain recommendations concerning ongoing eligibility, identify any overpayment or arrears, and indicate whether the matter should be referred to police to be investigated for fraud. A copy of the report must be placed on the master file. The Caseworker must maintain all notes, documents and information from the investigation as part of a file for future reference. After reviewing the report in conjunction with the master file, the ODSP Manager must be satisfied that sufficient information has been obtained to support a decision on eligibility.

If the ODSP Manager determines there are reasonable grounds to suspect that fraud may have occurred, a decision must be made as to whether to refer the matter to the police. Where sufficient evidence exists to suspect an intent to commit fraud, the matter **must** be referred to the police for possible criminal investigation. Investigations are completed by the police force with jurisdiction in the area where the offence occurred. The police decide if it is appropriate to lay charges, the local crown decides whether to prosecute.

Where an office is considering laying a charge under the *Provincial Offences Act*, the ODSP Manager must seek advice from Legal Services Branch to determine if proceedings should be initiated. The *Provincial Offences Act* requires that a proceeding be started within six months from the date on which the offence is alleged to have been committed. The Caseworker who conducted the investigation would have the most information about the case and is in the best position to lay the charge. Part III of the *Provincial Offences Act*, "Commencement of Proceeding by Information" sets out the procedure for laying a charge.

Local Protocols

In order to process suspected social assistance fraud cases in an efficient and effective manner, every Regional Director or Designate should consult with the local police services and the Crown Attorney's office to develop a written protocol for the effective investigation and prosecution of cases of suspected social assistance fraud.

This protocol should outline the practices of the local office, the police and the Crown Attorney for each stage of the investigation as it relates to the:

- collection of information concerning the case;
- process for referring a case to the police;
- initial preparation and vetting of the file with the police;
- securing, documentation, storage and disposition of evidence; and/or
- preparation and vetting of the crown brief.

The protocol should also identify contacts within the local ODSP office, the police agency and the local crown's office for the purpose of the exchange of information and legal advice.

Responsibilities after Case Referred to Police

The Caseworker must monitor the fraud referral and follow-up with the police concerning the outcome of the criminal investigation. If a charge is laid under the [*Criminal Code of Canada* / *Provincial Offences Act*](#) the Caseworker will liaise with the investigating officer concerning such matters as court dates and disposition of the case.

At the conclusion of the court action, the Regional Director or designate must ensure that the proper procedures are in place for the return of all original documents and cheques, the overpayment is dealt with according to the ODSP Recovery of Overpayments directive and the results of the Court action are promptly entered into the SAMS where appropriate.

Where there has been a conviction for social assistance fraud, the Caseworker is responsible for obtaining a certified copy of the Certificate of Conviction from the Court and placing it on the applicant/recipient's file.

Restitution Orders

In cases where there is a conviction, the Court may order restitution for part or all of the overpayments in question. These Orders will continue to be filed and maintained by the Ministry's Legal Services Branch.

The Regional Director or designate should take appropriate steps to ensure that restitution orders are collected in accordance with the instructions referred to in the restitution order.

Where restitution is ordered, and is part of a Probation Order, it is the responsibility of the Caseworker to monitor the payments against these orders and to contact the probation officer in cases of default.

In order to enforce the terms of the Restitution Order it may be necessary to utilize legal remedies, such as filing a writ of seizure and sale with the Sheriff's office in the district where the debtor resides. Prior consultation with Legal Services Branch staff is mandatory in these circumstances.

There may be situations where a non-recipient is charged and convicted of fraudulently receiving social assistance (eg. cashing cheques of a recipient who is deceased) and has been ordered by the court to repay this amount through a restitution order. Given that the convicted person has never been a recipient of social assistance an overpayment cannot be established. However it is important that monies owing are recovered. ODSP staff should establish an internal procedure for tracking payments and monitoring files of this nature. A ledger recording receipt of payments should also be kept.

With regard to the processing of the payments received under the restitution order, the same procedure that is followed for restitution payments from recipients should be applied in these circumstances.

Provincial Offences Act - Search Warrants

An ODSP Manager may delegate the authority to apply for and act under a *Provincial Offences Act (POA)* search warrant. ODSP staff are not authorized to apply for or act under a [Criminal Code](#) search warrant.

The Director of the ODSP must first authorize POA search warrant powers subject to the following criteria being met:

1. Only those designated staff, (i.e. Caseworkers or their managers) who have completed the provincial search warrant training course may be authorized to apply for and act under a search warrant; and
2. ODSP offices must provide confirmation in writing to the Director that appropriate local business protocols as outlined in the Search Warrant Manual have been established to support the activity (e.g. protocol for the security of evidence).

Search warrants would generally be used where requests for information from a third party relating to an investigation have been, or are likely to be, refused. Caseworkers might be refused access because the third party holding the information did not recognize the authority of the Caseworker to collect it, or accept the validity of the Consent Form signed by the recipient. Examples of where the search warrant might be used include financial institutions, employers or other third parties.

A search warrant can only be obtained from a Judge or Justice of the Peace. Before granting a search warrant, the Judge/Justice of the Peace must be satisfied that there are reasonable and probable grounds to believe that an offence may have been committed and that evidence relevant to the offence will be found at the place to be searched.

A Caseworker is required to adhere to all the rules governing "Search and Seizure" and all relevant protocols outlined in the Search Warrant Manual. Certain conditions and limitations are involved when applying for and acting under a POA search warrant; for example;

1. Caseworkers may not enter a place that is being used as a dwelling without the consent of the occupier unless it is under the authority of a search warrant.
2. Search warrants are not to be applied for to enter dwellings unless there are reasonable grounds to believe that the dwelling is being used as a place of business or employment and there is evidence related to this activity that has a bearing on eligibility.

Authority to Investigate

Caseworkers have the authority to investigate past or present eligibility under the Ontario Disability Support Program Act, 1997. Caseworkers have no authority to pursue allegations of fraud against vendors or childcare providers.

If a vendor or child care provider is suspected of fraud, a referral may be made to the appropriate authority that oversees the service contract and/or operations of the service provider.

Corporate Contacts

The ODSP Branch of the Ministry of Community and Social Services is responsible for policy development and program design for issues related to determining financial eligibility for ODSP. It is also responsible for fraud control policy, overpayments and appeals, and information sharing agreements.

Hyperlinks Associated with this Policy Directive

Related Directives:

[Directive 11.1 Recovery of Overpayments](#)

Other:

[Criminal Code of Canada](#)
[Provincial Offences Act](#)