

Ontario Disability Support Program - Income Support Directives

5.17 - Subrogation

Summary of Legislation

The ministry has the authority under legislation to recover ODSP income support paid or to be paid to recipients in certain situations where the recipient has suffered a loss as a result of a wrongful act or omission of another person. The Minister or Director can “step into the shoes” of the recipient and initiate or join in a legal action to recover damages or compensation for the loss.

Legislative Authority

[Section 52\(1\) to \(4\) of the ODSP Act](#)

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

Summary of Directive

- The ministry has subrogation rights in cases where a social assistance recipient is in receipt of benefits as a result of a loss due to a wrongful act or omission of another person.
- Recipients must notify the ODSP Director of any legal action pending in which they or a member of the benefit unit are the plaintiffs.
- In cases where subrogation is feasible, the ministry may need to collect additional information from the recipient.

Intent of Policy

- To ensure that the ministry has the right to recover public funds paid to recipients where the Court awards damages or compensation to a recipient as a result of a civil action arising out of negligence, a wrongful act or breach of contract.
- To ensure the ministry’s right to be subrogated to a person’s claim for any damages or compensation.
- To ensure those cases that may qualify for subrogation are identified and pursued.

Application of Policy

Subrogation is the substitution of one person in the place of another to a lawful claim, demand or right. A person who suffers a loss as a result of a wrongful act, negligence or breach of contract by a third party may pursue compensation through a court action. In cases where an ODSP recipient or member of the benefit unit is receiving ODSP income support and/or employment supports as a result of such a loss, the ODSP Director has the right to recover costs paid under ODSP. The Director may “step into the shoes” of the recipient and sue to enforce the rights of the injured party. This right, known as subrogation, is pursued through a court action.

Where an ODSP recipient or member of the benefit has suffered a loss as a result of wrongful act, negligence or breach of contract, details should be obtained about the incident in order to determine whether the person intends to sue or is in the process of suing. The ODSP recipient must notify the Director of any legal actions pending in which he/she is the plaintiff. **Note:** subrogation can apply to cases where the recipient or member of the benefit unit has already commenced a court action or where the ministry itself commences a court action.

Staff must ensure that the Expected Compensation or Settlement Referral form is completed and that all relevant information regarding the incident (e.g. date, circumstances and nature of incident) is documented and that the recipient has completed an Assignment and Direction form and an Agreement to Reimburse form. Legal Services Branch will review the completed forms and determine whether subrogation will be pursued.

Once the case has been finalized the Minutes of Settlement and Judgment will be provided to the ODSP local office, which should also be provided to Legal Services Branch.

Subpoena

In some situations ODSP staff may be asked to appear as a witness in a court action. Where this occurs, he/she should ask to be subpoenaed. The recipient's file must also be subpoenaed before it can be used in court. **Note:** the subpoena does not authorize release of file information prior to the court appearance.

Requests for Information

Requests for information related to a subrogation or potential subrogation should be made under Section 42 of the **Freedom of Information Act** and managed through the local office. Where a request is not made through the **Freedom of Information and Protection of Privacy Act (FIPPA)** the request should be directed to the ministry's Legal Services Branch.

Any release of information or correspondence should be copied to the Director of Legal Service Branch at MCFCS.

Hyperlinks Associated with this Policy Directive

Related Directives:

[5.2 Assignment of Retroactive Income](#)

[11.1 Recovery of Overpayments](#)

[6.6 Employment Supports Subrogation](#)