

Ontario Works Directives

5.10: Subrogation

Legislative Authority

Section 70 of the Act.

Audit Requirements

Random file reviews are completed to ensure that:

- documentation is on file to support subrogation decisions; and
- relevant legal documentation is obtained and is on file.

Application of Policy

A person who suffers a loss as a result of the negligence or wrongful act of another person may be able to obtain compensation from the party responsible for the loss through court action.

If, as a result of the loss, the person has applied for financial assistance, the Director or a delivery agent may be subrogated to recover damages or pursue compensation for the recipient's loss.

Subrogation allows the Director or delivery agent to pursue, through court action, a third party for recovery of assistance paid under Ontario Works to a recipient. Past and future financial assistance costs are the responsibility of the third party held legally responsible for a recipient's loss, subject to limitations of liability or insurance policy limits

A recipient is required to notify the delivery agent of any pending legal action related to negligence, a wrongful action or breach of contract in which they are the plaintiff. Details should be obtained regarding the incident in order to determine whether or not the recipient intends to sue or is in the process of suing.

If the participant is intending to sue, the delivery agent is a party to the proceedings and should make an assignment for any income that may be received as a result of the suit ([see Directive 5.2: Assignments](#) for more information).

Legal Procedures

Where subrogation is determined to be feasible and a delivery agent pursues subrogation, the counsel acting on behalf of the delivery agent is responsible for entering the subrogated claim.

All communications relating to a subrogation are to take place between the counsel acting on the delivery agent's behalf and the recipient's lawyer. A delivery agent's contact with the recipient's lawyer should occur only where it is necessary to establish the lawyer's correct name and address, or to determine whether legal action has commenced or is being contemplated.

The delivery agent may be asked to appear as a witness in a civil suit court case. Where this occurs, they should ask to be subpoenaed. The recipient's file is also required to be subpoenaed before it can be used in court. The subpoena does not authorize release of file information prior to a court appearance.

A lawyer who requests information about a recipient relating to a subrogation or potential subrogation, where the request is not made expressly under the **Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)**, must be referred to the counsel acting on behalf of the delivery agent.

Where a request is made under MFIPPA, a copy of the request and any related correspondence should be sent immediately to the counsel acting on behalf of the delivery agent. A lawyer requesting information under MFIPPA about a recipient and relating to a subrogation matter must provide the signed consent of the applicant or recipient for disclosure of the information. The matter should then be referred to the designated decision-maker who is authorized to release the information.

The **Expected Compensation or Settlement Referral** form (#2749) must be completed on behalf of social assistance recipients who expect to receive a compensation award or settlement for a tort action, an insurance claim or for any other reason. Where proceedings have been commenced by the ministry's Legal Services Branch, the Director will complete the form. Where the proceedings have been commenced by municipal legal department or the delivery agent's legal counsel, the delivery agent will complete the form.

Additional information and copies of documents and reports should be attached. Information to be forwarded includes the name, address and telephone number of the recipient and their lawyer. Information that should be provided includes:

- date, circumstances and nature of the incident;
- copies of pertinent reports (police, medical, etc.);
- details regarding any civil proceedings already begun;

- copies of available court documents;
- the amount of assistance already provided;
- the approximate amount of assistance likely to be provided in the future; and
- details of any proposed settlement.

The municipal lawyer, delivery agent's legal counsel or Legal Services Branch should review the information and obtain any further information that may be required.

In the event that counsel for the recipient wants to discuss the issues of subrogation, counsel for the recipient should be advised to contact the municipality's legal department, the delivery agent's legal counsel, or Legal Services Branch.

When a subrogation matter is settled, counsel should obtain a copy of the Minutes of Settlement and Judgement and provide a copy to the delivery agent.