

8 Self Advocacy

Foreword

When the idea of the After and Beyond Reference Manual was conceived, we at the CSRO were convinced that the best advocates for spinal cord injured consumers were the consumers themselves. To be a better self-advocate, one must be informed or work with partners who can better inform them as they carry on with daily living. This section is not designed to encourage bitterness and the old “me against the world” stereotype, but to better equip an individual to speak up for themselves in a truly practical sense. Most consumers feel they were wronged based on how they are treated through the various compensation systems found in the government, or through the courts. This section is designed to offer a brief summary of the appeal process and reference to clinics and individuals who may be able help advise one in making sure their rights are preserved in society.

The information found in this section and its local directory is a first attempt to help condense tools and information that could be used for self-advocacy. By no means is this meant to be exhaustive and we encourage those individuals who have information to add to contact the CSRO office so that for the next edition, we can pass this information along.

Self-Advocacy

Personal Rights of People with Disabilities

CANADIAN CHARTER OF RIGHTS & FREEDOMS

The *Canadian Charter of Rights and Freedoms* is part of the Canadian constitution and includes rights and freedoms that Canadians believe are necessary in a free and democratic society. The Charter contains a number of provisions that are important to people with disabilities. For example, Section 15, Part 1 states:

“Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based upon race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

This means that every individual is equal by law, regardless of their disability. As part of the Constitution, the Charter is the highest law in the country. However, it is important to remember that the Charter is limited in scope. The Charter only regulates relationships between an individual and the government (both federal and provincial). It does not apply to private matters (those between individuals and organizations in the private sector) unless the legislation governing the situation violates a right or freedom guaranteed by the Charter. For more information on the Charter, you can visit the Canadian Heritage Web site at:

http://www.pch.gc.ca/ddp-hrd/index_e.cfm

Ontario Human Rights Code

The provisions of the Ontario Human Rights Code are aimed at creating a climate of understanding and mutual respect so that each person feels like they are a contributing part of the community. The Ontario Human Rights Code states that it is public policy in Ontario to recognize the inherent dignity and worth of every person and to provide for equal rights and opportunities without discrimination.

Accommodating Persons with Disabilities

Under the Code, persons with disabilities have the right to full integration and participation in society. They should be able to

access services, employment, and housing and face the same duties and responsibilities as everyone else.

Employers, landlords, service providers, and others have a duty to consider the needs of persons with disabilities up-front. This includes designs for buildings, processes, programs or services. If existing physical structures or systems create barriers, they must be removed. Where it is impossible to remove barriers without undue hardship, special arrangements must be made so that persons with disabilities can fully participate. This is what is called “accommodation.”

Accommodation will vary according to a person’s unique needs. These needs must be considered, assessed, and accommodated individually.

Ontarians with Disabilities Act (ODA)

The Ontario government, in an effort to tear down barriers faced by people with disabilities, enacted the Ontarians with Disabilities Act (ODA) on December 14, 2001. The ODA has not come fully into effect but is coming into law in stages. The first proclamation of the Act, on February 7, 2002, established two sections of the Act. Section 19 established the Accessibility Advisory Council of Ontario and section 20 established the Accessibility Directorate of Ontario. The Accessibility Advisory Council is a government-appointed body that consults with the public and advises the Ontario Government on what barriers need to be removed and what regulations should be enacted to remove and prevent these barriers. The Accessibility Directorate is an office located in the Ministry of Citizenship that advises others on how they can create a barrier-free environment and develops guidelines, standards, regulations and other tools to help implement the ODA.

The second proclamation of the ODA took place on September 30, 2002 and will bring into law the sections of the Act setting out specific accessibility obligations on the part of municipalities, the government of Ontario, and the broader public sector. This includes public transit organizations, school boards, hospitals, colleges and universities. For more information on the ODA visit the Ministry of Citizenship’s Accessibility Ontario Web site at:
<http://www.gov.on.ca/citizenship/accessibility/>

Automobile Insurance

As stated in the Financial Planning and Benefits section, over half of those with a spinal cord injury were injured in motor vehicle crashes. As motor vehicle crash victims, they are entitled to rights under the law governed by Bill 59. There are two areas of compensation to which a person with a spinal cord injury, or catastrophic injury, is entitled. As an individual with a catastrophic injury, he or she meets a legal threshold that makes him or her eligible to sue the at-fault driver. This is known as a tort claim or litigation. They can sue for general damages such as pain and suffering. The other area of compensation is statutory accident benefits. Anyone injured in a motor vehicle crash is eligible for these benefits, which usually cover costs such as home and health care.

You should be aware that someone with a spinal cord injury could face future economic hardship. It is very important to contact a lawyer who is an expert in catastrophic injury, and use them when dealing with insurance companies or in seeking further compensation from the at-fault driver. It is entirely possible that there may be other parties involved from whom additional compensation could be found. These questions are better examined by an expert in the field.

Non-Automobile Injuries

There may be other forms of compensation via legal action when someone has sustained a spinal cord injury in some manner outside of an automobile crash. It is wise to seek out legal advice by an experienced personal injury lawyer regardless of how you had your injury. As one with an untrained mind, it is quite possible that you may not realize other forms of compensation beyond what is found through government programs that will help you cover the costs of equipment, care and loss of income moving forward in your future.

Legal Aid

Legal Aid Ontario is designed to provide legal services to people with low incomes. Legal Aid has two main parts:

- The community legal clinic system, and;
- The legal aid certificate program.

Community legal clinics

Legal clinics provide representation and advice on various kinds of legal issues, including worker's compensation, Employment Insurance, social assistance, the Canada Pension Plan, employment law, housing and human rights. Some clinics do not handle all of these issues. If this is the case, they will refer you to someone who does.

Community legal clinics are staffed by lawyers, community legal workers, and in some cases law students. All help is private and confidential. To receive services from a clinic, you must live in the area it serves, your problem must be one of the kinds the clinic handles, and your income and assets cannot be above a certain level. To find out if you qualify for services, contact your community legal clinic (please refer to the local directory).

You should keep in mind that most clinics also provide brief or "summary" advice without asking about your financial situation.

Legal Aid Certificates

If you want a private lawyer but are unable to afford one, you may be able to get a legal aid certificate from Legal Aid Ontario. Most certificates pay your lawyer's fees and expenses, but there are some that pay only expenses.

When you apply for a certificate, Legal Aid considers your financial situation and the nature of your legal problem. There are some legal problems that are ineligible for a certificate. Also, if Legal Aid believes that you have enough money to pay for a lawyer, they will not issue you a certificate. If you do receive a certificate, you may have to sign a payment agreement. This means that you agree to pay Legal Aid back for some or all of your legal fees and expenses.

When you receive a legal aid certificate, you should take it to a lawyer who accepts certificates. Legal Aid has a list of lawyers who do. You can also call the Lawyer Referral Service toll-free at 1-800-268-8326. This service provides you with the names of lawyers who accept legal aid certificates and also refers you to a lawyer in your area for a free half-hour consultation.

POWER OF ATTORNEY

Due to health reasons, many consumers have difficulty being self-advocates as it pertains to appearances and some judicial settings such as a hearing and/or dealing with insurance companies,

banking institutions, etc. At times when it is physically too demanding and not practical for a spinal injured consumer to appear, he or she has the option to use what is known as a Power of Attorney. In this section, we deal mainly with the Power of Attorney for personal care. There is also a Power of Attorney for property, which allows a person to give a chosen individual the power to make any type of decision concerning his or her property, governed by the Substitute Decisions Act.

Appealing Benefits

If you are turned down for benefits, you should always look for the reasons why you were turned down. If you still do not agree with the decision, many programs give you the opportunity to have your case reviewed and/or appealed. The following is an overview of the **first step** of the appeal procedures for some common programs.

Ontario Disability Support Program (ODSP)

If the Disability Adjudication Unit (DAU) turns you down for financial assistance, you have the right to ask for a review. This is called an Internal Review. If you want an Internal Review, write a letter to the DAU starting with the sentence: "I am requesting an Internal Review". After that, explain in a few sentences why you want a review and send it to:

Ministry of Community of Social Services
Ontario Disability Support Program
Disability Adjudication Unit
Box B18
Toronto, Ontario
M7A 1R3

Or, you can fax your letter to (416) 326-3374.

Canadian Pension Plan Disability Benefits

If your application for Canada Pension Plan Disability Benefits has been denied and you wish to appeal this decision, the first step you must take is to write a letter to Human Resources Development Canada (HRDC) requesting a reconsideration. You must write this letter within 90 days of receiving HRDC's decision letter. To find out where to address your letter, call 1-800-277-9914. You can also call

this number if you would like to talk to a staff member about your case and Canada Pension Plan legislation.

Employment Insurance (EI)

If you decide to appeal Human Resource Development Canada's (HRDC) decision to deny you EI benefits, you must write to your local HRDC office within 30 days of receiving their decision letter.

Ontario March of Dimes' Home and Vehicle Modification Program

If you have been denied funding by the Ontario March of Dimes' Home and Vehicle Modification Program, and you want to appeal, you must first determine whether you have been denied under a guideline that can be appealed. Your letter from Ontario March of Dimes would tell you if you can appeal, as well as the formal appeal process for their decision. For more information, call your local Ontario March of Dimes office.

Community Start-up Benefit

If you are denied a Community Start-up Benefit you must request an internal review of the decision in writing within ten days of receiving the decision. For more information contact your local Ontario Social Service or ODSP office.

Workplace Safety and Insurance Board (WSIB)

If WSIB makes a decision you do not agree with, you must write them a letter outlining your objection. It is WSIB policy that the decision-maker reconsiders decisions at your request. If you are not satisfied with the outcome of this reconsideration, you can launch a formal appeal. WSIB can provide you with instructions on how to proceed through each step of the dispute resolution process. You should note that there are specific time limits for appeals and these deadlines will be outlined in your decision letter. For more information, call 1-800-387-0773.

Canada Mortgage and Housing Corporation (CMHC) – Residential Rehabilitation Assistance Program for Persons with Disabilities

There is no formal appeal process when you are denied financial assistance under the Residential Rehabilitation Assistance Program for Persons with Disabilities (RRAP-D). However, you can still discuss your case with Canada Mortgage and Housing Corporation. For more information, you can call 1-800-704-6488.

Assistive Devices Program (ADP)

If you are denied funding for equipment, you should call ADP and they will refer you to a Claim Adjudicator. The Claim Adjudicator will explain why you were turned down and what options you have. You can reach ADP at 1-800-268-6021.

SUMMARY

This section was designed to stimulate you to seek out and find the answers for yourself. It is important to speak for yourself and learn how to use the procedures available to you and be your own advocate. You also must remember that some of these compensation programs, whether legal or government, can be very complex and there are individuals available to help you. Be sure to contact a lawyer, social worker or caseworker that specializes in the field to help you through the process.

RESOURCES

Policy and Guidelines on Disability and the Duty to Accommodate
<http://www.ohrc.on.ca/english/publications/disability-policy-fact2.shtml>

Canadian Human Rights Tribunal
<http://www.chrt-tcdp.gc.ca/english/index.htm>

“All About Law: Exploring the Canadian Legal System”
Third Edition. Toronto: John Wiley & Sons, 1990. P 49 & 56.

“CLEO, Community Legal Clinics in and around Toronto”
Pamphlet, March 2000.

Legal Aid Ontario, “Can I Get a Legal Aid Certificate: Your Questions Answered”.
Pamphlet.
http://192.75.156.68/DBLaws/Statutes/English/92s30_e.htm

Power of Attorney

http://www.hrdc-drhc.gc.ca/ae-ei/pubs/appeal_e.shtml

Appealing a decision for claimants

http://www.hrdc-drhc.gc.ca/isp/pub/disabguide/disabguide5_e.shtml

Applying for CPP Disability Benefits

<http://www.gov.on.ca/CSS/page/services/ODSP/odsphb.html#whatyoucan>

What you can do if you are turned down for supports

<http://www.cleo.on.ca/english/pub/onpub/PDF/may01/startup.pdf>

Social Assistance Community Start-Up Benefit

<http://www.wsib.on.ca/wsib/wsibsite.nsf/public/EmployersAppeals>

Appealing a WSIB decision

Terms Encountered in this Section

ADP - Assistive Devices Program - The objective of ADP is to financially assist Ontario residents with long term physical disabilities to obtain basic, competitively priced and personalized assistive devices appropriate for the individual's needs and essential for independent living.

CMHC - Canada Mortgage and Housing Corporation - CMHC assistance helps low-income and older Canadians, people with disabilities and Aboriginals live in decent, affordable homes.

DAU - Disability Adjudication Unit – Section of the Ontario Disability Support Program

HMVP - Home and Vehicle Modification Program part of The Ontario March of Dimes –It assists people with physical disabilities to enjoy greater independence through the Home and Vehicle Modification Program. Funding is provided by the Ontario Ministry of Community Social Services.

HRDC – Human Resources Development Canada - Mission is to enable Canadians to participate fully in the workplace and the community.

legal aid certificate – Legal document that permits low income earners and certain disadvantaged people to hire a lawyer.

ODA - Ontarians with Disabilities Act.

ODSP - Ontario Disability Support Program.

Power of Attorney – A legal instrument that is used to delegate legal authority to another.

tort– a private or civil wrong or injury, for which the court will provide a remedy in the form of an action for damages.

WSIB - Workplace Safety and Insurance Board formerly the Workman's Compensation Board - The WSIB oversees Ontario's workplace safety education and training system, provides disability benefits, monitors the quality of health care, and assists in early and safe return to work.