



Seeing you through.

The Personal Injury Lawyers at Harrison Pensa are knowledgeable and experienced in all areas of personal injury law. If you have sustained an injury, we can help you to understand your options. Whatever your injury, we are committed to achieving the best possible results in the best possible way.

HP

HARRISON PENSA

In any case.

450 Talbot Street, London, Ontario N6A 5J6
Tel: 519 679 9660 Fax: 519 667 3362
www.harrisonpensa.com

BRAIN INJURY ASSOCIATION LEGAL GUIDE

First Edition 2012



BRAIN INJURY ASSOCIATION LEGAL GUIDE

First Edition 2012

In collaboration with Harrison Pensa LLP



BRAIN INJURY
ASSOCIATION
OF LONDON
AND REGION



HARRISON PENSA

In any case.

While this Legal Guide is a good source of general information accurate at publication, the law is constantly evolving, and the application of the law is dependent on specific circumstances, so do not rely on this guide for specific legal advice. This guide does not establish a solicitor-client relationship between the authors or the Brain Injury Association of London and Region and you. Every legal matter is unique and your specific circumstances need to be discussed with a qualified lawyer. The authors would be pleased to discuss any questions you may have about how this information applies to your particular circumstances.

FOREWORD

Navigating the legal system is never an easy challenge at the best of times. But for Canadians who have suffered brain injuries, as well as the family members and caregivers who help and support them, these challenges are even greater, especially when seeking compensation for their injuries or fair treatment from public- and private-sector entities.

The lawyers of Harrison Pensa have helped many clients facing these challenges. Today, we're honoured to be able to help even more.

It is my pleasure to introduce this first edition of the Brain Injury Association Legal Guide, created by Harrison Pensa lawyers in close conjunction with the Brain Injury Association of London and Region. This Guide provides straightforward, accessible explanations of key legal issues and fundamental legal rights of those who have suffered brain injuries and for their support teams.

This Guide would not have been possible without the initiative and outstanding contributions of Donna Thomson and all her staff and volunteers at the Brain Injury Association. We salute them for their tireless dedication to serving their members and look forward to continuing to work with them for years to come.

Dave Williams, Managing Partner
Harrison Pensa LLP, London, Ontario
June, 2012

TABLE OF CONTENTS

1	FAMILY LAW	Page 1
2	CRIMINAL LAW	Page 15
3	WILLS, ESTATES & TRUSTS	Page 23
4	TAXES	Page 35
5	EMPLOYMENT MATTERS	Page 43
6	DISABILITY INSURANCE & COMPENSATION	Page 57
7	LANDLORD AND TENANT	Page 73
8	BUYING AND SELLING REAL ESTATE	Page 83
9	BUSINESS LAW BASICS	Page 91
10	BANKRUPTCY& INSOLVENCY	Page 99

FAMILY LAW

Chapter One



Chapter Author:
Kate Bennett, Family Lawyer
Harrison Pensa LLP

■ FAMILY LAW

My relationship has just ended. What do I do next?

Many issues arise when a marriage/relationship ends including but not limited to:

- custody of child(ren);
- access to child(ren);
- child support;
- spousal support; and,
- division of property.

You and your spouse/partner can negotiate the resolution of the issues which have arisen as a result of the breakdown of your marriage/relationship. You can negotiate personally, through a representative, i.e. a lawyer, or with the assistance of a mediator or arbitrator. If you and your spouse/partner come to an agreement, it is important that you draft a Separation Agreement detailing the terms of that agreement.

It is strongly recommended that you consult with a lawyer prior to negotiating the terms of a Separation Agreement so that you understand your rights and responsibilities and, to ensure that your interests are protected.

If you and your spouse/partner cannot agree on the resolution of the issues which have arisen as a result of the breakdown of your marriage/relationship, you may commence a court Application and a judge will decide how to resolve those issues.

CHILD CUSTODY AND ACCESS

My spouse/partner and I are separating. How will we decide where our child(ren) will live?

You and your spouse/partner may decide where your child(ren) will reside. The child(ren) may live primarily with you, with your spouse/partner, or with both of you. If you come to an agreement about where your child(ren) will reside,

it is important that you draft a Separation Agreement detailing the terms of your agreement. It is recommended that you consult with a lawyer when negotiating the terms of a Separation Agreement. As well, a lawyer can draft the Separation Agreement for you or provide independent legal advice about an Agreement drafted by another lawyer.

If you and your spouse/partner cannot agree where your child(ren) will reside, you may commence a court Application and a judge will decide where the child(ren) will live.

Who will make the major decisions about the child(ren)? Who will have custody?

Sole custody means that one parent makes all major decisions about the child(ren).

Joint custody means that both parents make major decisions about the child(ren) together.

Decisions about the child(ren)'s education, health care, religion, and general welfare will be made by one parent (***sole custody***) or jointly by both parents (***joint custody***). Alternatively, you may each be responsible for making certain decisions for the child(ren) (***parallel parenting***). For example, you may make decisions about the child(ren)'s education and religion and, your spouse/partner will make decisions about the child(ren)'s health care and general welfare. If you come to an agreement about custody, it is important that you draft a Separation Agreement detailing the terms of your agreement.

If you and your spouse/partner cannot agree who will have custody of the child(ren), you may commence a court Application and a judge will make an order for custody of the children.

My children do not live with me. How do I gain access to my children?

You and your spouse/partner may agree to an access schedule. It is important to detail the access schedule in a Separation Agreement. For example, access visits may occur during one or more of these times:

- each weekend;
- on alternating weekends;
- on alternating weeks;
- during the week overnight;
- during the week for a few hours;
- overnight for two or three days in a row; or
- any combination of the above.

Your access schedule should also detail how you and your spouse/partner will share the child(ren)'s holiday time.

If you and your spouse/partner cannot agree on an access schedule, you may commence a court Application and a judge will make an access order.

How will the judge decide where the child(ren) will live and who will have custody?

The judge will make his or her decision based on the best interests of the child(ren). Factors which will be taken into consideration are:

- the ability of you and your spouse/partner to care for the child(ren)
 - including any violence or abuse which has been committed in the past against the other parent, the child(ren), or both;
- the emotional ties between the child(ren) and each parent;
- the stability of the child(ren)'s current residential arrangements;
- each parent's plan for care of the children; and,
- the child(ren)'s wishes (where appropriate).

How will my brain injury affect my claim for custody or access?

Your brain injury is relevant only to the extent that it affects your ability to care for your child(ren). For example, if your injury results in difficulties controlling your behaviour, impairs your judgement, or affects your ability to meet your child(ren)'s physical or emotional needs on a daily basis, a judge will consider these factors when determining what custodial and/or access arrangements are in the child(ren)'s best interests.

CHILD SUPPORT

My children live with my former spouse/partner. Do I need to pay child support?

Each parent has a responsibility to financially support his or her children. This responsibility applies to all parents, regardless of whether they were married, living together or have never lived together. If your child(ren) do not reside primarily with you, the amount of child support you must pay is based on your income and the number of children who are eligible for support. Except in limited circumstances, the income of the other parent is irrelevant to the amount of support that you are required to pay. The parent with whom the child(ren) reside on a primary basis will use the child support payments to house, feed, clothe, entertain and generally care for the child(ren). If the child(ren) reside with you at least forty per cent (40%) of the time, the amount of child support you pay may be reduced. If you pay child support or if your income is required to calculate a child support amount, you must provide proof of your income to the other parent.

Child support is generally paid on a monthly basis however, you may also make a lump sum payment to satisfy your child support obligation.

You and your spouse/partner can determine the appropriate amount of child support by using the tables in the Child Support Guidelines. If you come to an agreement about the amount of child support payable, it is important that you draft a Separation Agreement detailing the terms of your agreement. It is recommended that you consult with a lawyer when negotiating the terms of a Separation Agreement. As well, a lawyer can draft the Separation Agreement for you, or provide independent legal advice about an Agreement drafted by another lawyer.

If you and your spouse/partner cannot agree on the amount of child support that should be paid, either of you may apply to the court for a child support order.

I have heard about special and extraordinary expenses. Do I have to pay for these expenses in addition to my monthly child support amount?

You must contribute to your child(ren)'s special and extraordinary expenses in addition to paying child support. Special and extraordinary expenses are:

- child care expenses
 - for example, day care or summer camp fees;
- medical and dental expenses;
- educational expenses
 - elementary, secondary or post-secondary; and
- extraordinary expenses for extra-curriculars
 - for example, competitive sport fees.

I have received a personal injury award. Is this award income for the purposes of determining my child support payments?

General damages for pain and suffering are capital, not income. However, interest generated from the investment of that capital is income and will be considered in determining your child support obligation. If part of the award represents future income loss, it will be considered income for the purpose of determining your child support obligation. Even where the award does not specify a certain amount as an amount for future income loss, the court may attribute a portion of the award to income.

I am unable to work as a result of my injury. How will my child support payment be determined?

If you do not earn an income from employment, your child support obligation will be calculated based on any investment income earned, on an award for future income loss or on an amount of income which is attributed to you by the court. This is called imputation of income. A judge may impute income to you if you are not making the best use of your employment skills or property to earn a sufficient income to meet the needs of your child(ren). The effect of your injury on your ability to work will be relevant to the judge's decision whether to impute income.

When does the obligation to pay support end?

The obligation to pay support will continue until:

- your child no longer resides with the custodial parent;
- your child is sixteen (16) years of age and has withdrawn from parental control
 - for example, your child lives on his or her own and, supports himself or herself financially;
- your child is eighteen (18) years of age and is not enrolled in full-time school **;
- your child is married; or
- your child dies.

***if a child over the age of majority [18 years] suffers from an illness or disability which prevents him or her from becoming self-supporting then he or she may continue to be entitled to child support. A child may also continue to be entitled to child support if he or she is attending post-secondary school to obtain a second or third degree. The child's entitlement will depend upon a number of factors.*

How is a child support order enforced?

Unless both you and your spouse/partner withdraw from enforcement, all support orders made in Ontario are automatically filed with the Family Responsibility Office (FRO). The FRO processes child support payments to help ensure that the support is paid on a regular basis and takes action to enforce support orders that are not being paid on time or in full.

SPOUSAL SUPPORT

My relationship has ended and I do not have enough money to support myself. Am I entitled to financial support from my former spouse/partner?

You can request financial support for yourself if you and your spouse/partner were married, have been living together for at least three years, or if you have lived together for less time and have a biological or adopted child.

You may be entitled to support if you have a need for support and your spouse/partner has the ability to pay support. You may also be entitled to support to compensate you for a role that you assumed during your marriage/relationship.

If you and your spouse/partner can settle on an amount of support, it is important that you draft a Separation Agreement detailing the terms of your agreement. It is recommended that you consult with a lawyer when negotiating the terms of a Separation Agreement. As well, a lawyer can draft the Separation Agreement for you or provide independent legal advice about an Agreement drafted by another lawyer. If you cannot resolve the issue of support, you may commence a court Application and a judge will decide if you are entitled to support.

How much support will I receive and for how long will I receive it?

You may receive a lump sum amount of support or a monthly amount of support paid over time. The amount of support you will receive, as well as how long you will receive it, will be determined based on a number of factors including:

- the age and health of you and your spouse/partner;
- available employment opportunities;
- the effect being in a relationship had on employment opportunities;
- the contribution you made to family care during the relationship;
- the contribution you made to your spouse/partner's career;
- your family's standard of living prior to separation;
- the time it will take you to become financially self-sufficient; and
- the need to stay at home to take care of a child(ren).

In general, if you and your spouse/partner were together for a short time you will only be entitled to support on a short-term basis. The purpose of this support amount is to assist you in becoming financially self-sufficient., for example, by providing you with an income while you return to school or train to re-enter the workforce. If you and your spouse were together for a long time or if you are unable to become self-sufficient as a result of an illness, disability or injury, you may receive an award of support for an indefinite period.

How is a spousal support order enforced?

Unless both you and your spouse/partner withdraw from enforcement, all support orders made in Ontario are automatically filed with the Family Responsibility Office (FRO). The FRO processes spousal support payments to help ensure that the support is paid on a regular basis and takes action to enforce support orders that are not being paid on time or in full.

FAMILY PROPERTY

I am married and my spouse and I are separating. How do we divide our property?

Marriage is considered a financial partnership and, when a marriage ends, the partnership is over and property must be shared. Except in limited circumstances, your property will be divided equally between you and your spouse. In general, the value of any property that you acquire during your marriage and that you still have when you separate must be divided equally between you and your spouse. The value of property that you brought into your marriage is not divided.

You and your spouse can agree to an uneven sharing of your property. If you come to an agreement about the division of your property, it is important that you draft a Separation Agreement detailing the terms of your agreement. It is recommended that you consult with a lawyer when negotiating the terms of a Separation Agreement. As well, a lawyer can draft the Separation Agreement for you or provide independent legal advice about an Agreement drafted by another lawyer.

If you and your spouse cannot agree, either of you may apply to the court and a judge will decide how to divide your property.

Is there any property that is not shared?

You are not required to share the value of the following property with your spouse:

- gifts that you received during your marriage from a person other than your spouse that exist at the date of your separation;
- property that you inherited during your marriage as long as you can trace the value of that inheritance to property which exists at the date of your separation;
- money that you received from an insurer because someone has died; and
- money that you received or that you have a right to receive as a result of a personal injury including money for :
 - pain and suffering;
 - prejudgment interest;
 - wage loss that occurred after the separation
 - (it is important to note that money you receive for lost wages for any period of time prior to separation will be divided);
 - loss of future earnings;
 - retraining or rehabilitation; and
 - disability benefits.

I purchased our family home with money that I received from my personal injury settlement. I own the home. Do I have to share the value of the home with my spouse?

The family home is called the Matrimonial Home. The matrimonial home is treated differently than other property. When your marriage ends, the full value of the matrimonial home must be shared even if:

- the home was owned by one of you prior to marriage;
- you received it as a gift;
- you inherited it, or
- you purchased the home with funds from a personal injury settlement.

As well, even though you own the home, your spouse has a right to possession of the home. This means that your spouse/partner may be allowed to continue living in the home after separation. This right ends upon divorce.

If you do not wish to share the value of your property, including the family home, with your spouse, you may enter into a marriage contract. In the marriage contract, you and your spouse may agree that upon dissolution of the marriage, there will be no division of property. Prior to entering into a marriage contract, both you and your spouse should provide the other with full financial disclosure and should seek independent legal advice. As well, both you and your spouse must enter into the contract of your own volition, free from duress or undue influence.

My partner and I are not married. What happens to our property on separation?

If you were cohabiting with your partner but were not married, your property will be divided according to ownership. Unless you have an agreement with your partner that says otherwise, you are not required to share the value of any property that you accumulated during your relationship.

RESOURCES:

About Custody and Access:

http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/family_law.asp

About Child Support:

http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/family_law.asp

<http://canada.justice.gc.ca/eng/pi/fcy-fea/sup-pen/index.html>

The Federal Child Support Guidelines: Step-by-Step

<http://canada.justice.gc.ca/eng/pi/fcy-fea/lib-bib/pub/guide/index.html>

Federal Child Support Guidelines:

<http://lois-laws.justice.gc.ca/PDF/SOR-97-175.pdf>

About Spousal Support:

http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/family_law.asp

<http://canada.justice.gc.ca/eng/pi/fcy-fea/spo-epo/index.html>

Spousal Support Advisory Guidelines:

http://canada.justice.gc.ca/eng/pi/fcy-fea/spo-epo/g-ld/spag/pdf/SSAG_eng.pdf

NOTES

CRIMINAL LAW

Chapter Two



Chapter Author:
Ron Ellis, Criminal Lawyer
Ron Ellis Law Professional Corporation

■ CRIMINAL LAW

Issues relating to criminal law

There may be circumstances where you or a family member will become involved with the criminal justice system. Being charged with a criminal offence is a very stressful, challenging and confusing ordeal for anyone. In most cases you will require the assistance of a criminal defence lawyer. In order to assist you in a general understanding of the process, we provide the following general information outlining the steps involved in most criminal cases.

I have just been arrested and charged with a criminal offence, what next?

When arrested, an accused person has the right to receive legal advice from their counsel of choice prior to making any statements to the police or other investigator. All police stations have a list of local criminal defence lawyers who are available 24 hours a day to assist you. You have a right to select a lawyer from the list or choose your own lawyer and to speak with them in private.

How do I know if and when I will be released?

Once arrested, an accused person will either be released by the police within a few hours or, if the charge is more serious, held in custody overnight. If you are held in custody, you must be brought before a Justice of the Peace within 24 hours. The crown prosecutor can then either agree to release you with terms for your supervision or ask that you have a bail hearing to determine the terms for your release and supervision while your case is before the court.

I have been charged with a criminal offence but can't afford to pay for a lawyer. Is there financial assistance available?

Yes. If you meet the financial eligibility tests, Legal Aid Ontario (LAO) will provide full funding to defend you. In some circumstances, your income or other financial

resources will be slightly higher than allowed by LAO. In these cases you will likely still qualify for assistance from local community legal clinics or a legal clinics based in the law school of a local university. Ask your local court which clinics are available to you.

What happens at my first court date?

If you are released, you will have to attend for your first court date in person at the local courthouse about one month after you are charged. If you are held in custody you will appear in court by video link from the local detention centre (usually within a few days). You will likely have several initial court appearances before your matter is resolved by trial or other resolution. If you hire a lawyer, that lawyer can attend court for you and you will not have to attend court until the trial or resolution date.

I have just been charged with domestic assault. How will this affect my children? How will this affect my current family court matters?

The criminal court and family court often experience overlap. If you are charged with domestic-related criminal offences the family court will likely have the final say on how you will access your children. You should consult with a family lawyer and a criminal defence lawyer to make sure your rights are protected. Both the criminal court and family court will consider the best interests of your children when making decisions concerning custody and access.

My brain injured family member has been charged with a criminal offence. I am certain they would not have committed this offence if they were not injured. What can be done in court?

Many jurisdictions have a Therapeutic Court or Therapeutic Diversion Program where accused persons can receive special consideration and treatment. These courts are designed to help rehabilitate and treat a person who is struggling to overcome special health circumstances that may include brain injury. Often, a person in the Therapeutic Court who successfully completes all counseling or treatment recommended to them will have all criminal charges withdrawn.

If your loved one is seriously unwell due to a brain injury, the law may provide a full shield to criminal liability. Assessments can be ordered by the court to determine whether a person is so unwell that they are not criminally responsible (NCR). If a person is deemed to be NCR they can be moved out of the criminal court and into a treatment facility.

After my injury I became addicted to prescription drugs. I have become involved with the criminal court as a result of my addiction. Is there help for me in the courts?

Yes. Many jurisdictions have Drug Therapy/Drug Diversion Courts. All jurisdictions will consider the role drug addiction has played in the offender becoming involved with the criminal justice system. Ask your criminal lawyer for assistance.

RESOURCES:

Legal Aid Ontario
<http://www.legalaid.on.ca/en/getting/>
 1-800-668-8258 (toll-free)

Local University Legal Clinic

University of Western Ontario, Faculty of Law
 Community Legal Services
 1151 Richmond Street, Law Building Room 120
 London, ON N6A 3K7

<http://www.law.uwo.ca/cls/index.html>
 Telephone: 519-661-3352
 Fax: 519-661-3428

Ministry of Transportation
<http://www.mto.gov.on.ca/english/index.shtml>

Attorney General of Ontario
<http://www.attorneygeneral.jus.gov.on.ca/english/contact.asp>

Criminal Code Of Canada
 PDF <http://laws-lois.justice.gc.ca/PDF/C-46.pdf>
 HTML <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Canadian Charter Of Rights and Freedoms
 PDF http://laws-lois.justice.gc.ca/eng/Charter/CHART_E.pdf
 HTML <http://laws-lois.justice.gc.ca/eng/Charter/>

NOTES

NOTES

WILLS, ESTATES & TRUSTS

Chapter Three



Chapter Author:
Cate Grainger, Lawyer
Harrison Pensa LLP

■ WILLS, ESTATES & TRUSTS

WILLS

Why is Having a Will Important for Me and My Loved Ones?

Having a Will is one way to ensure that your loved ones are taken care of after your death. By making a Will, you control who your executor will be and who your beneficiaries will be. In your Will, you can also appoint Guardians to take care of your children in the event you die before your children are adults. If you have a brain-injured or otherwise disabled beneficiary, you may include in your Will a Henson Trust for any beneficiaries who may be receiving Ontario Disability Support Program [ODSP] income support. This ensures that a bequest from you will not cause them to be ineligible for continued ODSP support.

What is a Henson Trust?

Beneficiaries who receives income benefits (such as ODSP) could lose those benefits if money is left to them directly in a Will or a regular trust. Henson trusts are specially designed to provide money to beneficiaries in such a way that they will not lose their income benefits.

Henson trusts may be created to settle money on beneficiaries during your life or they can be created in your Will to take effect after your death. Your lawyer will review your situation and advise which choice would best fit your situation.

Do I Need a Lawyer to Help Me with My Will?

If you want to be sure that your wishes are followed after your death, you should have an estate lawyer prepare your Will for you. Your lawyer will review with you your unique personal situation and advise you how your Will should be structured.

■ MANAGING PROPERTY

Do I Need a Continuing Power of Attorney for Property?

It is important to have a Continuing Power of Attorney for Property [“POA for Property”]. Your POA for Property document appoints someone to assist you with your finances. If, at some point in your life, you become unable to manage your own finances, the person you have appointed in your POA for Property will have the authority to take care of all financial matters on your behalf. This involves helping you with:

- Paying bills;
- Buying or selling property;
- Depositing cheques; and,
- Writing cheques, etc.

Court Appointed Guardians of Property

Often, people with brain injuries require help with their finances. If you do not have a POA for Property and you are not competent to grant one, a person may apply to the Court to be appointed as your Guardian of Property. The court appointed Guardian will be responsible for assisting you with your financial matters.

If a minor child (under the age of 18) has received money as a result of a legal action, a parent is not automatically the child’s Guardian of Property. It is usually necessary that a parent or other responsible adult be appointed by the Court as the child’s Guardian of Property.

Your lawyer will advise you and assist you with the following steps in a Guardianship for Property Application:

- Capacity assessment;
- Medical affidavits;
- Your affidavit;
- Consent of other persons;
- Management Plan; and
- The entire Court process. (In most cases, you will not be required to attend Court.)

What happens if a person appointed in a POA for Property or a Court Appointed Guardian of Property is not acting in my best interest?

- You may call your lawyer, who will advise you; or
- You may contact the Office of the Public Guardian and Trustee and request an investigation, pursuant to s. 27 of the Substitute Decisions Act, 1992.

■ MANAGING PERSONAL CARE

Do I Need a Power of Attorney for Personal Care?

It is also wise to have a Power of Attorney for Personal Care [“POA for Personal Care”]. Your POA for Personal Care document appoints someone to be your substitute decision maker in the event you are not capable of making your own health care decisions.

This involves decisions about:

- Hospital care;
- Consent to treatment;
- Consent to surgery; and
- Moving from hospital to supportive housing (or other healthcare) facility, etc.

Court Appointed Guardian of the Person

If you suffer a brain injury and are not capable of managing your personal care and you have not appointed a POA for Personal Care, a person may apply to the Court to be appointed your Guardian of the Person. The Guardian of the Person will assist you with your personal care decisions. If the Court has found that you are fully incapable in respect of all of your personal care needs and decisions, the Court Appointed Guardian of the Person will have access to any personal information you would have had access to, including health information and records.

Your lawyer will advise you and assist you with the following steps in a Guardianship of the Person Application:

- Capacity assessment;
- Medical affidavits;

- Your affidavit;
- Consent of other persons;
- Management Plan; and
- The entire Court process. (In most cases, you will not be required to attend Court.)

If a minor child (under the age of 18) suffers a brain injury, the child's parent is automatically the Guardian of the person for the child, until the child reaches the age of majority (18 years).

What happens if a person appointed in a POA for Personal Care or a Court Appointed Guardian of the Person is not acting in my best interest?

- You may call your lawyer, who will advise you; or
- You may contact the Office of the Public Guardian and Trustee and request an investigation, pursuant to s. 62 of the Substitute Decisions Act, 1992.

ODSP – WHAT IS IT AND HOW DOES IT WORK?

ODSP, or the Ontario Disability Support Program, is a social assistance program that provides support if the Ministry of Community and Social Services finds that:

- You demonstrate financial need; and
- You qualify as a “Person with a Disability”.

A. How is Financial Need Assessed?

In assessing your financial situation to determine if you are eligible for financial assistance, the Ministry will consider the following:

- Whether you have a spouse or dependants;
- How many children you have, and how old they are;
- Your income and assets;
- Your living expenses;
- Whether you are entitled to other sources of income; and
- Where you live.

B. Who Qualifies as a “Person With a Disability” for ODSP?

If the Ministry determines that you are eligible for financial assistance it will provide you with a “Disability Determination Package” to assess whether you qualify as a person with a disability. You must complete the package according to the instructions and return it to the Ministry. The package contains the following:

- A Health Status Report. Depending on the type of disability, the Health Status Report must be completed by one of the following:
 - Medical doctor;
 - Psychiatrist;
 - Psychologist;
 - Registered nurse;
 - Ophthalmologist; or
 - Optometrist.
- An Activities of Daily Living form. It is important to include copies of medical and consultation reports with this form.
 - The Activities of Daily Living form can be completed by the same person who filled out your Health Status Report, or by one of the following professionals:
 - Chiropractor;
 - Audiologist;
 - Occupational therapist;
 - Physiotherapist;
 - Registered nurse, or
 - Speech language pathologist.
- A Consent to Release Medical Information form. This form authorizes your health care professionals to release relevant information to the Ministry.
- A Self-Report form. This form is optional, you are not required to complete it, however, it will assist the Ministry in making its decision. The Self-Report form can be completed by you or by the following:
 - Your Guardian;
 - A family member;
 - An interpreter;
 - A community representative; or
 - Someone you trust.

How can I apply for ODSP?

You can apply to the Ministry of Community and Social Services on-line, in person, or by phone. For contact information for the Ministry please see Resources at the end of this chapter.

Canada Pension Plan Disability Benefit – what is it and how does it work?

If you have recently worked and contributed to the Canada Pension Plan and are now unable to work at any job due to a disability, you may be eligible for the Canada Pension Plan (CPP) Disability Benefit. It is also possible that, if you qualify for the CPP Disability Benefit, your children may also qualify for benefits.

A. Am I Eligible?

You may be eligible if:

- you are under the age of 65;
- you stopped working because of your medical condition; and
- you recently worked and paid into CPP for at least 4 of the last 6 years, OR
- You paid into CPP for at least 25 years and made valid contributions to CPP in 3 of the last 6 years.

B. Whom do I contact to find out if I'm eligible?

To find out if you are eligible for CPP contact Service Canada. For contact information for Service Canada please see Resources at the end of this chapter.

■ SUPPORTIVE HOUSING

Is Supportive Housing an Option for a Brain Injured Person Who is Not a Senior?

Yes. There are a variety of services that are available for people of any age including:

- in home and community support service to assist the brain injured person while living at home. This can assist the brain injured person with:
 - in-home nursing care
 - personal care, including hygiene, toileting, dressing and eating
 - escorting the person to appointments, etc
- Residential care, including supportive housing and long-term care homes

Whom Do I Contact for Assistance?

Community Care Access Centre
frontdeskservices@ccac-ont.ca
519-310-CCAC (2222)

How Do I Report a Complaint about a Supportive Housing Facility?

Anyone can report a concern or a complaint about a resident's situation including:

- A resident
- A family member
- An employee of the home
- Any member of the public

You may report your concern directly to the home. All long-term care homes in Ontario must have written procedures in place for making complaints.

May I Make an Anonymous Complaint?

Yes, you may call the Ministry of Health and Long-Term Care's toll-free ACTION line at 1-866-434-0144.

What Will the Ministry Do?

If you have provided a phone number, the Ministry will have an inspector contact you to talk about the problem. If the complaint is about improper treatment, abuse, neglect or unlawful conduct that resulted in harm or the risk of harm to a resident, then the inspector will immediately visit the supportive housing facility and conduct an inquiry.

RESOURCES:

ODSP

Ministry of Community and Social Services
Ontario Disability Support Program
Income and Employment Supports
217 York Street, 3rd Floor
Box 5217
London ON N6A 5R1

Note: For other ODSP Office locations, please visit the website or phone (below)

<http://www.mcsc.gov.on.ca/en/mcsc/programs/social/odsp/>

Tel: (519) 438-5111
Toll Free: 1-800-265-4197
TDD/TTY: (519) 663-5276

CPP

Service Canada Centre
London - Service Canada Centre
457 Richmond Street
London, Ontario
N6A3E3

http://www.servicecanada.gc.ca/eng/isp/contact/contact_us.shtml
For service in English: 1 800 277 9914 (toll free)
For service in French: 1 800 277 9915 (toll free)
TTY: 1 800 255 4786 (toll free)

Community Care Access Centre
frontdeskservices@ccac-ont.ca
519-310-CCAC (2222)

NOTES

TAXES

Chapter Four



Chapter Author:
Susan Fincher-Stoll, Lawyer
Harrison Pensa LLP

■ TAXES

How do I know if I need to or should file an income tax return?

Whether you need to or should file an income tax return depends upon a number of factors, including amount and sources of income, the availability of tax credits, such as property tax credits, and the availability of rebates, such as the HST rebate.

Where can I get help in determining whether and how to file an income tax return?

You may wish to consult with an accountant who is experienced in income tax matters to assist you. If your income is low and your tax situation is not complicated, there is a Community Volunteer Income Tax Program offered for free through the Canada Revenue Agency and you may wish to speak with a volunteer regarding whether you need to file a return and, if so, to get help to file your return.

Can I claim any medical expenses on my income tax return?

Yes. You may be able to claim eligible medical expenses for which you have not been reimbursed. There are numerous eligible medical expenses that may be claimed, including:

- prescription drugs;
- dental expenses;
- orthopaedic shoes and inserts;
- certain therapy expenses;
- wheelchairs and walking aids; and
- eyeglasses.

What other deductions or credits might be available to me?

There are other credits that might be available to you if you have a disability, such as the disability supports deduction and the disability tax credit. Under

the disability supports deduction, you may be able to deduct amounts you paid for attendant care services, devices or software to allow you to read print, etc.

In addition, if you have a severe and prolonged physical or mental impairment, you may be entitled to the disability tax credit.

As a parent of a child with a disability, what deductions or credits may I be able to claim?

You or your spouse or common law partner may be able to deduct expenses to look after your child so that you can work or go to school.

You might also be entitled to receive the child disability benefit if you receive the Canada child tax benefit for a child who is eligible for the disability tax credit. You do not have to file a separate application for the child disability benefit, as it will be calculated automatically when you file your income tax return, for children who qualify and are under age eighteen. It is based on family net income.

You may be entitled to the caregiver amount if you maintained a dwelling and your child is eighteen or older, lived with you and was dependent on you due to a physical or mental impairment. This caregiver amount applies to a dependant who is a child, grandchild, sibling, niece/nephew, aunt/uncle or grandparent of you or your spouse/common law partner.

What is a Registered Disability Savings Plan?

A registered disability savings plan (“RDSP”) is a savings plan governed by the Income Tax Act that allows funds to be set aside for someone who has a severe and prolonged physical or mental impairment. An RDSP is an excellent way for Canadians with disabilities and their families to save for the future. The beneficiary of the RDSP must be a Canadian resident with a social insurance number and eligible for the disability tax credit. Parents, grandparents, and others can contribute to the RDSP.

When and how is a RDSP set up?

An RDSP can be set up for the disabled person at any time up to age 59. You can establish an RDSP for a minor. In order to set up an RDSP, you should speak to a financial advisor.

What are the rules regarding contributions to and withdrawals from RDSPs?

Contributions to the RDSP are not tax deductible, but the funds in the RDSP grow on a tax-deferred basis. There is no annual contribution limit, but the maximum lifetime contribution is \$200,000 per beneficiary. The last date to contribute is the end of the year when the beneficiary turns 59. The beneficiary must start to withdraw the funds at age 60. The withdrawals are called disability assistance payments.

Does the Government contribute to RDSP?

Yes, the federal government contributes to an RDSP in two ways:

- 1) a matching grant, called the Canada disability savings grant, of up to \$3500 depending upon the contributions to the RDSP and the beneficiary’s family income; and
- 2) a bond, called the Canada disability savings bond, of up to \$1000 per year into RDSPs for low and modest income Canadians.

Any grants or bonds paid into an RDSP must remain in the RDSP for at least 10 years.

RESOURCES:

Community Volunteer Income Tax Program
www.cra.gc.ca/volunteer
 or call 1-800-959-8281

NOTES

NOTES

EMPLOYMENT MATTERS

Chapter Five



Chapter Author:
Lorraine J. Por and Mana Khami, Lawyers
Harrison Pensa LLP

■ EMPLOYMENT

This chapter of the handbook is intended to assist you in learning about your options if you have been dismissed from your employment or have trouble at work. If you have any questions you should consult with a lawyer to ensure your rights are protected.

■ NON-UNIONIZED EMPLOYEES

The advertisement for the job says the employer is looking for an Independent Contractor. Is that different from a regular Employee?

In Ontario, when you work for a person or a company, you are either an Employee or an Independent Contractor (sometimes called a “contractor” or “consultant”). There is a significant difference in your rights, obligations, and protections under the law depending on whether you are an Employee or an Independent Contractor.

How do I know if I am an Independent Contractor or an Employee?

Your description of “Employee” or “Independent Contractor” does not determine how the courts or a government agency will classify you. There are many factors used to determine whether you are an Employee or an Independent Contractor. Below are some of the most important factors:

Employee

- The company has extensive control over how you do your work.
- The company provides “tools” (computers, desk, office, materials, etc.).
- You cannot provide for your own substitute if you are ill or on vacation.
- You have no chance of profit but you also have no financial risk (for example, you are paid by salary or hourly wage).
- The company takes statutory deductions (employment insurance, Canada Pension, income tax) from your pay-cheques.

Independent Contractor

- For the most part you determine how work is completed.
- You provide “tools” to complete the work.
- You can hire somebody to do the work if you cannot or do not want to do it.
- You assume some chance of profit or you have financial risk (for example, you are paid by task).
- No statutory deductions are taken from your pay-cheques and you are responsible for your own remittances and possible charging/remitting of HST.

What rights do I have as an Independent Contractor?

For the most part, as an Independent Contractor you only have the rights that are set out in your contract of hire. This contract can be a written contract or an unwritten, oral contract. Sometimes, the terms of the contract can be both written and unwritten.

What Rights do I have as an Employee?

Employees are protected by a number of different statutes and by court decisions, which are known as the “common law”. The types of protection to which an Employee is entitled can include some or all of the following:

- protection from discrimination and harassment on the basis of disability, race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age (if you are 18 years or over), record of offences regarding offences for which a pardon has not been granted, and marital and family status;
- entitlement to a safe and healthy work environment;
- entitlements if injured in the course of employment; and
- entitlements upon termination.

These entitlements and protections are set out in further detail below.

What is my entitlement to be free from discrimination and harassment?

If you are being treated differently or being harassed because you have or appear to have characteristics which are protected under the Ontario Human Rights Code (disability, race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, and marital status or family status), you can make a complaint under the Ontario Human Rights Code against your employer and/or the person who is perpetrating the offensive conduct.

Employers have an obligation to accommodate an employee who is protected under the Ontario Human Rights Code. The employer has a duty to provide accommodation in a manner that most respects the dignity of the employee, and only insofar as the accommodation does not create “undue hardship” for the employer. “Undue Hardship” is an extremely high standard but is a limit on the obligation of the employer to accommodate. There is no formula for

accommodating employees and each person’s situation will depend on that person’s surrounding circumstances and the employer’s various capabilities to effect the accommodation.

What is my entitlement to a safe and healthy work environment?

If you are experiencing violence and/or harassment at your workplace, you have the right to initiate an investigation of the treatment you have received under the procedures set out in the Occupational Health and Safety Act.

What is my entitlement if I am injured in the course of my employment?

If you are injured or have an accident in the course of your employment, you may be entitled to some monetary or medical benefits if your workplace is covered by the Workplace Safety and Insurance Act. You should contact a lawyer in order to determine whether you can claim benefits under the Workplace Safety and Insurance Act. Workplace safety and insurance is a no-fault insurance system for work-related injuries and diseases that is governed by the Workplace Safety and Insurance Act and managed by the Workplace Safety and Insurance Board.

My employer has fired me, what am I entitled to?

If your employment is terminated, you are entitled to reasonable working notice or payment in lieu of notice, or a combination of the two. You may also have additional damages if your termination:

- is in bad faith on the part of the employer;
- causes you extreme psychological distress;
- constitutes discrimination under the Ontario Human Rights Code; or
- has violated any rights of re-employment you may have under the Workplace Safety and Insurance Act. (The most common entitlement is working notice or payment in lieu of notice).

Working notice means that your employer will tell you that you will be terminated on a particular date and you will continue to work, get paid, and receive benefits until the termination date.

Pay in lieu of notice means that your employer terminates your employment, the termination is effective immediately, but your employer pays you for the period of time which would have otherwise been working notice.

Pay in lieu of notice can be a lump sum payment or salary continuance. Your employer may agree to continue your benefits during the period of reasonable working notice even though you are not working. Under the Employment Standards Act, in most cases your employer is supposed to continue your benefits for a minimal period of time.

You may not be entitled to receive reasonable notice if:

- your job is for a specific duration (referred to as a “fixed term” contract). An example would be if you were hired to work from April 1st to September 30th in a given year;
- you were terminated for just cause. “Just cause” is a legal term but arises where you engage in misconduct which:
 - violates an essential condition of the employment contract;
 - breaches the faith inherent in the employer/employee relationship; or
 - is fundamentally or directly inconsistent with your obligations to your employer; or
- there has been a “frustration” of the employment contract. “Frustration” is also a legal term which is applicable in very specific situations where you cannot do your job for reasons which are beyond your control.

How is reasonable notice calculated?

Reasonable notice is calculated pursuant to:

1. **statutory law; and**
2. **the common law.**

1. Statutory Law

Employment Standards Act

Most employers are provincial undertakings and the Employment Standards Act is the legislation which sets out the minimum notice period in Ontario. The following chart sets out the notice period entitlements under the Employment Standards Act:

Length of Employment	Amount of Notice of Termination
3 months up to 1 year	1 week
At least 1 year, up to 3 years	2 weeks
At least 3 years, up to 4 years	3 weeks
At least 4 years, up to 5 years	4 weeks
At least 5 years, up to 6 years	5 weeks
At least 6 years, up to 7 years	6 weeks
At least 7 years, up to 8 years	7 weeks
8 years and over	8 weeks

The Employment Standards Act also provides for a cash payment (referred to as “severance pay”), which is payable if you have been employed for five or more years and your employer has a payroll in Ontario of \$2.5 million or more.

Canada Labour Code

If you work for an employer whose business is considered to be a federal undertaking, such as a bank, a telecommunications company, or an interprovincial transportation company, then the Canada Labour Code (not the Employment Standards Act) applies to you.

Under the Canada Labour Code, if you are not a manager and you have been employed for 12 continuous months, you can only be dismissed for reasons that are not “unjust”. Under the Canada Labour Code, most employees are entitled to written notice of the termination of their employment two weeks prior to the date specified in the notice or payment of two weeks of wages.

If you have completed 12 months of continuous service, you are also entitled to “severance pay” which is the greater of:

1. two days’ pay for each completed year of service; or
2. five days’ pay.

2. Common Law

The notice period requirements under the Employment Standards Act and Canada Labour Code are minimum notice periods, and are included in the common law calculations of reasonable notice.

At common law, the notice period for termination of an employee’s employment can be much longer than the statutory law provides. “Notice” is generally calculated with reference to:

- the character of the employment;
- the length of service of the employee;
- the age of the employee; and
- the availability of similar employment, having regard to the experience, training and qualifications of the employee.

If there is an enforceable employment contract, this contract will in most circumstances determine your notice period under common law.

Other entitlements upon termination

Depending on the terms of your employment contract and the governing law, you may also be entitled to:

- continuation of benefits;
- pension contributions;
- use of company vehicles;
- profit sharing; and
- bonuses and/or unpaid commission.

Your obligations upon termination

Employees have an obligation to keep confidential all the “Confidential Information” of the employer. This obligation continues after termination no matter how the employment relationship ended. “Confidential Information” is information which is not known by the general public about the Company. Examples of “Confidential Information” include:

- marketing information;
- financial information;
- sales techniques and processes;
- manufacturing techniques and processes;
- customer/client lists and specific customer or client contracts; and
- documents and precedents.

If you were a key employee or if it was specifically set out in your employment contract, you may also have an obligation not to compete with your former employer and not to solicit your former employer’s customers, clients, or current employees.

You also have an obligation to return **all** of your employer’s property immediately on termination.

An employee, most importantly, has a legal obligation to seek replacement employment as soon as possible. This replacement employment only has to be “comparable” employment, and not something that is “less” than what the employee originally held. The courts have developed guidelines to determine what constitutes comparable, alternative employment.

■ UNIONIZED EMPLOYEES

I am a member of a union, what rights do I have?

If you are in a workplace which is unionized and you are a member of that union, your rights are governed by the Collective Agreement.

Unions have a positive legal obligation to fairly represent their members and making sure their rights are protected under the Collective Agreement. The Ontario Labour Relations Act requires trade unions to act in a “caring and non-capricious manner” when representing their members. The union can bring “grievances” against the employer when the employer breaches a provision of the Collective Agreement.

The union controls both the collective bargaining process and the grievance mechanism in accordance with the terms of the Collective Agreement. Employees are not entitled to deal individually with their employer unless it is through the union. Employees must rely on their union to protect or advance their interests. When an employee is unhappy with a union’s conduct or lack of action, the employee can file an unfair representation complaint with the Ontario Labour Relations Board against the union. A lawyer will be able to assist you with filing a complaint with the Ontario Labour Relations Board.

RESOURCES:

For more information on your entitlements pursuant to the Employment Standards Act see the Ontario Ministry of Labour’s guide entitled:

Your Guide to the Employment Standards Act, 2000
<http://www.labour.gov.on.ca/english/es/pubs/guide/index.php>

For more information on unjust dismissals, see Labour Canada’s website at www.labour.gc.ca and/or contact a lawyer.

Human Resources and Skills Development Canada
<http://www.hrsdc.gc.ca/eng/home.shtml>

Labour Canada
www.labour.gc.ca

Ontario Human Rights Commission
<http://www.ohrc.on.ca/>

Ontario Ministry of Labour
<http://www.labour.gov.on.ca/english/>

Employment Standards Act
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00e41_e.htm

Canada Labour Code
<http://laws-lois.justice.gc.ca/eng/acts/L-2/>

Canadian Human Rights Act
<http://laws-lois.justice.gc.ca/eng/acts/H-6/FullText.html>

Ontario Human Rights Code
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h19_e.htm

Occupational Health and Safety Act
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90o01_e.htm

Workplace Safety and Insurance Act
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_97w16_e.htm

NOTES

NOTES

DISABILITY INSURANCE & COMPENSATION

Chapter Six



Chapter Author:
Sean Mackintosh and Gerard T. Tillmann, Lawyers
Harrison Pensa LLP

■ DISABILITY INSURANCE AND COMPENSATION

When you or a family member suffers an injury there may be compensation available through insurance or lawsuit claims to assist with rehabilitation, expenses and income losses. There may be very short time limits within which you must provide notice to access insurance or to provide notice of a lawsuit. A personal injury lawyer can help you identify and recover fair compensation to assist with early rehabilitation, care, transitions to independence, and to relieve financial burdens associated with the loss of the ability to work.

Lawsuit Compensation for Injuries

What types of compensation can I recover in a lawsuit for my injuries?

If your injuries are caused by the negligence of an individual, authority or a company, you may be entitled to compensation from the following categories:

- damages for pain and suffering, loss of enjoyment of life, and loss of amenities;
- loss of Income;
- loss of Housekeeping and Household Services Capacity; and
- damages for your Medical Expenses and Care.

Are my family members able to recover damages as a result of my injuries?

In Ontario, family members may be entitled to recover damages for their loss of care, guidance and companionship resulting from injuries sustained by another family member. Family members may also be entitled to recover compensation for the value of services they have provided or their economic losses.

In cases where a family member dies as a result of their injuries, the surviving family members may be entitled to compensation for additional economic losses including the loss of financial support that the deceased family member would have provided.

Are there any time limits for me to make a claim as a result of my injuries?

There are some instances where you have to give notice within days of an incident of your intention to sue the at-fault party.

In Ontario, you generally have 2 years to sue an at-fault party for damages you suffer as a result of your injuries caused by the at-fault party. However, there may be instances when the limitation period can be longer such as when the injured person is under 18 years of age.

If you do not give notice or bring your claim within the specified period you may not be able to sue the at-fault party.

It is important to obtain advice from a personal injury lawyer immediately after you are injured to ensure that you are aware of the limitation periods and notice periods that are applicable to your case. Most lawyers who specialize in personal injury law will provide a free initial consultation and provide a contingency fee arrangement where legal costs can be paid after a settlement is obtained.

Hazardous Premises

In general, an occupier of a premises has an obligation in law to take reasonable care in the circumstances to see that people are reasonably safe while on the premises. Accordingly, if you are injured on a premises such as a parking lot, a store, facility or building, you may have a claim against those that are occupying or that are otherwise in control of the condition of, or of the activities carried out on, the premises.

I was injured when I slipped on ice on a City sidewalk, what claims do I have for compensation?

If you are injured on a municipal sidewalk, you may have a claim against the municipality. If the sidewalk is located along a road you will be required to provide notice to the municipality of your intention to commence an action within 10 days of the date of the incident.

A display case fell over at a shopping mall and injured my child, what claims can we make for compensation?

You and your child may have claims against the shopping mall or the store responsible for the display in question. However, early and prompt investigation is necessary to determine what caused the display to fall. Mall or store surveillance tape may be lost without notice of the potential claim and so you should discuss the possible case with personal injury lawyer right away so that steps to preserve the evidence can be undertaken before any evidence is lost.

My son was injured when he fell off a ladder at our home, what compensation is available?

In many cases, a home owner's insurance policy will not cover injuries to family members. You should review your particular policy with an insurance lawyer. It may be that the ladder was defective and a claim can be made against the manufacturer of the ladder.

A family member was injured on a ski trip, is there any right to sue for compensation?

In many cases participants in recreational activities are required to sign waiver agreements which may restrict the participant's right to sue the operator of the recreational activity or facility. However, the language of the particular release and the circumstances under which it was signed should be reviewed with a personal injury lawyer to determine whether the participant may still bring a lawsuit against the operator.

If I was injured at work do I have to take Workers' Compensation benefits or can I commence a lawsuit?

If your injury was the result of your employer's negligence and you are considered an employee, then you will be covered by Workers' Compensation and you will not be able to commence a lawsuit for your injuries. However, if your injury was caused by machinery or equipment supplied by someone other than your employer then it may be possible to commence a lawsuit against the machinery or equipment supplier. You should discuss your circumstances and options with a personal injury lawyer.

Automobile Accidents

I was just injured in an automobile collision, what do I need to do?

In Ontario, you must notify your automobile insurer and provide your intention to apply for accident benefits within 7 days of the collision. You must then complete an application for accident benefits within 30 days after receiving the application forms from your automobile insurer. Before you can commence an action against any at-fault driver in relation to your injuries, you must apply for accident benefits from your own automobile insurer.

If you are a passenger in a vehicle involved in a collision, or you are a pedestrian or bicyclist injured by a vehicle, and you do not have automobile insurance of your own, you must provide the notification and application noted above to the automobile insurer of the vehicle in which you are a passenger, or of the vehicle that injured you as a pedestrian or bicyclist.

If your collision involved a road defect or improper removal of snow or ice, you must notify the road authority responsible for the roadway in question within 10 days of the collision.

What insurance benefits are available to me through my automobile accident benefits policy?

The benefits that you may be entitled to from your automobile insurer as a result of an automobile accident in Ontario include the following:

- income Replacement Benefits, Non-Earner Benefits or Caregiver Benefits;
- medical and Rehabilitation Benefits;
- case Manager Services;
- attendant Care Benefits;
- lost Educational Expenses;
- visitor Expenses;
- housekeeping and Home Maintenance Expenses;
- damage to Clothing, Glasses, Hearing Aids Etc in the Accident;
- costs of Assessments; and
- death and Funeral Benefits.

Your entitlement and the duration or limit of certain benefits will depend on a number of factors including whether or not your injury is considered a “minor injury” or a “catastrophic injury”. You may be entitled to enhanced accident benefits if you purchased optional benefits prior to your collision.

If you are entitled to Income Replacement Benefits, Non-Earner Benefits or Caregiver Benefits you must obtain and participate in rehabilitation that is reasonable, available and necessary to permit you to engage in employment or shorten the period during which these benefits are payable.

If your automobile insurer denies or terminates a particular benefit, you must initiate the dispute process by applying for a Financial Services Commission of Ontario mediation within two years of the date of denial or termination.

What compensation in a lawsuit can I recover for my injuries against an at-fault driver?

You and your family members may be able to recover the compensation noted above under Lawsuit Compensation for Injuries.

In Ontario, before you can recover damages for pain and suffering or damages for the loss of care, guidance and companionship you must prove that you or the injured family member have sustained a permanent and serious impairment of an important physical, mental or psychological function; or a permanent serious disfigurement.

For Ontario automobile accidents after October 1, 2003 if the amount awarded for pain and suffering damages at trial does not exceed \$100,000 your claim for pain and suffering damages will be reduced by a \$30,000 deductible.

Similarly, for Ontario automobile accidents after October 1, 2003 your family members’ claims for the loss of care, guidance and companionship will be reduced by a \$15,000 deductible if the amount awarded for the loss of care, guidance and companionship at trial does not exceed \$50,000.

Your entitlement to damages for loss of income, household services and care costs will be reduced by automobile insurance benefits and other benefits you may receive or which are available to you.

I was injured in a single vehicle collision, do I have a claim?

If you were involved in a single vehicle collision, you are also entitled to make an automobile insurance accident benefits claim as noted above.

You also may have a claim against the road authority responsible for the design and maintenance of the road in question. You must provide notice of your intention to commence a lawsuit against a road authority within 10 days of a collision and in many cases it may not be obvious to you initially after an

accident that there was a problem with the road that has caused your collision. It is important to consult with a lawyer early on to determine whether there may be a case against a road authority and to whom to provide notice of such a claim.

You also may have a claim against the manufacturer of your vehicle or the mechanic responsible for the maintenance of your vehicle if there was a mechanical cause of your accident. Again, it may not be obvious that a mechanical problem was the cause of your accident and you should consult with a lawyer right away to determine whether your vehicle should be preserved for further inspection.

Finally, as noted below, if your injuries do not allow you to recall the details of the collision, the collision may have been caused by an unidentified driver that left the scene.

My daughter was injured in a collision that was caused by another driver that left the scene of the accident, what should we do?

Your daughter may have insurance coverage for situations involving an uninsured, underinsured or even an unidentified motorist.

It is important to consult with a lawyer right away in such a circumstance to determine whether this coverage is available, to commence crucial early investigations and to consult with necessary experts to obtain the proof necessary to prove that the collision was caused by an unidentified driver.

An early investigation of witnesses and physical evidence on the scene before the evidence is lost is extremely important to support the existence of another driver. This is particularly so if your daughter has no recollection of the collision and there is no direct evidence of a collision between your daughter's vehicle and the unidentified vehicle.

My spouse was injured in a collision while working, what compensation is available?

If your spouse was working at the time of the car crash and the other driver was also working at the time of the collision then your spouse may not have an option to sue the other driver if the employers for both drivers are part of the same worker's compensation schedule. In such a case, your spouse's only recourse for compensation may be to the worker's compensation regime.

However, if your spouse was working at the time of the car crash but the other driver was not working at the time of the collision, your spouse may elect to obtain auto insurance accident benefits and sue the at fault driver rather than make a claim through the worker's compensation regime.

Your spouse will want to consult a personal injury lawyer right away in such a case for advice with respect to the availability of an election and the implications of the election.

Other Insurance or Social Benefits

Whether you have the option of a lawsuit to obtain compensation or not, you may have access to other forms of compensation including medical and income benefits through other insurance or social benefits such as; employment benefits, Employment Insurance, the Ontario Disability Support Program benefits, Canada Pension Plan Disability benefits, Community Care Access Centre services, the Trillium Drug Program and Workplace Safety and Insurance benefits.

My long term disability insurer terminated my monthly disability benefit but I am still unable to return to work because of my health, what are my rights?

Your entitlement to long term disability benefits will depend on the wording of your insurance policy. The length of time that you have to dispute your insurance company's decision to terminate your disability benefit will also be determined by the specific wording of your insurance policy. When your insurance company appears to be getting ready to terminate your disability benefit or has terminated your benefit while you are still unable to return to work, you should consult with a lawyer immediately to determine what your rights and your time limits are.

Generally, insurance companies have an obligation to deal in good faith with the people they insure and if they do not they may be subject to punitive damages. A lawyer experienced in handling disability insurance claims can assist you in recovering the past benefits owing with interest; the reinstatement of your benefits; aggravated damages resulting from the denial of your claim; or can negotiate for a fair lump sum settlement of your past and future long term disability payments.

I have been injured in a car crash and I am receiving medical and rehabilitation benefits from my auto insurer, do I have to use my employment medical benefits first?

Yes. The insurance legislation requires you to exhaust your medical benefits available through work or any other benefits before accessing medical, rehabilitation and attendant care benefits, and other expense benefits.

I lost my job and my employment benefits after I was injured in a car accident, what are my rights?

You may have employment rights in such a circumstance and should consult an employment lawyer for advice.

However, if you are unable to work as a result of your injuries you may claim the loss of your employment benefits as part of your income losses in any claim that you have against an at-fault driver as a result of the car accident.

What disability benefits are available through Employment Insurance?

Employment Insurance (EI) sickness benefits are available through Service Canada to individuals who are unable to work because of sickness, injury, or quarantine. You may be entitled to receive EI sickness benefits if:

- you have paid EI premiums;
- you are unable to work because of sickness, injury or quarantine but would otherwise be available for work if not for your incapacity due to medical reasons;
- your normal weekly earnings have been reduced by more than 40%; and
- you have accumulated at least 600 hours of insurable employment during the qualifying period or, if you are a self-employed fisher, you have sufficient insurable earnings from self-employment in fishing during the qualifying period.

You will need to obtain a medical certificate signed by your doctor or approved medical practitioner to apply for EI sickness benefits. To determine if you are eligible to receive EI benefits, you must submit an application online. To apply online and for more information about the application process for EI sickness benefits please visit the Service Canada Employment Insurance Sickness Benefits webpage.

What benefits are available through the Ontario Disability Support Program?

The Ontario Disability Support Program (ODSP) provides financial help for eligible people with disabilities. The ODSP benefit provides financial assistance for living expenses such as food and housing and other benefits and supports including:

- health benefits, such as prescription drug and dental coverage;
- disability-related benefits, such as help to pay for hearing aids;
- employment incentives and benefits, such as help to pay for child care costs or items you need for work;
- housing-related benefits, such as help to pay for emergency plumbing repairs; and
- transition child benefit.

For more information on applying for ODSP benefits please see **ODSP – What is it and how does it work?** in the Wills, Estates & Trusts chapter of this Legal Guide (Chapter 3) or visit the Ministry of Community and Social Services website.

I have a lawsuit and I am receiving ODSP benefits, do I have to repay these benefits?

Before you begin receiving ODSP benefits you may be required to sign an agreement to repay your ODSP benefits if you recover damages or a settlement in a lawsuit. However, there are limits to the requirement to repay your ODSP benefits that you can discuss with a personal injury lawyer.

Should I apply for Canada Pension Plan Disability Benefits?

Canada Pension Plan (CPP) disability benefits are available through Service Canada and provide a monthly taxable benefit to contributors who are disabled and to their dependent children. You may be entitled to receive CPP disability benefits if:

- you are under 65 years of age;
- you stopped working because of your medical condition and your disability is considered to be severe and prolonged; and
- when you were working, you paid into the CPP for at least four of the last 6 years, or paid into the CPP for at least 25 years and made valid contributions to the Plan in three of the last six years.

You may apply for the CPP disability benefits online or you can contact Service Canada to have an application kit mailed to you. Part of the application process requires a medical report to be completed by a doctor.

Are there any services available to assist me with living in my own home or in a supportive housing facility, or with my involvement in the community?

Yes. Your Community Care Access Centre (CCAC) can connect you with the care that you need. CCAC can coordinate care in your home and community, and can assist you with supportive housing options. CCAC advice and services are covered by OHIP. For more information on CCAC assistance please see **Supportive Housing** in the Wills, Estates & Trusts chapter of this Legal Guide (*Chapter 3*).

How do I access funding for medications through the Ontario Drug Benefits or Trillium Drug Programs?

The Ontario Drug Benefit Program (ODBP) covers most of the cost of many prescribed drugs and some nutrition products. To be eligible to join the ODBP you must:

- live in Ontario;
- have a valid Ontario Health Card; and
- one of the following statements must apply:
 - You are age 65+,
 - You live in Supportive Housing,
 - You are enrolled in the Home Care program and receiving a professional service,
 - You have high drug costs relative to your income, or
 - You receive social assistance through Ontario Works or the Ontario Disability Support Program.

The Trillium Drug Program (TDP) assists people who have a valid Ontario health card and spend a large portion of their income on prescription medications. The TDP provides benefits for certain prescription drugs when drug costs for a household are higher than approximately 4% of the total household net income. You can apply to the program if you have no private drug insurance coverage or if your drug costs are only partially covered by your private insurer.

I was injured at work, are there any workers' compensation benefits available?

Yes, you may be entitled to Workplace Safety and Insurance benefits (WSIB) which may include benefits such as the following:

- benefits for Loss of Earnings;
- benefit for Future Economic Loss;
- loss of Retirement Income Benefit;
- benefits for Non-Economic Loss;
- health Care Benefits;
- health Care Equipment and Supplies; and
- survivor Benefits.

In order to qualify for WSIB benefits, you must:

- have a worker-employer relationship with an employer covered by WSIB;
- have an injury or illness directly related to your work;
- promptly file a claim with the WSIB;
- provide all relevant information requested by the WSIB; and
- consent to the release of functional abilities information to your employer by the health care professional treating you.

As noted above there may, however, be an option to commence a lawsuit for compensation against a party that caused your injury. You should consult with a personal injury lawyer for advice with respect to the availability of an election to sue an at-fault party rather than claim WSIB benefits.

Obtaining Benefits and Compensation for those with Capacity Issues

If benefits or compensation is received on behalf of an injured person who does not have capacity to manage his or her own property, a guardian of property will be required to manage the benefits or compensation. For further information with respect to the procedure for appointing a guardian of property please see the Wills, Estates & Trusts chapter of this Legal Guide (*Chapter 3*). If the benefits or compensation are being received by way of a settlement for a person without capacity, the Rules of Civil Procedure in Ontario require that the settlement be approved by the Court.

RESOURCES:

Employment Insurance Sickness or Injury Benefits:
www.servicecanada.gc.ca/eng/sc/ei/benefits/sickness.shtml

Canada Pension Plan Disability Benefits:
Service Canada
www.servicecanada.gc.ca/eng/sc/cpp/disability/disabilitypension.shtml
(1-800-277-9914)

Ontario Disability Support Program Benefits:
www.mcass.gov.on.ca/en/mcass/programs/social/odsp/

Community Care Access Centre Services:
www.ccac-ont.ca

Workplace Safety and Insurance Benefits:
www.wsib.on.ca/splash.html
1-800-387-0750

Trillium Drug Program:
<http://www.health.gov.on.ca/english/public/pub/drugs/trillium.html>
<http://www.health.gov.on.ca/en/public/programs/drugs/faq.aspx#top>
[www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/014-S46850E-87~15/\\$File/TrilliumBookE.pdf](http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/014-S46850E-87~15/$File/TrilliumBookE.pdf)

Ontario Drug Benefit Program:
<http://www.health.gov.on.ca/en/public/programs/drugs/faq.aspx#top>
[http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/014-3693-87~18/\\$File/3693-87E.pdf](http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/014-3693-87~18/$File/3693-87E.pdf)

Financial Services Commission of Ontario:
<http://www.fsco.gov.on.ca/Pages/default.aspx>

NOTES

LANDLORD AND TENANT

Chapter Seven



Chapter Author:
Pamela Nolan, Lawyer
Harrison Pensa LLP

■ LANDLORD AND TENANT

I am planning on leasing an apartment, what information should the landlord give me?

The landlord must give you a copy of the “Information for New Tenants” Brochure when the tenancy begins.

In some cases the landlord must give you information regarding the cost of utilities for the unit, for more details please refer to the section on utilities near the end of this chapter.

If you sign a lease, the landlord must give you a copy within 21 days, which you should keep for your records.

Do I have to provide post-dated cheques?

The landlord cannot insist that you pay the rent by post-dated cheques or automatic withdrawals.

Can the landlord require a deposit?

The landlord can require a deposit which cannot be more than the amount of rent for one rental period (either one month or one week). The deposit can only be used by the landlord to cover the rent on the last rental period. The landlord cannot use the deposit to cover the costs of repairs for any damages to the unit. If the landlord has collected a deposit he has to pay you interest on the deposit in accordance with the Residential Tenancies Act Regulations.

Does the landlord have the right to enter my apartment?

The landlord can only enter the unit for reasons allowed by the Residential Tenancies Act and must usually give 24 hours’ notice in writing, although in emergency situations or situations where you consent, notice may not be required.

Can the landlord increase my rent?

If you have been in the unit for more than 12 months and it has been more than 12 months since your last rent increase, the landlord may increase your rent. The landlord must give you written notice of his intention to raise the rent at least 90 days before the rent is raised.

The amount that a landlord can raise the rent is controlled by the Ontario Government; the 2012 amount is 3.1%. The amount of the raise is calculated based on inflation. In some cases the landlord may be able to raise the rent by more than the guideline amount, but he must obtain an order from the Landlord and Tenant Board before he can do so.

I am having trouble paying my rent, can the landlord take my property or shut of my heat and water?

The landlord cannot take your property if you have not paid rent, unless you have moved out and left property behind.

Even if you have not paid rent, the landlord must continue to provide vital services to your unit, for example heat and hydro.

The landlord can apply to the Landlord and Tenant Board for an order for eviction for non-payment of rent. If the Board has issued an order for eviction the landlord can have the Sheriff come to the rental unit and lock you out.

Are there any programs which can assist me with paying my rent?

If you are receiving assistance under the Ontario Disability Support Program [For more information on ODSP please see the Wills, Estates & Trusts chapter of this legal guide] or if you are receiving assistance under Ontario Works (OW), there is an additional benefit available called the Community Start-Up and Maintenance Benefit (CSUMB). This benefit is available to assist with you with making rent payments if your landlord has begun the process to evict you. In order to receive benefits under CSUMB you will have to show that the benefits will help you to keep your housing for more than just a month or two.

If you do not receive OW or ODSP benefits and you meet income and other criteria you may qualify for a low or no interest loan from a Rent Bank. For further information on eligibility requirements and to find out if there is a Rent Bank in your area please see the Ontario Rent Bank Network website.

I have reached the end of the term of my lease, do I have to move out of the unit?

Once you reach the end of the term of the lease, you can remain in the unit under the same terms unless the landlord has received an order from the Landlord and Tenant Board to evict you. If you continue to occupy the rental unit after the term of your lease expires, then you occupy the unit on a month to month basis. The landlord will only be able to obtain an eviction order if there is cause to evict you or if the landlord needs your unit in order to do one of the following:

- renovate the unit, if the renovation requires a building permit and the work cannot be done unless the rental unit is empty;
- occupy the unit. The landlord must show that he needs the unit for himself or for a member of the landlord's immediate family or their caregiver;
- to sell the building. If the purchaser of the building requires the unit for personal use as outlined above. (This is only allowed in buildings with three or fewer units and in condominiums.)

When can the landlord evict me for cause?

The landlord may receive an order to evict you if the landlord applies to the Landlord and Tenant Board and can show that you are:

- not paying the rent in full;
- causing damage to the rental property;
- disturbing other tenants or the landlord; or
- carrying on illegal activity in the rental unit or residential complex.

I am having problems with my landlord, can I withhold rent or leave the unit?

You cannot withhold rent for any reason. You should contact the landlord if the landlord is not maintaining the unit, or is not complying with safety, health or maintenance standards. If the landlord does not correct the problem you can

make an application to the Landlord and Tenant Board for an order that the landlord make the repairs. As part of your request, you can ask for a return of part of the rent you paid during the period when the problems existed.

What is affordable housing?

Affordable housing, otherwise known as subsidized housing, is housing provided by the government at a reduced rent for low income households. Many Ontario municipalities offer affordable housing. Often, these programs charge rent based on your income. Most affordable housing programs have waiting lists for these units. For more information on whether affordable housing is offered in your area, please contact your local municipality.

■ UTILITIES

Who is responsible for paying the utilities for a unit?

Suite Meters

Suite meters are electrical meters that measure how much hydro is used in each unit within a residential building. A landlord and tenant can agree to have the tenant pay a suite meter provider for the tenant's electricity costs instead of the landlord paying these costs. There are separate rules that a landlord must follow regarding current tenants and prospective tenants.

- If you are a current tenant, the landlord must get your consent in writing, tell you how much the rent will be reduced, and give you information about the suite meter provider's fees, policies, and other information.
- If you are considering renting a unit with a suite meter, the landlord must provide you with information about the electrical usage for the unit and about the electrical efficiency of the refrigerator.

Electric heat: If your unit is heated primarily with electrical heat your landlord must continue to supply electric heat. You can agree with the landlord that you will pay for electricity used for other purposes, as long as there are separate meters to measure the electricity for heat and the electricity used for other purposes.

Apportionment of Utilities

In buildings with not more than six rental units where the landlord supplies a utility to each of the units, the landlord may charge the tenant a portion of the cost of the utility.

Before entering into a lease with you, the landlord must give you the following information:

- The portion of the cost of the utility that is applicable to the rental unit, expressed as a percentage of the total cost;
- The total cost of the utility for the building for the prescribed period for which the landlord has information; and
- If any part of the building was vacant during any part of the period to which the information applies, a statement of which part of the building was vacant and for what period of time.

The landlord must also:

- ensure that any appliances provided satisfy the prescribed conservation and efficiency requirements; and
- ensure that other aspects of the rental unit satisfy the prescribed requirements relating to conservation and efficiency.

My landlord and I disagree about the utilities, what can I do?

If you have a suite meter you can apply to the Landlord and Tenant Board. Your application will be in relation to improper installation, failure to give you the required information, transferring the electrical charges without your written consent, or not reducing the rent by the correct amount.

If you disagree about apportioned utility costs, you may apply to the Landlord and Tenant Board for an order determining whether the landlord breached an obligation. The Landlord and Tenant Board can then order a rent abatement, authorize a repair or replacement and order its cost to be paid by the landlord to the tenant, order that the landlord do specified repairs within a specified time, order that the rent charged be reduced, and make any other order it considers appropriate. If the rent is not reduced and/or adequate notice of the apportionment is not given to the tenant, the Landlord and Tenant Board can order that the tenancy is at an end so that the tenant can move out early or order that the landlord will assume responsibility for paying the utility.

Are there any programs that can assist me with paying my utilities?

If you are receiving ODSP or OW benefits CSUMB is available to assist you with paying overdue utility bills, especially where you are faced with having services cut off.

The Province of Ontario has provided funds to municipalities for Emergency Energy Programs. Each municipality sets its own eligibility criteria. Contact your local municipality for more information on this program. See the Low-Income Energy Network Energy Assistance webpage for further information on this and other assistance programs that may be available to you.

RESOURCES:

Landlord and Tenant Board
Southwestern Regional Office
150 Dufferin Avenue, Suite 400
London, Ontario N6A 5N6

<http://www.ltb.gov.on.ca/en/index.htm>
Toll Free: 1-888-332-3234

Residential Tenancies Act, 2006
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_06r17_e.htm

Ministry of Community and Social Services
Ontario Disability Support Program
Income and Employment Supports
217 York Street, 3rd Floor
Box 5217
London ON N6A 5R1

http://www.mcsc.gov.on.ca/en/mcsc/programs/social/odsp/income_support/odsp_maintenance.ASPX
Tel: (519) 438-5111
Toll Free: 1-800-265-4197
TDD/TTY: (519) 663-5276

Ontario Rent Bank Network
<http://ontariorentbank.net/>

The Low-Income Energy Network
<http://www.lowincomeenergy.ca/energy-assistance/>

NOTES

BUYING AND SELLING REAL ESTATE

Chapter Eight



Chapter Author:
Pamela Nolan, Lawyer
Harrison Pensa LLP

Do I need a lawyer to buy or sell real estate?

Yes, you will need a lawyer to buy or sell real estate, even if you are buying from, or selling to, a family member. There are many legal issues with respect to buying or selling a home. You need to have a lawyer review all of the legal issues with you to ensure all legal problems are properly handled, and to ensure that all of your rights are protected. In addition, your lawyer will also conduct title searches of the property you are buying, prepare all of the necessary paperwork to transfer the title into your name, prepare any necessary mortgage documentation, and close the transaction.

When should I get a lawyer involved?

You need to get a lawyer involved as soon as possible when buying or selling a home. You will want to choose a lawyer who deals primarily with real estate law. It is important to consult with a lawyer prior to submitting an offer on a purchase so the lawyer can give you advice. So, your lawyer can ensure the agreement to purchase contains terms and conditions which protect you as a buyer. It is also important to obtain legal advice on an offer from a potential buyer when you are selling property to ensure that the offer contains terms and conditions which protect you as a seller.

Can I buy or sell real estate if I do not have capacity?

Yes, you can buy or sell real estate by way of a Power of Attorney for Property, or by way of a Guardian for Property. Your Attorney or Guardian can negotiate the transaction on your behalf, and sign the closing documents on your behalf.

For more information on the role of a Power of Attorney for Property or Guardian for Property please see the Wills, Estates & Trusts chapter of this Legal Guide.

I found a house I like, what is my next step?

You will need to secure a lawyer to assist you with the process. Your lawyer can review the Agreement of Purchase and Sale on your behalf and advise you if any

changes need to be made. Your lawyer can also advise on waiving or fulfilling any conditions, discuss with you the details of the transaction, and prepare the necessary paperwork for you or your Attorney or Guardian to sign.

Do I have to use a real estate agent to buy or sell property?

No, you do not always have to use a real estate agent. If you do not use the services of a real estate agent it is considered a private transaction. You can buy or sell real estate in a private transaction and your lawyer can help you prepare the Agreement of Purchase and Sale which will include terms and conditions to protect you. You can also use the services of a private real estate service to assist you.

I am buying property, what types of costs should I expect to pay?

When you purchase real estate you will have a number of costs beyond the purchase price of the property, these will include:

- legal fees, disbursements and HST;
- title insurance;
- costs to register the transfer deed on title;
- if you are mortgaging, the cost to register the mortgage on title; and
- Land Transfer Tax, however, if you are a first time home buyer, all or a portion of the land transfer tax may be rebated.

Other costs that you could incur may include:

- costs of a home inspection;
- fire insurance on the property. This will need to be in place as of the day of closing;
- if you are mortgaging, you may have to pay for an appraisal of the property, and you may have to pay a Canada Mortgage and Housing Corporation (CMHC) fee if you are borrowing more than 80% of the purchase price from a mortgage company; and
- you will also want to consider moving expenses if you decide to hire a moving company to assist you with moving.

How much do I need for a down payment?

You need at least 5% of the total cost of the property as a down payment. This amount cannot be borrowed from a bank, however, there are assistance programs to assist individuals who meet certain criteria with down payment and closing costs.

Can I use gifted money for a down payment?

Yes, most mortgage companies will accept down payment funds that are a gift from family as an acceptable down payment. A gift letter signed by the donor is usually required to confirm that the funds are a true gift and not a loan. Often the mortgage company requires the gift money to be in the purchaser's possession before the mortgage application is sent in to the bank for approval.

If you are in a low or moderate-income household and you are purchasing a home you may be eligible for a government loan toward your down payment on the home. Please contact your local municipality to find out whether you are eligible to participate in this program and whether funding is available.

I am selling property, what types of costs should I expect to pay?

As the person selling property, you should be prepared to pay costs which can include:

- legal fees, disbursements, and HST;
- If you used the services of a real estate agent, you will need to pay their commission; and
- If you have a mortgage on the property, you will also need to pay out the mortgage.

What happens on the day of closing?

If you are buying property the day of closing is when the title is legally transferred into your name, and you receive the keys to the property. This means

the property is officially yours. You will generally meet with your lawyer a day or two before the closing date to sign all of the documents and deliver your down payment and closing costs to your lawyer.

If you are selling property, the day of closing is when the title to the property is legally transferred to the buyer, and you no longer have any right, title or interest in the property.

RESOURCES:

Investment in Affordable Housing (IAH) Homeownership Assistance Program
<http://www.housing.london.ca/NewAffordableHousingProgram/HomeOwnership.htm>

NOTES

BUSINESS LAW BASICS

Chapter Nine



Chapter Author:
Michael Mumby, Lawyer
Harrison Pensa LLP

■ BUSINESS LAW BASICS

■ TYPES OF BUSINESSES IN ONTARIO

There are three main ways in which to carry on a business in Ontario: sole proprietorship, partnership or corporation. A brief description of the three main ways of carrying on a business is outlined below. It is important to note that there are different variations of each of these three types of businesses and no one type of business is the best in any case. It is strongly recommended that anyone thinking of starting up a business seek legal advice to ensure the proper method is used to maximize your business goals.

Sole proprietorship

Many small businesses start out as sole proprietorships. A sole proprietorship is the most basic type of business entity and can be used in a wide variety of circumstances. Sole proprietorships are owned by one person, who is in complete control of the business and may make decisions as he or she sees fit. The sole proprietor owns all the assets of the business personally and the profits generated by it are declared as personal income. He or she also assumes complete personal responsibility for any of the business's liabilities or debts.

A major disadvantage of sole proprietorships is that there are no limits on the liability of the sole proprietor. This means that all business and personal assets may be seized in satisfaction of the sole proprietor's business obligations and liabilities. For example, if the sole proprietor is sued for something that occurred involving the business, he or she could be held personally liable. The sole proprietor can limit his or her personal liability exposure however, by contract, due diligence and by acquiring insurance coverage.

Before beginning to carry on business, sole proprietors should review municipal, provincial, and federal licensing requirements, since licenses are required for a number of business activities.

Partnership

When two or more persons, whether individuals or corporations, carry on business together with a view to profit, the relationship is called a partnership, and the members of the partnership are called partners. Like sole proprietorships, the partners own all the assets of the business as well as the profits generated by it. They also assume complete responsibility for any of the business's liabilities or debts.

The partnership is generally governed by a partnership agreement signed by each partner. This legal agreement outlines how the partnership will be governed. For example, topics covered in the agreement might include:

- how decisions will be made
- how profits will be shared,
- how disputes will be resolved,
- how future partners will be admitted to the partnership,
- how partners can be bought out, or
- what steps will be taken to end the partnership when needed.

It may be easier for partnership to raise business funds because there is more than one owner in a partnership. Partnerships also usually benefit from partners working together who have complementary skills.

A disadvantage of a partnership is that all partners are responsible for the actions of the other partners. Also, unlike a sole proprietorship, the profits of the business must be shared with the other partners.

Corporations

A corporation is the most common form of business organization. A corporation is a legal entity separate in law from its owners. A corporation can own property, carry on business, possess rights, pay taxes, sue and be sued.

The owners of a corporation are its shareholders. Shareholders own the corporation through their ownership of shares, they do not own the property belonging to the corporation, and a shareholder's liability is limited to the value of the assets they have transferred to the corporation (in the form of money, property, or past services) in exchange for shares. Of the three types of businesses, this provides the greatest level of protection for the personal assets of the business owners.

The corporation is run by a board of directors who make the major policy and decisions of the corporation. The members of the board of directors are elected by the corporation's shareholders.

The corporation has a life of its own and does not dissolve when the ownership changes. A corporation continues notwithstanding the death or withdrawal of a shareholder by the sale of his or her shares.

Corporate dissolution may only occur in the following situations:

- the requisite majority of shareholders resolve that it should;
- a court orders that the corporation be dissolved; or
- pursuant to statute, it is deemed to be inactive or has breached certain statutory provisions.

■ TYPES OF CONTRACTS FREQUENTLY ENCOUNTERED IN BUSINESS

A contract can be written or verbal. It is generally best practice to enter into written contracts to avoid potential disputes as to what was agreed to. A lawyer can assist parties in drafting an agreement to ensure that everyone's interests are protected. The following are the types of contracts business owners most frequently encounter:

- Purchase Agreements;
- Leases;
- Employment Agreements;
- Shareholder Agreements; and
- Partnership Agreements.

Purchase Agreements

A purchase agreement is a contract where a seller promises to sell something that a purchaser promises to buy. A purchase agreement can be used to sell goods, assets, equipment, services, etc. The contract will outline the rights and obligations of each party.

Lease

A lease is a contractual arrangement where a person who wishes to use an asset, such as a building or piece of equipment, will pay the owner for the use of that property. The lease should provide specific provisions regarding the responsibilities and rights of the user and owner, sometimes there will also be automatic provisions required by statute. In general, by paying the negotiated fee to the owner, the user has possession and use of the leased property to the exclusion of the owner and all others except with the invitation of the user.

Employment Agreement

Employment agreements are generally made between an employer and employee and outline the responsibilities and obligations of each party. There will be specific provisions with respect to the employee's pay and duties. An effective employment agreement can assist both parties in understanding the expectations of the position and what terms will govern the employment relationship. In addition, an enforceable employment agreement can help protect the employer from wrongful dismissal claims and protect the employer's business interests following the termination of the employment relationship.

Shareholder Agreement

Shareholder agreements are made between shareholders of a corporation. The agreement generally consists of clauses regulating the ownership and voting rights of the shares in the company, clauses outlining the control and management of the company and provisions for the resolution of any future disputes between shareholders. In addition, shareholders agreements will often make provision for the nature and amount of initial contribution to the company, the proposed nature of the business, how any future capital contributions are to be made and the allocation of key roles or responsibilities.

Partnership Agreement

Partnership agreements outline how a partnership will be governed. Topics covered in the agreement might include, how decisions will be made, how profits will be shared, how disputes will be resolved, how future partners will be admitted to the partnership, how partners can be bought out, or what steps will be taken to dissolve the partnership when needed.

NOTES

BANKRUPTCY & INSOLVENCY

Chapter Ten



Chapter Author:
Emily Assini, Lawyer
Harrison Pensa LLP

■ BANKRUPTCY & INSOLVENCY

Issues may arise in the areas of bankruptcy and insolvency in two distinct situations: (1) where the injured person needs the financial protection afforded under the Bankruptcy and Insolvency Act (the “Act”); or (2) where the person who caused the injury attempts to use the provisions of the Act to avoid payment of liability to the injured person.

What does it mean to be insolvent?

Generally, a person is “insolvent” when he or she is unable to meet his or her financial obligations as they become due, or when he or she has stopped paying his or her current financial obligations in the ordinary course.

How does the Act protect an insolvent person?

An insolvent person can seek protection under the Act by way of two procedures:

- a consumer proposal; or
- an assignment in bankruptcy.

What is a consumer proposal?

A consumer proposal is an offer by the individual to his or her creditors to accept a lesser payment in satisfaction of his or her debts. If the creditors accept the terms of the consumer proposal and the insolvent person fulfils the terms of the consumer proposal, the debts will be discharged. However, if the creditors do not accept the terms of the consumer proposal, the individual will be deemed to have made an assignment in bankruptcy and the bankruptcy process will occur. In a consumer proposal, the individual is able to keep all of his or her assets.

What is an assignment in bankruptcy?

With an assignment in bankruptcy, the insolvent person surrenders ownership of all of his or her assets, with some limited exceptions, to a Trustee in Bankruptcy (“Trustee”). The Trustee will sell the property and distribute the proceeds to

the creditors of the insolvent person. The debts of the insolvent person will then be discharged and the insolvent person will no longer have to pay those creditors. Examples of assets that are not sold by the Trustee are clothing, household items, and furniture.

What is a Trustee?

A Trustee is a federally licensed individual who operates as an officer of the Court and collects and distributes the debtor's assets to the creditors.

Are proceeds from a liability or disability insurance policy included in the property that I must surrender to the Trustee?

If the insurer is obligated to pay the proceeds of a liability or disability insurance policy to you, the proceeds must be surrendered to the Trustee.

If I make an assignment in bankruptcy, is part of my income surrendered to the Trustee?

The Act sets out guidelines to determine what portion of your income must be surrendered to the Trustee. The guidelines base the amount on factors such as:

- monthly income;
- family status;
- number of people in your household;
- medical expenses; and
- childcare expenses.

Is income received pursuant to a trust property which must be surrendered to the Trustee?

Yes. If the bankrupt is entitled to a life interest under a will or a trust, the income is property of the bankrupt and must be surrendered to the Trustee, subject to the income guidelines as set out above.

Is an award of damages for pain and suffering or personal injury included in the property that must be surrendered to the Trustee?

Generally, if you received such an award before you made the assignment in bankruptcy, the award must be surrendered to the Trustee. However, if part of the award was compensation for pain and suffering or personal injury, that part of the award remains your property and is not divisible among the creditors.

Can an action for damages continue against a defendant if the defendant makes an assignment in bankruptcy?

Yes. An injured person may apply to the court for leave to continue an action against a bankrupt after an assignment in bankruptcy.

I have received a discharge from bankruptcy. Does that mean I no longer have any debts?

Some types of debt are not discharged by bankruptcy. This means that you will still have to pay them after you have received a discharge from bankruptcy.

These debts include:

- An award of damages in civil proceedings for bodily harm intentionally inflicted or sexual assault or wrongful death;
- Spousal support;
- Child support; and
- Government student loans.

Students who are experiencing difficulty repaying their student loans due to a permanent disability may receive government assistance through the CanLearn Assistance Plan for Borrowers with Permanent Disabilities (RAP-PD).

If I am not mentally competent can my Power of Attorney for Property or Guardian of Property make an assignment in bankruptcy or consumer proposal on my behalf?

Yes. A personal representative appointed as Power of Attorney pursuant to a Continuing Power of Attorney for Property or as Guardian of Property by a court has the ability to make an assignment or file a proposal on behalf of an individual.

It is important for the personal representative to realize that there are no provisions under the Act for the maintenance of the incompetent person in priority to the claims of the creditors.

RESOURCES:

Office of the Superintendent of Bankruptcy Canada
Federal Building
451 Talbot Street, Suite 303
London, Ontario N6A 5C9
Tel.: 1-877-376-9902 (toll free)
Fax: 519-645-5139
www.osb.ic.gc.ca

CanLearn
National Student Loans Service Centre
P.O. Box 4030
Mississauga, ON L5A 4M4
Phone: 1-888-815-4514 (toll free)
TTY: 1-888-815-4556
www.canlearn.ca

NOTES