



WEST END LEGAL SERVICES OF OTTAWA/  
SERVICES JURIDIQUES DE L'OUEST D'OTTAWA

# **THE *REAL* COST OF HELPING CLIENTS PURSUE ODSP JUSTICE**

Prepared By: West End Legal Services of Ottawa  
March 2009

## **1.0 PURPOSE**

This report documents the amount of public money that is spent annually to assist Ontario Disability Support Program (ODSP) applicants in appeals associated with denial based on disability status.

This information could make a valuable contribution to the ongoing advocacy focused on ODSP.

## **2.0 BACKGROUND**

The Ontario Disability Support Program (ODSP) legislation was proclaimed with much fanfare in 1997. The Provincial Government of the day presented the act and the regulations as a new and better deal for the Disabled folks of Ontario.

After more than a decade of experience many of the clients and applicants for these essential benefits likely have a much more modest view of this key social program.

From the outset there has been heated discussion and controversy about how the system works, how it responds to clients/applicants and how best to make changes.

It soon became evident that these observations were much more than simply getting used to a new Act and the bureaucracy adjusting to a new reality. It has been clear for some time that a multitude of systemic problems exist within this program.

The advocacy community has been active and vocal about this circumstance. For example the Income Support Advocacy Centre (ISAC), the ODSP Action Coalition and the Ontario Municipal Social Services Association (OMSSA) have been active in identifying needed changes and improvements. All this has resulted in limited success at best.

Both the Auditor General of Ontario and the Ombudsman of Ontario have focused their attention on this program. It is interesting to note that their activity has resulted in changes to regulations, program design, staffing and procedures that in many cases have benefited applicants and recipients.

The vast majority of the oversight and advocacy activity directed towards ODSP has been understandably centered on clients rights, the gap between legislative promise and program outcome reality and many and varied ideas and proposals for improvements.

## **3.0 CONTEXT**

For some time the Board and staff of West End Legal Services (WELS) have been concerned about the growing number of people seeking justice in light of what they believe to be a flawed disability adjudication process within the ODSP program.

This concern is twofold. First there is the issue of the capacity to serve the increasing number of requests related to ODSP disability denied cases, and the potential that it will

reduce the capacity of WELS to meet other legitimate requests for assistance. Secondly, it was evident that there is a similar trend across all legal clinics and extended to include other related organizations.

Given that many voices were already focused on the details of how to change and improve ODSP, WELS decided to attempt to document the amount of public money that is spent annually to assist applicants in appeals.

## **4.0 METHODOLOGY**

### **4.1 Project Scope**

Of the areas where public funds are spent to support appeals, the crucial issue for WELS was the capacity to determine the actual funds expended .

The five specific areas to be examined included:

1. Legal clinics (general and specialty)
2. Private bar (LAO certificate program)
3. Social Benefits Tribunal (SBT)
4. Disability Adjudication Unit (DAU)
5. Municipalities (CMSMs delivering Ontario Works)

Data was collected on either the calendar year 2007 or the fiscal year 07/08, according to the organizations financial calendar.

Several significant areas were not included in light of the difficulty in accessing reliable financial data. These included community-based social service and health agencies, local advocacy agencies and the health care system outside of the specialist physicians' reports captured in part by legal clinics and municipalities.

### **4.2 Sources of Data and Assumptions**

(Note: A conservative approach was used when applying the assumptions in all situations.)

For the **legal clinic system**, WELS had access to Legal Aid Ontario (LAO) summary data including total number of disability denied cases served and the average cost per case.

With respect to the **private bar** certificate program it was possible to access the total number of certificates issued for 2007 and an estimate of the average cost per case.

The annual budget of **SBT** is a matter of public record. From their 06/07 annual report (07/08 report not available) the percentage of cases that are disability denied is 67%. Assuming that a case is a case with respect to effort, a same percent was applied to the annual budget to calculate costs.

In the case of the **DAU** all the effort associated with both internal reviews and dealing with SBT appeals were included. The actual annual budget was not available to WELS.

From documents in the public domain, including the Auditor's and Ombudsman's reports, it was possible to determine the average salary. Based on a statement by the ODSP Director that there are 85 staff in the DAU, an annual budget was projected. And based on an internal report of case disposition over a three-year average it was possible to determine the proportion of effort devoted to internal reviews and SBT appeals.

Finally, it was determined that the only reasonable method to determine the expenditures by **municipalities** was a survey. With the assistance of the City of Ottawa and the Ontario Municipal Social Services Association (OMSSA), a survey (Appendix A) was distributed to all 47 Consolidated Municipal Service Managers (CMSMs) delivering Ontario Works. 14 of 47 responded for a 30% return rate. Those responding represented a cross section of small, medium and large CMSMs and also a wide range of expenditure devoted to assisting in the application and/or appeal of ODSP. We concluded that this was a representative sample of all CMSMs.

It is important to note that this survey asked for the expenditures devoted to assisting clients with both the application and the appeal process. This request was based on the consultation with Ottawa and OMSSA that indicated that most CMSMs do not separate this function and would not be able to respond to a request for details pertaining to appeals only.

## **5.0 RESULTS**

Legal Clinics: Legal Aid Ontario data indicates that for 2007 there were 10,433 "disability denied" cases served by all clinics. LAO data also shows that the average cost for this type of case is \$828.00. This results in a 2007 cost of **\$8,638,529.**

Private Bar: Legal Aid Ontario data informs us that 1,381 certificates were issued in 2007 and the average cost per case was \$1,200.00. The expenditure for this component was **\$1,657,200.**

Social Benefits Tribunal: Based on the Ministry of Community and Social Services budget (07/08) estimates briefing book the annual budget for the SBT was \$5,063,500. According to the 06/07 SBT annual report 67% of all decisions were related to ODSP disability denied cases, resulting in a cost of **\$3,392,545.**

Disability Adjudication Unit: The Ombudsman's 2006 report on ODSP references an internal briefing to the Community and Social Services Deputy Minister stating that adding 12 new positions to the DAU would cost \$900,000 annually. This is a \$75,000 average cost per position. Assuming that the average for all staff would be less, we used an average of \$65,000. In a meeting with community advocates in the fall of 2008, the Director of ODSP stated that the DAU has 85 staff. Based on these assumptions, the annual budget for the DAU can be estimated to be at least \$5,525,000.

A recent internal ODSP document states that there are 30,200 per year (based on a three year average). 52% are granted and 48% are denied. Some 9,300 cases request an internal review, 5,300 subsequently request a SBT appeal and 3,800 actually proceed to SBT. Assuming that DAU staff must attend to the file multiple times after the first decision, we conclude that approximately 33% of all DAU effort is directed to internal

reviews, SBT appeals and / or preparing for and attending SBT hearings, resulting in an annual cost of **\$1,823,250.**

Municipalities: Not all responding municipalities answered the specific survey questions. Some provided a total annual expenditure for the activities mentioned in the survey. Others provided a statement of the staff complement and the cost they incurred for medical assessments. In order to arrive at a cost for each respondent we used an average full time annual salary of \$55,000.

There was one large municipal respondent that we removed from the sample to prevent skewing the sample.

Projecting the sample results to the total population of CMSMs and then adding in the single large respondent the result is a total expenditure in 2007 of **\$16,138,951.**

### **Summary of results**

Legal clinics	\$8,638,529
Private Bar	\$1,657,200
SBT	\$3,392,545
DAU	\$1,823,250
<u>Municipalities</u>	<u>\$16,138,951</u>
<b>Total</b>	<b>\$31,650,475</b>

## Appendix A

### **E-mail survey sent to Municipalities (CMSMs)**

**Subject Line:** ODSP Re: Amount of resources used by CMSMs to assist Ontario Works participants through application/appeal process

**Message:**

Dick Stewart, a former member of OMSSA and board member for one of the City of Ottawa's legal clinics, is gathering data on the total amount of public funds that are spent across Ontario in supporting applicants and appellants in accessing ODSP. This includes an annual cost to the Legal Aid system, the Social Benefits Tribunal, the Disability Adjudication Unit and CMSMs. The City of Ottawa has agreed to collaborate with the legal clinic in collecting the information from CMSMs. This will help in putting pressure on the province to bring amendments to improve the current ODSP application/appeal process.

CMSMs are asked to estimate the total amount of resources, both in human resources and money, dedicated to supporting Ontario Works participants through the ODSP application/appeal process. Once the information is collected, the City of Ottawa will provide an aggregate number to the legal clinic. Individual CMSMs will not be identified and participating CMSMs will be copied on the findings.

**Please answer the following questions by providing estimates for the:**

- Number of full- or part-time positions or staff time devoted to the ODSP application/appeal process (e.g., 1 FT liaison worker or 0.25 of a caseworker);
- Number of additional medical assessments (beyond the initial assessment) per year to support ODSP applications/appeals to the Disability Adjudication Unit (e.g., number of specialized medical assessments); and
- Average cost to CMSM per medical assessment.