



LAFRENIÈRE SANNA  
— ESTATE LAW —  
A B O U T I Q U E F I R M

Chantal M.J. Lafrenière  
*B. Soc. Sc., JD, CEA*

Natalie A. Sanna  
*B.A. (Hon.), LL.B.*

## General Information for Recipients of ODSP

The Ontario Disability Support Program (“ODSP”) provides help to people with disabilities. The program is administered by the Ministry of Community and Social Services (“MCSS”).

If eligible, ODSP provides people with disabilities with two kinds of support:

- income support: financial help to pay for living expenses such as housing and food; and
- employment supports: help to prepare for and find a job.

This brochure will focus on income support. ODSP has very specific rules regarding assets and income. If you or a family member receives or may receive income support under ODSP (the “ODSP recipient”), it is very important that you familiarize yourself with these rules. Please note that a “benefit unit” generally includes the ODSP recipient, his or her spouse, and his or her dependant children.

### Treatment of Assets

The rules governing the program set limits on the amount of assets that the ODSP recipient is permitted to own. Under the current rules, an ODSP recipient who is single is allowed to own liquid or cashable assets to a limit of \$40,000 at any one time. This includes money or assets that can be turned into money. The asset limit for a couple is \$50,000 plus \$500 for each dependant other than a spouse.

Interest earned on assets below the maximum limits is exempt from income under ODSP (more on the treatment of income below). Interest may be accumulated to the allowable asset limit. It will be

treated as an asset in the month following the month in which it was earned.

Many assets are considered to be exempt for ODSP purposes. These are set out in the rules. Exempt assets do not affect eligibility or how much income support will be received. The following are some examples of exempt assets:

- the ODSP recipient's interest in a principal residence;
- a second residence, if approved for health and well-being;
- one motor vehicle regardless of value;
- a second motor vehicle up to \$15,000 in value, if needed for work;
- tools of the trade including business vehicles and farm assets;
- business assets that are necessary to operation of business up to \$20,000 in value;
- necessities of living such as furniture, clothing, and household goods which are considered necessary for the reasonable functioning of the household;
- a prepaid funeral of any value;
- the cash surrender value of life insurance policies up to \$100,000 (with some caveats discussed below);
- funds held in a Registered Disability Savings Plan (“RDSP”);
- Registered Education Savings Plans (“RESPs”) for the benefit of persons related by blood, marriage, or adoption;
- Locked-in RRSP;
- Capital amount of payments pursuant to an Aboriginal land claim settlement

agreement between Ontario and/or Canada;

- Special government compensation payments;
- Arts grants and grants from Indigenous Culture Fund;
- student loans; and
- a loan used to purchase an exempt asset, a principal residence, or an asset necessary for the health or welfare of a member of the benefit unit.

## Treatment of Income

Income is taken into account in determining a person's eligibility to receive ODSP and the amount of income support to which they may be entitled. In general, any money that a person receives or is entitled to receive is considered income. All income received by an ODSP recipient is deducted from their income support unless an exemption applies.

An ODSP recipient is required to make all reasonable efforts to obtain any financial resources that they may be entitled to. Failure to do so may result in a refusal, suspension, or reduction of income support. An ODSP recipient is also required to report to MCSS all income received or pending.

Some examples of income include:

- wages, salaries, casual earnings or any remuneration paid pursuant to employment or a training program;
- income or revenue from an interest in or operation of a business including sale of goods or services, commissions, cash value of goods or services received in kind, sale of or interest earned on business assets and any other business income;
- all regular or periodic payments received under a pension plan, superannuation scheme or insurance benefit; and
- all payments, in cash or in kind, for spousal and/or child support received pursuant to a court order, judgement or an agreement.

Some sources of income are exempt. This means they will not be taken into account when determining eligibility or amount of income support. Some examples include:

- earnings of dependent children;
- earnings of dependent adults attending secondary school or a training program;

- earnings of persons attending post-secondary school;
- the portion of a payment from the sale of an asset, used to purchase a principal residence within twelve months from the closing date of the sale, an asset necessary for health and welfare, an exempt asset, or an asset that does not result in the recipient exceeding the prescribed asset limit;
- interest earned on liquid assets up to the prescribed asset limits, e.g. \$40,000 for a single recipient;
- an amount up to \$10,000 in a 12 month period per member of the benefit unit, in the form of gifts or voluntary payments for any purpose from any source (this includes monies from trusts, life insurance policies, honorariums and windfalls);
- casual gifts of insignificant value, e.g. basic clothing, meals, occasional food purchases;
- voluntary contributions made to RDSPs by family members and other third parties;
- interest earned on and re-invested in an RDSP;
- refundable tax credits including the Canada Child Tax Benefit and the National Child Benefit Supplement (NCBS); and
- all payments from a trust, including interest earned, used for the purchase of approved disability-related items and services or education and training expenses incurred because of the benefit unit member's disability (more below).

To avoid the duplication of ODSP and other government allowances, all government benefits will be considered income received in the month to which they apply, and deducted from income support for that month.

## Inheritances

Under ODSP, an inheritance is considered to be a gift. Some or all of an inheritance may be exempt under certain circumstances, including:

- up to \$10,000 of the total value of all gifts, voluntary payments and payments from a life insurance policy or trust received in a 12-month period is exempt as income;
- the purchase of a disability-related item that has been approved in advance. Any remaining inheritance will be treated as an

asset the following month and the asset rules will apply; and

- the purchase an exempt asset.

If an ODSP recipient inherits property, the inherited property is considered to be an asset and the asset rules apply. For example, if the ODSP recipient inherits a house and decides to live in it, it may be exempt as a principal residence.

## Trusts

There are many different kinds of trusts. The impact of a trust on a recipient's ODSP will depend upon the specific terms of the trust. Two kinds of trusts commonly established for the benefit of people with disabilities are discretionary trusts and protective trusts.

A *discretionary trust* is most often set up in a will for the benefit of an ODSP recipient. It is also commonly referred to as a *Henson Trust*. The key feature of this type of trust is the discretion given to the trustee to determine how the trust funds should be used. As the trustee is not obligated to make payments to the ODSP recipient, a discretionary trust is an exempt asset regardless of the value of the trust. Any interest earned will not be considered income if reinvested in the trust regardless of value.

A *protective (or regulation) trust* can be established by an ODSP recipient with money received from an inheritance or the proceeds of a life insurance policy. It will be exempt as an asset if:

- the money to fund the trust came from an inheritance or life insurance proceeds;
- the amount in the trust does not exceed \$100,000; and
- the funds in the trust are available for the ODSP recipient's maintenance.

After receiving an inheritance or life insurance proceeds, an ODSP recipient may be given up to six months to establish a protective trust (note that an ODSP recipient cannot establish a discretionary trust). The cumulative value of all protective trusts cannot exceed \$100,000. Interest earned will be exempt if it is reinvested in the trust and the capital of the trust does not exceed \$100,000.

If an ODSP recipient has one or more protective trusts and a life insurance policy, the *total* of the capital of all such trust(s) *and* the cash surrender value of the life insurance policy cannot be more than \$100,000.

## Permitted Uses of Trust Funds

Payments from a trust (including interest that is paid out) are generally considered income when received by the ODSP recipient. However, there are exceptions:

- up to \$10,000 of the total value of all gifts, voluntary payments and payments from a life insurance policy or trust you receive in a 12-month period will be exempt as income;
- payments used for approved disability-related items, services, education or training incurred because of a disability that are not reimbursable may be exempt as income. Such payments also may not count against the \$10,000 limit described above; and
- contributions to an RDSP will be exempt as income.

Other payments from a trust will be considered income in the month the payment is received.

In order for the exemptions to apply, there are reporting requirements which must be fulfilled. Each year, the ODSP recipient, or the trustee on their behalf, must report to MCSS the amount of capital in the trust and all payments made in or out of the trust including payments made to or on behalf of the beneficiary. Verifying documentation such as bank statements must be provided.

For more information on trusts and other things to consider when estate planning for a loved one with a disability, please see our brochure *Providing for a Family Member Who is Disabled*.

## Disability-related Items and Services

Generally speaking, disability-related items and services are used to replace, compensate for, or improve the functional abilities of persons with disabilities. A broad range of items and services are covered (more below). There are special rules regarding disability-related items and services including increased limits and flexibility. This allows ODSP recipients to save for and purchase disability-related items and services.

As discussed above, payments from a trust may not be considered income when used to buy disability-related items and services. Additionally, an ODSP recipient may receive approval to accumulate assets beyond the normal asset limits in order to purchase approved disability-related items or services.

The exemptions from income apply if the ODSP recipient files an annual report in an approved form documenting all income and expenses related to the disability-related items and services. Expenses that are considered by MCSS not to fit the criteria may be disallowed.

Where the relationship between the items or services that are submitted as disability-related expenses and the disability need is unclear, the ODSP recipient (or their representative) will have to demonstrate how the items or services accommodate or compensate for a functional limitation due to disability.

Disability-related items or services facilitate access, participation and/or enhanced functioning in one or more of the following:

- activities of daily living;
- social, recreation, community activities;
- education, training;
- housing;
- health maintenance, health care, safety;
- religious observances;
- transportation;
- communications; and
- employment.

Disability-related items and services may include costs associated with:

- items and services specifically designed for people with disabilities;
- “add-on” or enhancements to items and services designed for general use in order to make them accessible, useable or available to people with disabilities; and
- items and services not specifically designed for people with disabilities but which nevertheless can compensate for or accommodate a functional limitation.

Disability-related items and services may also include user fees, upgrades, enhancements or timely delivery of disability-related items and services available through government or non-government programs or services.

Any expenses associated with the purchase of disability-related items or services may also be considered as approved disability-related items

and services. Examples of associated costs include assessments, repairs, maintenance, installation and set-up, training and user support.

### **Examples of Approved Disability-related Items and Services**

Approved disability-related items and services include, but are not limited to:

- assistive devices;
- support services;
- health maintenance, health care and safety items and services;
- renovations; and
- education and training items and services.

Here are some examples of disability-related items and services falling within each category:

#### **Assistive devices:**

- environmental controls e.g., turning on lights, opening doors;
- independent living devices e.g., automatic light switches, adaptive telephones, air conditioners, transfer lifting devices, ramps, reaching devices, bath aids;
- hearing and visual aids;
- orthotics and prosthetics;
- communications aids e.g., speech devices, TTY units;
- respiratory devices;
- computers and access technology;
- adapted information and communications systems e.g., closed caption decoders;
- costs of Assisted Devices Program (ADP) approved devices (including upgrades, actual costs above approved limits, repairs and maintenance, insurance);
- mobility aids e.g., scooters, wheelchairs;
- extraordinary costs related to the care of working dogs trained and certified to provide essential services on a daily basis to people with vision, hearing, or physical disabilities e.g., boarding fees, veterinary charges, special diets;
- extra clothing, adaptive clothing;
- wheelchair lifts;
- motor vehicle for a disabled person; and

- vehicle modifications.

**Support services:**

- interpreter, intervener and reader services;
- attendant services;
- nursing services including home care;
- housekeeping/cleaning services required because of disability;
- services provided by a psychologist licensed to provide therapy or rehabilitation; and
- specialized transportation.

**Health maintenance, health care and safety:**

- prescription drugs not available under a drug plan;
- prosthetics e.g., implants, wigs, prosthetic supplies;
- air conditioners and air purifiers for people with breathing problems;
- extraordinary food preparation expenses e.g., supplies of pre-prepared foods;
- nutritional supplements, vitamins, herbal remedies, treatments not covered under the drug plan;
- life alert systems (purchase and on-going costs);
- visual fire alarm;
- incontinence supplies, diabetic supplies and surgical supplies; and
- travel expenses to obtain medical assessments and treatment.

**Renovations:**

- home renovations for accessibility and/or health and safety;
- outdoor modifications e.g., ramps, safety rails; and
- driveway alterations for accessibility reasons.

**Education and training:**

- disability-related educational supports such as interpreters, attendants, readers, devices and technology for people enrolled in continuing education (including correspondence courses, high school evening courses and adult upgrading programs);

- disability-related educational supports for post secondary students beyond what is made available through the special needs offices located in colleges and universities in Ontario;
- sign language, lip reading and other disability specific training; and
- fees for programs specifically adapted for disability.

**Where to Go For Further Information**

This brochure is intended to provide general information about ODSP only. It is based on information provided by the MCSS. We cannot confirm the accuracy of this information.

If you have any questions about your particular situation or whether you qualify for ODSP, please contact your local ODSP office.

Please visit the MCSS' website for further information:

<http://www.mcass.gov.on.ca/en/mcass/index.aspx>.

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