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Loretta is one of the few lawyers in Ontario who has substantial experience in dealing with abuse and harassment in civil lawsuits and employment cases. She understands and cares about abuse survivors, recognizing that coming forward, being heard and acknowledged as well as gaining a sense of justice and closure, in addition to the amount of a settlement, are what matter to her clients.

Ontario Disability Support Program Changes Help Abuse Survivors

The Ontario Government has made changes to social assistance programs that will provide increased support to sexual abuse survivors.

Sexual abuse causes serious harm and the effects of abuse in childhood can last a lifetime. Some survivors become disabled as a result of their psychological injuries resulting from the abuse. An abuse survivor may be entitled to benefits under the Ontario Disability Support Program ("ODSP"). ODSP is one of Ontario's social assistance programs. ODSP provides money to eligible Ontario residents who have disabilities to pay for living expenses like food and housing. It also provides health benefits like drug and dental coverage. ODSP is a program of last resort, meaning it is for people

who cannot work and do not have other sources of income or benefits.

Effective August 2017, the provincial government introduced changes to the ODSP which will help abuse survivors who bring civil lawsuits. Now, all compensation awards for pain and suffering are fully exempt as income and assets for individuals receiving ODSP. In the past, where an abuse survivor was on ODSP and then obtained a settlement or judgment from a civil lawsuit, only the first \$100,000.00 received was exempt for ODSP purposes. This means that amounts over \$100,000.00 would be considered assets and income and have the potential of triggering repayment obligations or cutting off future benefits.

Now, the law has been changed and a new directive has been issued. The ODSP general regulation now establishes full income and asset exemptions for awards for pain and suffering as a result of an injury (i.e. there is no cap) as well as expenses actually or to be incurred as a result of the injury and *Family Law Act* s.61 damages. This means there is no longer a limit on the exemption for pain and suffering and future care awards. However, any money received for past or future income loss or punitive damages would still count as income. Pre-judgment interest on pain and suffering or care costs is also exempt.

If an ODSP recipient uses exempt funds (i.e., money from a settlement for pain and suffering or future care) to purchase an asset, the asset may or may not be exempt. If the funds are used to purchase a principal residence or other approved asset that is necessary for health and welfare or a primary motor vehicle, the asset remains exempt and will have no impact on ODSP payments. However, if the exempt award is used to purchase a non-exempt

asset, it will count towards the asset limit.

Sometimes, amounts awarded for compensation or damages are used to purchase structured settlements which provide the plaintiff with an income stream. Structured settlements can only be purchased by an insurance company from a federally regulated life insurer. The life insurer guarantees to provide periodic payments over a specified period of time, often over a life-time. Structured settlements are not considered assets. However, the structured settlement payments are income and the plaintiff has the option of applying exemptions either upfront or pro-rating them until age 65. The amount payable to a plaintiff from a structured settlement that will be exempt is equal to the exempt amount of the capital invested into the structure. For example, if \$150,000.00 was exempt capital invested into the structure, then the recipient is only entitled to receive \$150,000.00 in payments out of the structure before the income exemption is exhausted.

For individuals receiving

Ontario Works, awards for pain and suffering will now be exempt up to \$56,000.

These changes are obviously good news for abuse survivors who are on ODSP and then receive a settlement or judgment for pain and suffering or care costs. Abuse survivors can receive any amount for pain and suffering or future care and not have to repay ODSP and continue receiving ODSP benefits.

This change demonstrates the government's ongoing commitment to support abuse survivors in Ontario. It follows the government's initiative "It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment" which includes: 1) the removal of limitation periods (time limits for suing) in civil cases and criminal injuries compensation claims; 2) imposing obligations on employers to investigate sexual harassment complaints and imposing requirements for workplace harassment programs; 3) imposing obligations on colleges and universities to have sexual violence policies; and 4) providing the right to terminate residential tenancies if the tenant or their child is being harassed.