ACE NEWSLETTER

Fall 2003, Vol. 3, No. 8 ACE is a Legal Clinic Serving Low Income Seniors

CONFRONTING THE FAILURE TO OBTAIN CONSENT TO TREATMENT

By Graham Webb, Barrister & Solicitor

The Advocacy Centre for the Elderly (ACE) receives many calls from family members of physically and sometimes cognitively impaired older adults who experience a wide range of problems in nursing homes, homes for the aged and hospitals. Often the problems at first appear to be about the adequacy of care or about unusual behaviour in the older person, and failure to obtain consent to treatment is not identified as an issue. However, as problems are worked through it sometimes turns out that drug treatments are the root of the problem. Many times, mind-altering drugs are administered in a hospital or nursing home entirely without consent. The person taking the drugs may not be aware of doing so, and relatives and friends may have no knowledge of the drugs. These drugs pose serious risks to those taking them, and they alter behaviour. However, steps can be taken to confront the failure to obtain consent to treatment.

The law requires consent to treatment.
Physicians are required to obtain consent to treatment in all non-emergency cases. This has long been understood in the common law (judge-made law), and is reinforced in Ontario by the *Health Care Consent Act, 1996,* S.O. 1996, c.2. If a hospital or nursing home patient is mentally capable of understanding information and appreciating the consequences of giving or refusing consent to treatment, then the resident or patient will make his/her own decision about the treatment that is offered. If the resident or patient is not mentally capable of this, then Ontario law guarantees that there will always be a substitute decision-maker. Normally, the substitute decision-maker will be the person who holds a power of attorney for personal care, if there is one, or a relative as defined in legislation. In rare cases, the substitute decision-maker could be a court appointed guardian of the person, a representative appointed by the Consent and Capacity Board, or the Public Guardian and Trustee. Where consent to treatment is required by law, the law guarantees that there will always be a substitute decision-maker.

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The College of Physicians and Surgeons of Ontario is a self-governing body that is authorized by law to license and regulate doctors. The College has guidelines that govern the conduct of its members, and a disciplinary process to deal with complaints. The College guidelines are very clear that it is professional misconduct for a physician to administer treatment without consent where consent is required by law.

Recently, several ACE clients have made complaints to the College of Physicians and Surgeons that nursing home and hospital physicians have treated an incapable family member with medications without any consent at all.

Complaining about a failure to obtain consent to treatment.

The College of Physicians and Surgeons has a two-stage disciplinary process. The first stage is a review by the Complaints Committee, which is more or less a screening mechanism for complaints. The Complaints Committee can dismiss a complaint entirely and take no action at all. It can take minor action, such as advising a physician to correct or avoid certain practices, or it may issue a caution. If the complaint is serious, the Complaints Committee may refer the complaint to the second stage, which is a hearing before the Discipline Committee. The Discipline Committee will have a full hearing. It may also dismiss a complaint, but the Discipline Committee may also invoke serious sanctions, including the suspension or revocation of a physician's license to practice medicine.

The College Complaints Committee has not yet referred to the Discipline Committee any of the complaints made by ACE clients about medical treatment without consent. Instead, the Complaints Committee has in every case either given some warning or advice to the physician to better inform the patient's family of changes made to medications, or to more closely follow the letter of the law in the area of consent to treatment. In every one of these cases, the ACE client has felt that the physician's disregard for the patient's right not to receive treatment without consent was very harmful.

If the Complaints Committee dismisses a complaint about lack of proper consent for medical treatment, that decision can be appealed to the Health Services Appeal and Review Board. ACE clients have made several appeals to the Health Services Appeal and Review Board on this issue within the past year. In one case, the Health Services Appeal and Review Board held that the Complaints Committee did not properly consider the law of consent to treatment, and directed that it re-consider the complaint. In that case, the Complaints Committee did re-consider the complaint without a hearing, but did not change its decision. The complainant has again appealed that decision to the Health Services Appeal and Review Board. Other cases are now pending before the College Complaints Committee and the Health Services Appeal and Review Board without a decision having been made.

Significant risks in taking mind-altering medications.

Mind-altering neuroleptic medications are often given to make a nursing home resident or hospital patient more easily managed by staff. Sometimes these medications have little to do with the patient's medical condition, and are simply a form of chemical restraint to alter the patient's behaviour. In some cases, these medications could have had serious and long-lasting effects on the patient. In one case, an

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expert Coroner's Geriatric Committee reported that the medications prescribed without consent contributed to the patient's death.

The risks to the elderly in taking these medications are summarized in the following comments from an article by Dr. Nathan Herrmann entitled "Principles of Geriatric Psychopharmacology" from **Practical Psychiatry in the Long-Term Care Facility: A Handbook for Staff** (D.Conn, N.Herrmann, A.Kaye, D.Rewilak, B.Schogt, eds., Toronto:Hogrefe and Huber, 2001):

"The elderly experience many physiological changes which can alter the way drugs are metabolized. ( ) As a result of these changes, many psychotropic medications will have prolonged effects, and tend to accumulate more in the elderly than in younger individuals. The elderly are very susceptible to side-effects; even so-called "therapeutic" doses of common psychotropic medications may lead to complications such as delirium or hypotension. All these factors highlight the need for careful administration of psychotropics with close monitoring." (p.164)

Summary

Consent to treatment is an important right that gives patients and their families more autonomy and better control over the medical treatment they receive. It is a fundamental right that protects the security of the person and unwanted intrusions into one's own physical integrity. There is a wide divergence between the stated policy of the College of Physicians and Surgeons that doctor's shall obtain consent to treatment where it is required by law, and the recent decisions of the Complaints Committee that generally give very light penalties for administering treatment without consent. It may be that complaints of this type are very much a pioneer effort that will cause the College to reconcile its theory with its practice. Certainly, treatment without consent seems to be a common practice in nursing homes and hospitals, especially with respect to drug treatments for older adults with some degree of cognitive impairment. It is hoped that if more complaints are made to the College about this issue, the need for better education and understanding by both physicians and patients would be identified and acted on.❖

Advocacy Centre for the Elderly
Annual General Meeting

Tuesday, October 28, 2003
7:00 p.m.
Toronto YMCA
20 Grosvenor Street
(1 block north of College, west off Yonge)

You are invited to hear ACE staff talk about

Hot Seniors Issues

The **Advocacy Centre for the Elderly (ACE)** is a legal clinic for low income seniors 60 years of age and over, funded by Legal Aid Ontario. ACE is incorporated as a non-profit corporation under the name "Holly Street Advocacy Centre for the Elderly Inc.".

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THE RIGHT TO DECIDE ON ONE'S OWN MEDICAL TREATMENT: Are there limits to this right?

By George T. Monticone,
Barrister & Solicitor

In 1996 Ontario introduced a comprehensive law regarding mental capacity and treatment decisions known as the Health Care Consent Act (HCCA). The HCCA says when a person can make their own decisions about medical treatment, when someone else has the right to decide for them, who would have the right to decide for them, and how the decision must be made . In recent years Ontario courts have begun to interpret this legislation known as the Health Care Consent Act (HCCA). The following is a discussion of the first case regarding the HCCA to reach the level of the Supreme Court of Canada. In Starson v. Swayze the Supreme Court considered the issue of whether a person suffering from a mental health problem (in this case a bi-polar disorder) is capable of making decisions about his or her treatment. Not only did the Court clarify what it is to be mentally capable of making treatment decisions, it made a number of important observations about the relationship between mental health and the capacity to make one's own decisions. The Court said very clearly that there is a constitutional right to make one's own treatment decisions if capable, and that persons suffering from a mental health problem are not thereby incapable of making treatment decisions.

Is it impossible for a person suffering from a mental illness to make his own decisions about what kind of medical treatment is appropriate? Does it matter if the person has a long history of mental illness or that the treatment is effective 60% of the time?

If that person refuses treatment recommended by physicians, does that show that the person is incapable of making treatment decisions? Does it matter if the refusal seems foolish to others?

Does a person have to be able to understand the causes of his illness before he can be said to be mentally capable of deciding what treatment, if any, is appropriate?

The Supreme Court of Canada answered "No" to all of these questions in the recent decision in *Starson v. Swayze*, with dissent from three of the nine justices hearing the case. The Court's reasoning is explored in the following discussion. References throughout are to paragraphs of the Supreme Court decision as reported on Quicklaw ([2003] S.C.J. No.33).

Background

Scott Starson was ordered to be detained for 12 months in a mental health facility after being found not criminally responsible for uttering death threats. Although Starson had a long history of mental illness usually diagnosed as bipolar disorder, he had never actually physically harmed himself or anyone else. In this instance, treating physicians proposed neuroleptic medication, mood stabilizers, anti-anxiety medication, and anti-parkinsonian medication. Starson refused this medication on the grounds that it interfered with his thinking processes and creativity, and that he counted earlier treatment as among the most horrible experiences of his life. However, the physician proposing the treatment found Starson to be mentally incapable of making decisions about his treatment. This finding set the stage for a series of four court challenges ending with the Supreme Court of Canada's decision. →

Starson first challenged the physician's decision that he was mentally incapable before the Consent and Capacity Board, a special tribunal with authority under the HCCA to decide upon such matters. The Board agreed with the physician that Starson was incapable of making treatment decisions. However, Starson was then successful in challenging the Board's decision in the Ontario Superior Court. The Superior Court's carefully reasoned findings were upheld by both the Ontario Court of Appeal and finally by the Supreme Court of Canada.

The courts wrestled with several important legal issues including what standard of review courts should use when reviewing decisions made by the Consent and Capacity Board. However in this discussion we will focus on the issue of mental capacity to make treatment decisions.

Since 1985 Starson had been in and out of mental health facilities with a diagnosis of bipolar disorder. Starson was interested in physics. He counted physicists among his friends and in 1991 he co-authored a paper entitled "Discrete Anti-Gravity" published by Stanford University. The evidence before the courts was that Starson was intellectually gifted. Starson believed that previous treatment with similar medications had prevented him from working as a physicist. As a result he refused the proposed treatment. The central question is whether he had the mental capacity to do so.

What does it mean to be mentally capable of making a treatment decision?

The central issue before the Supreme Court was whether Starson was mentally capable of deciding whether to accept or reject the treatment proposed by his physicians. The HCCA says that a person is capable with respect to a treatment decision if (1) able to understand information relevant to making a decision about treatment, and (2) able to appreciate the reasonably foreseeable consequences of a decision or lack of decision. The Board and courts were faced with the challenge of interpreting this legislation and applying it to Starson's circumstances.

Was Starson able to understand relevant information?

The Supreme Court of Canada agreed with the lower courts that Starson had the ability to understand the relevant information. As the Court said, "this requires the cognitive ability to process, retain and understand the relevant information" (par.78). The evidence was clear that Starson is an intellectually gifted person. Therefore, there could be little doubt that he satisfied the first condition for mental capacity.

Was Starson able to appreciate the reasonably foreseeable consequences of treatment or non-treatment?

The courts, including the Supreme Court of Canada, disagreed with the Board as to whether Starson was able to appreciate the consequences of a decision or lack of one. This was the central disagreement in this case.

The Supreme Court said that the second part of this test for capacity includes two elements. In the first place, the person must be able to recognize that he or she displays a certain kind of behaviour or physical condition. The Court used the expression "physical manifestations" to describe the outward signs of an illness. Physical manifestations would include behaviour and any bodily signs that may result from an underlying condition. The second element is that the person must be able to appreciate the consequences of treatment or non-treatment for that behaviour or physical condition. ***Medical Con't P. 6***

Medical Treatment con't from P. 5

Did Starson acknowledge his disorder?

The Court found that while Starson did not agree that he had a mental illness, he acknowledged that he exhibited manic behaviour and that he behaved in ways that were "almost impossible to handle" (par.93). The testimony of a physician treating Starson revealed that Starson clearly understood he did not behave normally (par.94). The Court was satisfied that this was sufficient to say he acknowledged his condition. Starson did not have to agree that his behaviour was the result of an underlying mental illness in order to be said to acknowledge or recognize his condition (par.79).

Was Starson able to appreciate the benefits and risks of treatment or non-treatment?

The Court observed in passing that it is "ability" that is important, not actual appreciation. If a person lacks information that has a bearing on the consequences, he cannot be faulted for failing to appreciate those consequences (par. 80). So did Starson appreciate both the benefits and risks of treatment or non-treatment?

With respect to the benefits and risks of treatment the Court concluded, based on the evidence, that "it is clear that he (Starson) views the cure proposed by his physicians as more damaging than his disorder" (par.102). Starson had been treated before by similar medications and he was not able to engage in his work as a physicist while undergoing treatment. He feared that the same would be true for the proposed treatment as it would turn him into "a struggling-to-think drunk". The evidence of the physician was that the proposed treatment could not be guaranteed to restore Starson to a normal functioning level, and in fact, it only helped patients to some extent in 60% of the cases (par.98). As there was no clear evidence supporting the conclusion that the proposed treatment would actually benefit Starson, the Court found that Starson could not be said to have failed to appreciate the benefits and risks of treatment.

Did Starson appreciate the benefits and risks of non-treatment? The Board found that he did not appreciate the likelihood that his mental disorder will worsen (par.103). However, the Court pointed out that there was little or no evidence supporting the conclusion that without the proposed treatment his condition would worsen. The physicians disagreed as to whether Starson's condition would become worse over time (par.103-104). But even assuming that it would worsen, no evidence was offered showing that the proposed treatment would slow down or stop the deterioration (par.103).

What did Starson appreciate about the benefits and risks of non-treatment? It is clear that he saw the ability to engage in physics as a benefit of non-treatment. In addition, the Court found that he was never asked about the risks of non-treatment (par.105). Because the law presumes a person is capable until shown not to be, the failure to ask Starson anything about the risks of non-treatment was fatal to any argument that he could not appreciate the risks (par.105). There was simply no evidence supporting the conclusion that he did not appreciate the risks of non-treatment. Therefore, the Board's finding that he could not appreciate the risks of non-treatment was pure speculation. It involved a fundamental error in law of ignoring the basic presumption that each of us is capable until shown otherwise. →

Summary

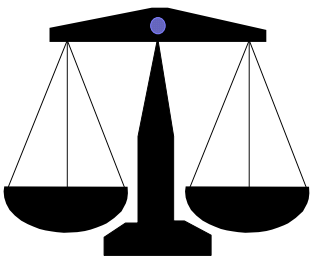
The Supreme Court of Canada found that Starson was mentally capable of deciding whether to accept or refuse the medical treatment proposed for his mental illness despite his long history of mental illness. He had the cognitive ability to process, retain and understand relevant information. He acknowledged that he did not behave normally; he appreciated the consequences of treatment for his condition, and he was presumed to appreciate the risks of non-treatment in the absence of any evidence to the contrary. Therefore, Starson had the right to refuse the treatment proposed to him.

This case contains many lessons for physicians, judges, and any of us involved with persons who suffer from a mental illness. The fact that a person refuses a proposed treatment does not show they are incapable. The fact that a physician and patient disagree about the benefits or risks of a treatment does not show that the patient is incapable. Values play a large role in weighing benefits and risks, and we cannot assume that everyone values something the same. A person who enjoys the intellectual challenge of physics may value the ability to engage in that activity above all else, even perhaps at the cost of his or her health (although it was never demonstrated here that failure to take medications would cost Starson his health). Many of us would disagree with these values; health comes before any intellectual ability. However, even if most of us would disagree, that does not authorize anyone to impose this contrary view on others.

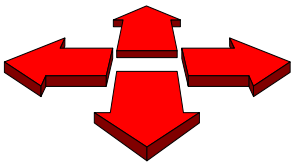
The Supreme Court commented on how the Board dealt with the Starson case:

"Furthermore, as noted above, the Board's reasons indicate that it strayed from its legislative mandate to adjudicate solely upon the patient's capacity. The Board stated at the outset of its reasons that "it viewed with great sadness the current situation of the patient" (p.15), and later noted that "his life has been devastated by his mental disorder" (p.16). Putting aside the fact that the respondent entirely disagreed with those statements, the tenor of the comments indicate that the Board misunderstood its prescribed function. The Board's sole task was to determine the patient's mental capacity. The wisdom of Professor Starson's treatment decision is irrelevant to that determination. If Professor Starson is capable, he is fully entitled to make a decision that the Board, or other reasonable persons, may perceive as foolish. The Board improperly allowed its own conception of Professor Starson's best interests to influence its finding of incapacity." (par.112)

We could debate whether Starson's choice to go unmedicated in order to pursue his interests in physics is a wise choice. However, the Supreme Court is reminding all of us that the choice is his to make, and not one for a physician, legal authority, or any of us to impose. The Starson decision is a clear victory for the autonomy of the individual. ❖



Advance Care Planning Training for Family Physicians



In collaboration with the Alzheimer's Society of Ontario and the Ontario College of Family Physicians, the Advocacy Centre for the Elderly (ACE) will participate in training sessions for family physicians on health care consent and advance care planning. This training will be done by Dr. Andre Hurtubise and Judith Wahl of ACE in Sudbury, London, Ottawa and Toronto. The first session has already taken place in Sudbury on October 4th. Future sessions are scheduled for London on November 13th, Toronto on November 19th, and Ottawa on December 4th.

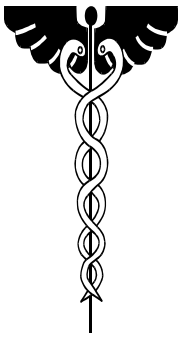
The training, funded by the Ontario Government, is part of the Ontario Alzheimer Initiative #2 on Physicians Training. The intent of the workshops is to prepare physicians to do advance care planning with patients, particularly those patients and their families affected by Alzheimer's Disease and related disorders. As a result of this education, physicians should have a better understanding of health care consent, an appreciation of the advance care planning process, and a better grounding in the clinical issues related to end-of-life care.

The content of the training programme has been developed in part by ACE and in part by the Ian Anderson Continuing Education Programme in End of Life Care. ACE has developed the legal components of the programme. The Ian Anderson Programme has developed the clinical components.

This is an exciting collaboration for ACE as the training is expected to have an impact on health care for older adults and for persons with Alzheimer's and related dementias. It has also been an excellent learning experience for ACE. Learning more about the clinical practices in end-of-life care helps ACE staff to better communicate with health professionals on the related legal issues when advocating for older clients.

As part of this training, ACE has developed a laminated reference card on the legal issues related to health care consent and decisional capacity assessment. The utility of this reference card for health practice will be tested during the course of this training and the reference card amended with the feedback received during the training.

If successful, the reference card will be made available by ACE through its website at www.advocacycentreelderly.org. The card was created to give persons working in health services a quick reference to the key legal issues that they must consider in obtaining informed consent, in assessing capacity for treatment decision making, and in determining who is the appropriate substitute decision maker if the patient is not mentally capable for this purpose. ❖



AVOID LOSING YOUR GOVERNMENT PENSION BENEFITS

Canadian residents who are seniors are entitled to receive Old Age Security (OAS) benefits if they have been resident in Canada for the required number of years.

Low-income senior residents may also be entitled to receive the Guaranteed Income Supplement (GIS), as well as the provincial supplement (GAINS).

Seniors should be aware that in some circumstances they may do something which might result in a reduction in or a loss of these benefits.

This article should serve as a warning that seniors considering major financial transactions, such as selling or giving away property, should seek expert financial advice before doing so.

The clawback of OAS

Since 1989, higher income pensioners may lose all or part of their OAS benefits. If your annual income is more than $57,879 for 2002, you will lose some or all of your OAS benefits as follows:

If your 2002 net world income was (CAN $)	Your monthly deduction is (CAN $)
$58,065	$ 2.33
$69,065	$139.83
$79,015	$264.20
$89,965	$401.08
more than $94,148 in 2002	$446.66 (max 2003 OAS benefit)

Sudden increases in income

A large capital gain or other increase in income could result in the loss of OAS and GIS benefits, as well as a large tax bill owing to Canada Customs and Revenue. Tax arrears can be collected as direct deductions from almost any source of income, including private pensions. Even real estate can be subject to collection procedures by Canada Customs and Revenue.

1. Capital gains from sale of cottage or other real estate

One of the most extreme examples of unexpected income that a senior may encounter happens when a senior gives away a cottage property to their children. The cottage property may have been purchased by the senior many decades ago when property was relatively inexpensive. The senior may be low-income and have few other assets, except for a home in the city. Even if the cottage were transferred for free, the tax department would consider the transfer to be a deemed disposition at fair market value and would assess the senior for the capital gains on the value of the property.

Losing Pension Benefits Con't P. 10

Losing Pension Benefits, con't from P. 9

In Canada, persons can own multiple properties, but only one property can be considered to be a principal residence that is exempt from capital gains taxation. Other properties are subject to the capital gains taxation.

For example, consider these consequences for a senior who gives away a cottage that has a deemed taxable capital gain of $100,000:

1. The senior's income for that year would increase by $100,000. The senior would be taxed at the top tax bracket. This will result in the senior owing thousands of dollars in taxes for that taxation year unless the senior also happens to have large deductions that offset the gain that year.

2. The senior would lose the GIS and GAINS income entirely for the following year.

3. The senior's OAS income would disappear entirely for the following year because the senior's deemed income is over $94,148.

2. RRSP and RIF withdrawals

Other transactions that could result in substantial tax bills, as well as a loss of benefits, are lump sum withdrawals from RRSPs or RRIFs. Seniors should get financial advice before they make any major financial decisions. Such withdrawals could have the same consequences as described above in connection with transfer of real estate: a large income tax bill, loss of GIS or GAINS, and loss of some or all OAS benefits.

Loss of GIS benefit if a senior leaves Canada

While moving out of Canada does not necessarily result in a higher income, the GIS benefit stops if a senior leaves Canada for over six months. A senior may reapply upon returning to Canada. ❖

ANNOUNCEMENT

The Advocacy Centre for the Elderly (ACE) is very pleased to announce that Emily Chan has accepted a one year contract position with ACE as Staff Lawyer/Institutional Advocate. Emily is replacing Jane Meadus who is on parental leave.

Emily is a graduate of Queen's University Law School, served her articles as a clerk for the Ontario Divisional Court, and was called to the Ontario Bar in February of 2002. Emily has since worked as a litigation lawyer for a public interest law firm, and with Justice for Children and Youth as the Community Development Lawyer.

Emily's volunteer work demonstrates a clear commitment to human rights. Emily has done volunteer work for Education Wife Assault, the Canadian Centre for Victims of Violence, was chair of Quest for Justice-Toronto Committee, and a founding member of CARR Kingston (Creating Awareness of Race Relations). ❖

Caucus Task Force on Seniors

In September the Federal Government announced the creation of a Caucus Task Force on Seniors. The Task Force will examine a number of social and economic issues relating to Canada's aging population, and identify the challenges policy-makers must face to help achieve quality of life for Canadian seniors.

"We must ensure full inclusion in our society for citizens of all ages as we work to promote healthy communities, improve our health care system, and reduce the number of Canadians living in poverty," said Prime Minister Chretien.

The Task Force will deliver its report to the Prime Minister by December 2003.

The following is a publication of Ombudsman Ontario. It is included in the ACE Newsletter as a public service.

OMBUDSMAN ONTARIO

Do You Have A Complaint About Ontario Government Services?

Ombudsman Ontario may be able to help you or your clients. Did you know that every person in Ontario has the right to be treated justly and fairly when they deal with provincial governmental organizations?

Did you know that it is your right to complain if you are not satisfied with the way in which you have been treated by a governmental organization?

Did you know that when you have a complaint and do not know what else to do Ombudsman Ontario may be able to help you ?

You may think no one can do anything about your problem, or that it is too small. But if you feel a provincial government organization has treated you in way that is unfair, illegal, unreasonable, mistaken, or just plain wrong, you should bring your matter forward to the Office of the Ombudsman. You may succeed in getting your own problem solved and you might help make changes so others are treated more fairly.

A senior contacted Ombudsman Ontario in 2002. She had been injured in 1963, and since then has suffered from depression. She was receiving a pension from the Workplace Safety and Insurance Board (WSIB), but complained that the WSIB failed to pay her interest on pension arrears the Workplace Safety and Insurance Appeals Tribunal had awarded her in 2000. After she contacted us, Ombudsman staff contacted WSIB and determined that, in accordance with WSIB's policy she was entitled to receive interest on her pension arrears. As a result of our enquiry, the WSIB agreed to pay interest and she received a cheque for $16,613.80.

Ms D, a 70 year-old woman, advised that in August 2000, she and her late husband filed a complaint with the Ontario Securities Commission regarding their insurance company. She complained to the Ombudsman that the Commission has refused to provide her with information about the status of her complaint. Initially, Ombudsman staff was advised that once the Commission sends a letter of confirmation to a complainant, no other communication occurs. A Supervisor at the Commission later indicated that this information was incorrect. The Commission indicated it would inform staff that complainants are to be provided with updates as required and sent closing letters with an explanation of the outcome. The Commission confirmed that a letter had recently been sent to Ms D outlining the outcome of the initial review of her complaint and providing a referral. The Commission also advised a staff member would contact Ms D to provide

Ombudsman con't from P.11

her with further information. Ms. D was grateful that the Ombudsman's efforts provided her with a contact at the Commission who would answer her questions.

A consumer survivor contacted the Ombudsman office to complain that her benefit cheque was being held. She indicated that she had been hospitalized for two weeks of the month. Ontario Disability Support Program (ODSP) benefits are meant to cover the cost of maintaining a private residence, and when people are residing elsewhere, such as a hospital or a correction facility, ODSP would not generally pay for that period. However, during that month the consumer had split her time between her home and the hospital, she should have received a portion of her normal benefits. To resolve this case we contacted the local ODSP office. Staff there had the case reviewed, and as a result, determined that a cheque should be released immediately.

If you have tried all available complaint and appeal procedures without a solution, then the Ombudsman may be able to help. Often problems are resolved informally by phone calls. **During 2002-2003 fiscal year, 50 percent of all complaints were resolved within eight days.**

The Ombudsman of Ontario is Clare Lewis, Q.C. He is independent and impartial of both the public service and of the political parties. The Ombudsman is an Officer of the Provincial Legislature. He is neither an advocate for the complainant nor an apologist for the government. The Ombudsman's role is that of a neutral party. As an advocate for *fairness*, the Ombudsman is responsible for the investigation and resolution of complaints about public administration by governmental organizations such as the Workplace Safety and Insurance Board, the Ontario Disability Support Program, the Family Responsibility Office, the Ministry of Health and Long-Term Care and the Ministry of Transportation among others.

There are certain types of complaints the Ombudsman cannot investigate. For example, federal governmental matters such as income tax or Canadian Pension Plan do not fall under the jurisdiction of the Ombudsman. Municipal government problems such as housing, property taxes or garbage pick-up are also not within the Ombudsman's authority. The Ombudsman has no jurisdiction over the courts or private companies. **In those cases Ombudsman Ontario staff will make every effort to provide you with information and referrals to help you try and find a solution to your problem.** If you have a problem that we *can* assist you with, when you contact us, we need to know what you have done so far, who you have spoken with and when.

All inquiries and investigations are conducted free of charge and are confidential. Complaints can be made in writing, in person, by telephone, by Internet, TTY, fax or by cassette recording.

Please call 1-800-263-1830,TTY 1-866-411-4211 or visit our website at htpp://www.ombudsman.on.ca to make a complaint about provincial government services.

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