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TO/DEST. The Chair and Members of Council

FROM/EXP. Commissioner, Social Services Department

SUBJECT/OBJET **SOCIAL ASSISTANCE REFORM ACT (SARA)
1997 UPDATE**

EXECUTIVE SUMMARY

This report presents an overview of the significant provisions of the June 12, 1997 version of SARA, in particular, those relating to the Ontario Works Act (OWA) and the Ontario Disability Support Programs Act (ODSPA). SARA was tabled to fulfil the Ontario Government's commitment to reform social assistance and in particular, to create a new legal framework for the Ontario Works program started in 1996. It replaces a number of the existing social assistance legislations such as the General Welfare Act (GWA) and the Family Benefit Act (FBA); and in turn creates OWA and ODSPA. SARA is currently at Second Reading in the legislature and will probably be passed by the end of this year.

OWA

OWA seeks to provide financial assistance to the needy as well as promote self-sufficiency through employment assistance. It is anticipated that dental and vision care will become mandatory for all children under OWA. However, the full list of benefits will not be known until OWA's regulations are in place. Generally, OWA's basic financial assistance provisions are fairly consistent with what currently exists under GWA. The exceptions include expanded eligibility requirements such as consent to undertake structured job search and community participation; to have a lien registered on personal property and to reimburse for the assistance provided. There is concern that the lien provisions of OWA may make it harder for people to renew their mortgages.

The employment assistance provisions of OWA are also more stringent than currently exists under GWA; in that GWA does not directly legislate community participation and the signing of participation agreements. Other requirements under OWA without parallel in GWA include limitations on direct payments of financial assistance to persons under 18 years of age; the authority to make third party payments on behalf of recipients; the introduction of an internal review process to address recipients' concerns; the establishment of fraud control units to be staffed by eligibility review officers who may apply for and act under a search warrant; as well as

the introduction of the family support workers role to assist recipients in claiming financial support from persons with a legal obligation to do so.

ODSPA

ODSPA's definition for disability excludes drug abusers; eliminates the term "permanently unemployable"; disqualifies persons aged 60 - 64 and allows a wider range of professionals to be involved in the determination of eligibility for ODSPA. There is concern relating to the restrictive nature of the new definition for "disability" as it will result in potential FBA beneficiaries failing to qualify under ODSPA and consequently exert an upward pressure on the GWA caseload. Other provisions of ODSPA related to eligibility include:

- a) the replacement of 25% co-payment with 100% provincial funding of the approved cost of assistive devices;
- b) increases in maximum limits for liquid assets, personal injury awards, the cash surrender value of life insurance policies, and allowable testamentary trusts;
- c) the elimination of regular retesting to assess disability; and
- d) the introduction of finger print scanning or the use of other client identification technologies.

While there are obvious positive sides to most of the changes introduced by ODSPA, concerns have been expressed with particular reference to the restrictive nature of ODSPA's definition for disability and its potential implications for OWA's caseload size and profile. It is also not yet known whether clients applying for ODSPA will need to apply through OWA first as is currently the case for FBA clients. Finally, municipalities are concerned that they may be required to fund 20% of benefits and 50% of administrative costs related to ODSPA as recommended by the Who Does What panel.

BACKGROUND

The Ontario government began fulfilling its commitment to reform social assistance as soon as it took office in June 1995. The reform process was initiated by:

- a) a 21.6 % reduction in welfare rates beginning October 1995,
- b) changes to allow recipients to earn-back the difference between the old and the new rates,
- c) changes to tighten eligibility criteria and anti-fraud measures,
- d) a requirement that 16- and 17-year olds be in school or training in order to obtain assistance,
- e) redefinition of the word "spouse" to better recognise the circumstances under which a person living with an opposite sex adult may be ineligible for assistance, and

- f) amendments to regulations under the General Welfare Act to facilitate a phased-in implementation of a mandatory Ontario Works program started in 1996.

To create a new legal framework for the Ontario Works program, SARA was introduced to replace the General Welfare Assistance Act (GWA), the Family Benefits Act (FBA), the Vocational Rehabilitation Services Act (VRSA) and the Social Assistance Review Board (SARB) provisions of the Ministry of Community and Social Services Act (MCSSA). In turn, Schedules A and B of SARA respectively create two new acts known as the Ontario Works Act, (OWA); and the Ontario Disability Support Program Act, (ODSPA). Other components of SARA include: Schedule C - Substantive Amendments to other Statutes, Schedule D - Transitional Provisions and Schedule E - Consequential Amendments, (see Figure 1). As several important aspects of SARA have been deferred to be prescribed in regulations, this report will present a only a broad overview of the OWA and ODSPA components of SARA. SARA is currently at Second Reading in the legislature and scheduled to undergo public hearing in the Ottawa area sometime in the fall. It is expected to be passed by the end of 1997.

Schedule A: Ontario Works Act, 1997

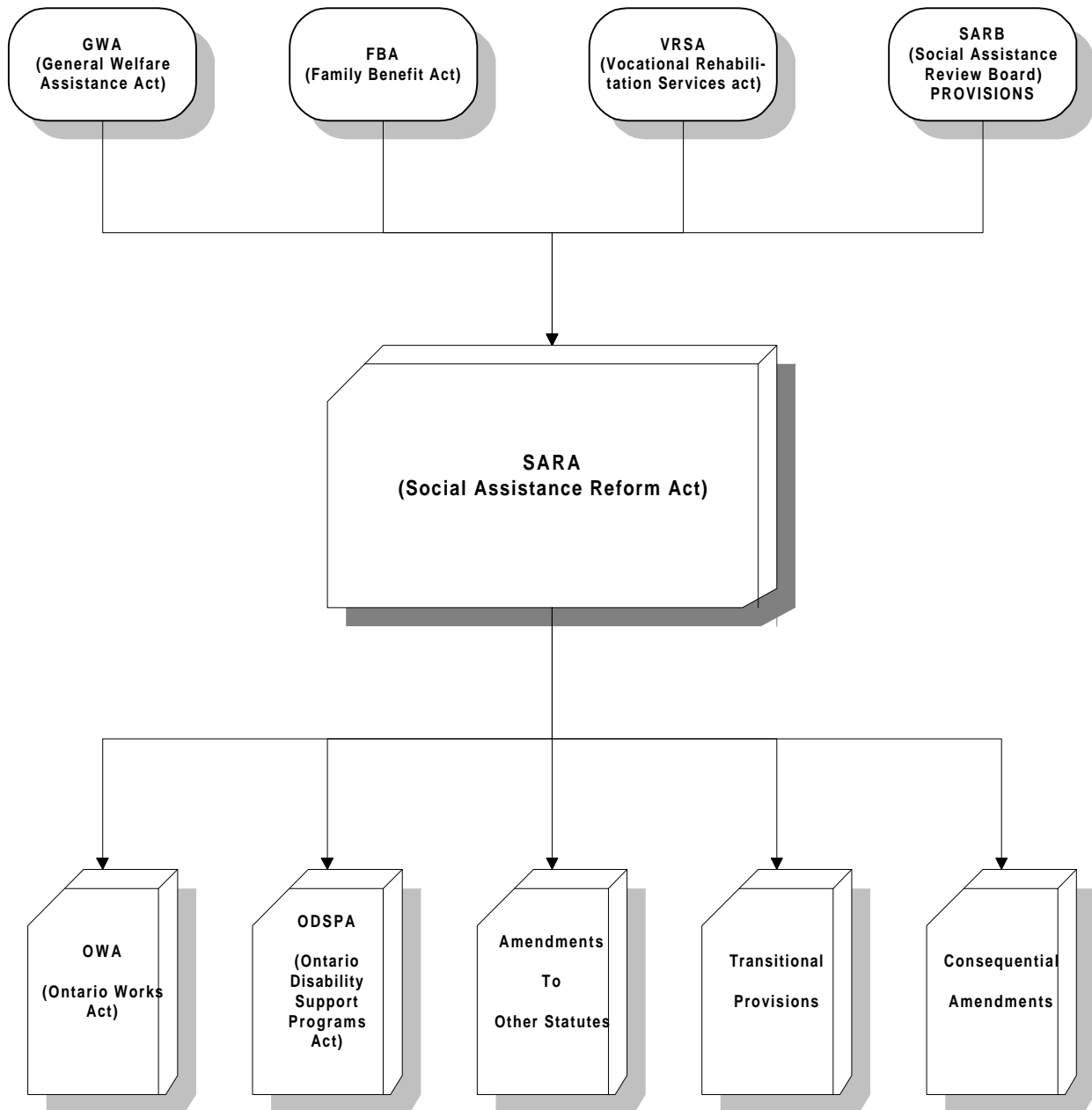
OWA consists of a purpose statement, definitions and five parts. As set out in Schedule A of SARA, the purpose of OWA is:

“...to establish a program that:

- a) recognises individual responsibility and promotes self-reliance through employment;
- b) provides temporary financial assistance to those most in need while they satisfy obligations to become and stay employed;
- c) effectively serve people needing assistance; and
- d) is accountable to the taxpayers of Ontario.”

By its purpose, OWA establishes a dual priority for Ontario’s social assistance program - to promote self-sufficiency through employment and to provide financial assistance. It also converts social assistance into an active labour market adjustment program. This change is consistent with the RMOC’s long standing commitment to actively assist recipients to find and sustain employment by providing the supports required to enable them do so.

Figure 1: The Components of SARA



ELIGIBILITY FOR ASSISTANCE

Types of Assistance

“Basic Financial Assistance” and “Employment Assistance” are the two main types of assistance available to OWA beneficiaries. Both the basic financial assistance and the employment assistance are further broken down into a number of components (see Figure 2). Basic financial assistance includes income assistance for basic needs and shelter; benefits (defined as prescribed items, services or payments); and emergency assistance: (meaning assistance provided to help with basic needs and shelter on an emergency basis). Employment assistance, on the other hand, consists of community participation and other employment measures to be prescribed in regulations.

OWA regulations will determine what additional benefits will be available and whether they are mandatory or discretionary. Benefits currently provided under GWA include: diabetic supplies, necessary medical transportation, community start-up benefit, and employment start-up allowance. These items are mandatory, meaning they can be appealed. Other benefits called special assistance are provided on a discretionary basis by municipalities and therefore cannot be appealed under GWA. These include such things as surgical supplies, vision and dental care. It is anticipated that vision and dental care will become mandatory for all children under OWA. It is not yet known whether the other GWA benefits will be provided under OWA, and whether OWA will make vision and dental care available to parents and single adults as well.

Generally therefore, OWA’s basic financial assistance is fairly consistent with what currently exists under GWA. However, based on information currently available on OWA, emergency assistance is considered as being discretionary and not appealable. This initiative differs from GWA where it was considered mandatory and appealable.

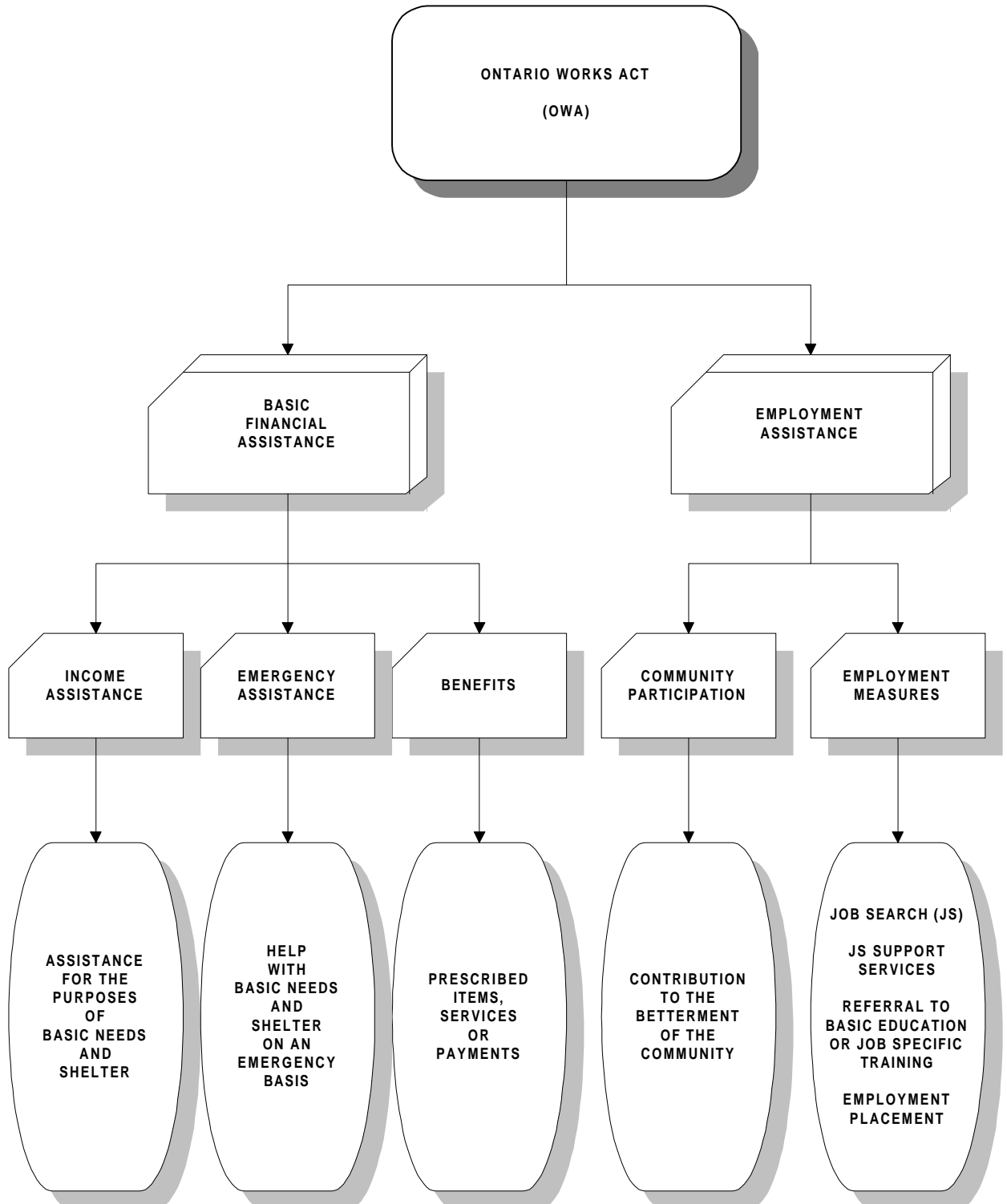
GWA provides for employment assistance without the community participation component as envisaged in OWA. This will be further discussed in the eligibility requirements section of this report.

Eligibility Requirements

To be eligible for income assistance, the applicant/dependants must be resident in Ontario, provide all prescribed information including personal identification and financial information, have budgetary requirements in excess of income, have assets within the prescribed limits as well as meet any prescribed conditions relating to eligibility. In addition, recipients of income assistance, and their prescribed dependants, may be required as a condition of eligibility for basic financial assistance to:

- a) satisfy community participation requirements;

Figure 2: Types of Assistance Under OWA



- b) participate in employment measures; (see Figure 2)
- c) accept and undertake basic education and job specific skills training;
- d) accept and maintain employment;
- e) in prescribed circumstances, consent to a lien being registered against his / her property;
and
- f) in prescribed circumstances, agree to reimburse the administrator for the assistance to be provided.

Employment assistance, on the other hand, may be provided to qualified OWA beneficiaries. However, beneficiaries of ODSPA and certain classes of persons to be prescribed in regulations will also be eligible to receive employment assistance and the benefits component of basic needs assistance.

There is concern that the lien provisions of OWA will make it harder for people to get off welfare and make a new start as their debt will follow them. It could also mean that people may lose their houses because their mortgages may not be refinanced with the lien on it. While details are still being worked out to define which forms of property will be subject to lien under OWA, it is known that the list will include joint ownerships, interests in property, trusts or other legal and equitable claims.

The employment assistance provisions of OWA require that the administrator determine recipients' eligibility for employment assistance and provide such assistance in the form of employment support and community participation. The Act also places more structure on the job search requirements for recipients by legislating the entire process of employment assistance from skills development, job training, job search, job placement to community participation. It also requires employable persons to demonstrate reasonable effort or provide just cause for refusal to make a reasonable job search effort. Applicants and recipients can be disentitled or have their entitlement reduced for 3 months for the first refusal occurrence, and 6 months for a subsequent occurrence. OWA further provides that applicants and recipients who refuse to sign a participation agreement will not be eligible for basic financial assistance.

Under GWA, employable recipients participate in an independent job search for 3 months followed by a supervised or verifiable job search. They were also eligible for supports from the employment resource centres. However, GWA does not, for example, directly legislate community participation and the signing of participation agreements.

In addition, entitlement under OWA may be reduced for employed recipients who do not make an effort to improve their income (part-time earners). This initiative does not exist under GWA. Enforcement of this initiative will be difficult due to confidentiality, the nature of part-time work and the time required to follow up each case. A verification system would have to be in place to monitor participants' potential and actual opportunities for work.

In general therefore, the employment assistance provisions of OWA will lead to increased workload in areas affecting the determination of eligibility, temporary deferrals, preparation and

execution of participation agreements and monitoring to assess reasonable effort; as these activities will have to be undertaken with greater stringency.

PROVISION OF ASSISTANCE

16 and 17 Year Olds

Under OWA, financial assistance will not be paid directly to young persons under the age of 18. However, under exceptional circumstances such as abuse, financial assistance may be provided on the young person's behalf to a trustee or a guardian where the adolescent is attending school or an approved training program under adult supervision. Under GWA, persons under 18 years of age were granted assistance only in extremely rare situations similar to those outlined in OWA. However, GWA had no requirement for "adult supervision". While this requirement may be useful in certain instances, there may be certain youths in high risk situations where arrangements for adult supervision may either not be feasible or may inadvertently place a young person at further risk. The effect of this requirement will however not be known until the term "adult supervision" is clarified in regulations.

Third Party Payments

OWA provides that a portion of basic financial assistance may be paid directly to a third party (e.g. a landlord or utility company) on behalf of a recipient; if the recipient or his / her dependant owes money to the third party for costs related to basic needs or shelter. Regulations will further clarify how this requirement will be implemented. However, there is concern that this provision may constitute an ineffective social policy as it favours the payment of overdue debts over day-to-day survival expenditures and fosters dependency. In addition, there are fears that most creditors particularly landlords and utility companies may seek to use the third party payment provision of OWA as a first resort to guarantee payment for their goods and services on a continuous basis. This in turn may result in increased administration costs as additional staff time is allocated to process third party payment requests and to adjust recipient entitlements accordingly.

Appeal Process

Under OWA, the existing Social Assistance Review Board (SARB) will be replaced by the Social Benefits Tribunal (SBT). OWA recipients may appeal certain decisions relating to their benefits to the SBT. Other key initiatives relevant to the SBT include:

- a) the requirement that each delivery agent establish an internal review process to address complaints or disputes;
- b) the provision that no appeal be allowed to proceed to the SBT until an internal review is requested by the recipient and completed; and
- c) the authority of the SBT to allow the provision of financial assistance to the appellant on an interim basis, if it is satisfied that such assistance is required in the duration of

the review. The interim assistance would be recovered as an overpayment if the appeal is denied.

There is no formal internal review process under GWA. Informally, however, persons whose applications for assistance are denied by welfare workers may request to have their applications reviewed by a more senior staff member. It is not known how the SBT will work in practice; and it is too early to assess its impacts on clients. The RMOC will continue to review its internal processes to ensure that all requirements of the SBT initiative are met.

ADMINISTRATION OF THE ACT

There are a number of initiatives associated with the administration of OWA. Each delivery agent is for example required to submit to the province; information relevant to the implementation of the Act; including information about present and former applicants and recipients. Other key initiatives include:

a) Provincial & Local Fraud Control Units (FCUs)

The province and each delivery agent may establish a social assistance fraud control unit to investigate the eligibility of present and past applicants/recipients including possible violations of OWA, ODSPA, GWA, FBA and VRSA;

b) Eligibility Review Officers

FCUs will be staffed with eligibility review officers (EROs) designated under OWA. EROs will be deemed to be engaged in law enforcement while executing their FCU functions; and for that purpose may apply for and act under a search warrant.

c) Family Support Workers

The duties of family support workers designated by the OWA administrator will include the provision of assistance to applicants, recipients and dependants in their pursuit of whatever action is necessary to claim financial support from persons with a legal obligation to do so.

The RMOC has consistently made efforts to reduce fraud in order to maintain program integrity. OWA expands the ability of delivery agents to establish fraud control measures. The RMOC therefore supports the SBT and internal review provisions of OWA. However, there is concern that the level of detail outlined in the legislation may prove to be restrictive in its application.

New Business Practices and Technology

The role of technology to address service delivery is recognised in the new legislation. OWA enables the Province to undertake a comprehensive redesign of the delivery system; including the sharing of information among government agencies within and outside Canada and the introduction of new technologies such as the use of Encrypted Biometric Identifier (EBI) for the identification of recipients. This 3-5 year initiative will be implemented under the auspices of the Ministry's Business Transformation Process.

The RMOC has been proactive in the development of technology to ensure a more efficient and effective delivery system and has worked in partnership with the Province on this initiative. However, there are privacy issues related to the use of EBIs which are not yet resolved.

Schedule B: The Ontario Disability Support Program Act, 1997 (ODSPA)

ODSPA consists of a purpose statement, definitions and five parts. As set out in the act, the purpose of ODSPA is to:

“...establish a program that,

- a) provides income and employment supports to eligible persons with disabilities;
- b) recognises that government , communities, families and individuals share responsibility for providing such supports;
- c) effectively serves persons with disabilities who need assistance; and
- d) is accountable to the taxpayers of Ontario.”

DEFINITION OF DISABILITY

Under ODSPA a person is considered as having a disability if:

- a) the person has a substantial physical or mental impairment that is continuous or recurrent and expected to last one year or more;
- b) the direct and cumulative effect of the impairment on the person's ability to attend to his or her personal care, function in the community and function in a workplace, results in a substantial restriction in activities of daily living, and
- c) the impairment and its likely duration and the restriction in the person's activities of daily living have been verified by a person with the prescribed qualifications.

The Act further clarifies that a person is not a person with a disability if the person's impairment is caused by the presence in the person's body of alcohol, a drug or some other chemically active

substance that the person has ingested, unless the alcohol, drug, or other substance has been authorised by prescription as provided for in the regulations.

ODSPA therefore changes the definition of disability from one which was based on medical assessment and focuses upon one's ability to work, to one which looks at all aspects of daily living. Moreover, the new legislation allows for a wider range of professionals to be involved in the determination of eligibility for ODSPA. The Act states that persons with "the prescribed qualifications" will make this determination. Again, depending upon the details of the regulations, it appears that the definition of who can assess level of disability may change from the current physician only assessment to include other professionals. In the June 1997 Backgrounder released by the Ministry, examples such as registered psychologists, social workers, and mental health outreach workers are cited as professionals who may be able to assess disability within the new Act. Because the ability to "undertake activities of daily living" is central to qualifying for this program, it is potentially advantageous for persons with disabilities to be assessed by not only medical professionals, but possibly by social workers, mental health and outreach workers.

Furthermore, ODSPA's definition of disability eliminates the term "permanently unemployable" which the disabled community has asserted attaches a stigma to persons with a disability and has a disincentive implication. The term "permanently unemployable" suggests that persons with disabilities are not capable of working when in fact many people are capable and eager to work despite the barriers they may experience as a result of their particular disability. It is also reassuring to note that ODSPA's definition of disability allows for cyclical or episodic disabilities. These are covered by the term "recurrent".

There is concern relating to the restrictiveness of the new definition of "disability" as it stipulates specific conditions which must exist for a person to be deemed disabled. Such restrictions would lead to many current FBA recipients failing to qualify under ODSPA; and a resultant upward pressure on the OWA caseload. Examples include:

1. Alcohol and Drug Addictions -

Persons suffering from alcohol and drug addictions are considered as having disabilities under the FBA. This group of persons will not qualify for ODSPA. Experience clearly shows that substance addiction is a major barrier to paid employment. Therefore if this client group does not qualify for ODSPA they will have to apply for OWA where in all likelihood they will need to be temporarily or permanently deferred from participating in employment assistance. However, based on the current wording of OWA, "substance abusers" may be considered disabled if they participated in a rehabilitation program.

2. Ages 60 to 64 -

Persons aged 60 to 64 were previously eligible for assistance under FBA by reason of their age. Under the new legislation new applicants between the ages of 60 and 64 will not be eligible for ODSPA but rather will have to apply for OWA. Clients in this age group currently on FBA will be grandparented into ODSPA.

There is concern that persons between 60 and 64 may not be appropriate clients for the OWA. Generally, people in this age group are not readily employable, and therefore they are not likely to earn-back the reductions in financial benefits which will be provided to them under OWA. OWA is predicated on the idea that clients are better off working. The reality is that few clients in the 60 to 64 age group are going to be able to increase their earnings through work. The workforce is highly competitive, the current unemployment rate is high, and even highly qualified older people have difficulty finding work. To impose mandatory employment participation for 60 to 64 year olds seems to be impractical.

ELIGIBILITY FOR INCOME SUPPORT

ODSPA defines “Income Support” as assistance for the provision of basic needs, shelter and costs related to a person’s disability; including benefits other prescribed needs.

Persons with a disability and their dependants who are resident in Ontario and have budgetary requirements in excess their income may be eligible to receive income support. In addition, ODSPA beneficiaries may, as a condition of eligibility, be required to agree to having liens registered on their properties or to reimburse the income support to be provided.

Other provisions of ODSPA related to eligibility include:

1. Assistive Devices -

Under FBA, persons with disabilities could obtain assistive devices through the Assistive Devices Program (ADP). Under ADP the disabled person pays 25% of the cost of the assistive device required. If the client is unable to pay his/her portion of the cost, s/he may obtain assistance through supplemental aid, special assistance or service donation. ODSPA eliminates the 25% co-payment requirement; and provides for 100% payment of the approved cost of assistive devices by the Province. But what the approved amounts are is yet to be determined, and if an individual requires an item that exceeds the approved amount, s/he will need to find the extra money from savings or some other source.

2. Asset Levels -

ODSPA will raise the liquid asset limit from its FBA level of \$3,000 to \$5,000 for a single person; and from \$5,000 to \$7,500 for a couple. Five hundred dollars in assets will be allowed for each additional dependent person in a benefit unit. Personal injury award limits will also be increased from their current level of \$25,000 to \$100,000.

Additionally, the cash surrender values of life insurance policies will no longer be considered liquid assets up to \$100,000. However, the Ministry has indicated in its June 5th Backgrounder that ODSPA recipients may take a loan against the value of their life insurance policies to cover costs related to the advanced stages of such illnesses as cancer or AIDS.

Other provisions of ODSPA relating to asset levels include the requirement that families can now help with certain disability-related costs to be prescribed in regulations. Families can also provide up to \$4,000 per year for non-disability related expenses without affecting ODSPA allowances; although again the specific eligible expenditures will be defined in the regulations. Additionally, allowable testamentary trusts (inheritances in the form of a trust fund) will also increase within ODSPA from \$65,000 to \$100,000. These changes appear very positive for ODSPA recipients who have families to support them.

3. Retesting -

Retesting of clients for “disability” will only occur now if and when the disability is expected to improve. Previously, under FBA retesting needed to be undertaken regularly.

The Act also states that the retesting of clients for “disability” will no longer be necessary for those who have been off ODSPA for less than one year. Only a financial assessment will be required if the person is seeking income support.

4. Finger Printing -

ODSPA allows for finger print scanning or the use of other client identification technologies such as EBI. It also gives authority for the sharing of information among government agencies within and outside of Canada. Both of these aspects raise concerns about individual rights and freedoms. Although there appears to be no plans to proceed in this regard in Ontario at this time, the Act makes it possible in future.

5. Handicapped Children’s benefit -

The Handicapped Children’s Benefit program will continue under ODSPA, but is restricted to “extraordinary costs” for children with “severe” disabilities. The details of the impact of “extraordinary costs” will not be known until regulations are in place.

PROVISION OF ASSISTANCE

1. Appointment of a Person to Act

Under FBA the Substitute Decisions Act was invoked in order to establish trusteeship arrangements for clients. ODSPA has allowance for the appointment of trustees for clients independent of the Substitute Decisions Act. The Act provides that such an appointment may be made if there is no guardian of property or trustee for the recipient; or the recipient is using or is likely to use his or her assistance in a way that is not for the benefit of a member of the benefit unit; or the recipient is incapacitated or is incapable of handling his or her affairs.

These broad clauses could make it easier to take away a recipient's control of his or her money, without having to go through the procedures and safeguards of the Substitute Decisions Act. There appears to be no provision for the accountability of informal trustees, nor is there a provision for appeal of trusteeship arrangements. ODSPA also allows for the direct payment of a recipients rent and/or utilities expenses, again presenting a further potential threat to the autonomy of the client.

2. The Appeal Process -

As noted under OWA, ODSPA also provides for the replacement of the Social Assistance Review Board with the Social Benefits Tribunal (SBT). This new process has clients undergoing an internal review first prior to the case going to the SBT. For some recipients this may result in an easier resolution of the issue at hand, but for others, the internal review requirement may represent a delay in the resolution of their concerns. The Act further provides that the SBT can refuse to hear "frivolous or vexatious" appeals, and questions remain about what would be a "frivolous or vexatious" appeal. There also are many decisions within ODSPA which are simply not appealable.

Finally, ODSPA is to be introduced along with the provision of a training manual for determining disability. It is anticipated that this training manual will ensure greater consistency in the implementation of ODSPA.

Other Impact Considerations

As a result of ODSPA's more restrictive definition of "disability" the OWA client caseload profile is expected to change. The question also remains whether clients applying for ODSPA will need to apply through OWA first as is currently the case for FBA clients.

Cost Sharing Formula:

As a result of decisions reached by the Who Does What panel, municipalities are to fund 20% of benefits and 50% of the administrative costs of ODSPA. Municipalities are concerned that they will be required to fund a program which will be delivered by the provincial government outside of the social assistance program.

EMPLOYMENT SUPPORT

ODSPA provides for an employment support program for person with a disability who can and want to work. The program will include such services as:

- a) employment planning assistance;
- b) technological aids/devices and personal supports;
- c) pre-employment services;
- d) on-going job-supports; and
- e) employment development strategies.

The program will be administered by a "Service Co-ordinator" defined as an organisation or person approved to provide or purchase employment supports.

It is noted that unlike OWA, ODSPA's employment support program is not mandatory. It will be available to all persons with disabilities in Ontario, regardless of their financial status; including persons with disabilities who are not eligible for income support under ODSPA. In addition, the program will, where feasible, provide funding directly to the client so that s/he can choose the aid, device or support that will provide the most assistance to his/her employment efforts. In general, the program represents an expansion of services for disabled persons who wish to seek employment.

CONCLUSION

Generally, most of SARA's provisions are subject to further clarification in regulations which are not yet published. It is therefore recommended that this report be considered as preliminary. A more conclusive analysis of SARA will be prepared for Regional Council once SARA is passed and its regulations are published.

*Approved by
Dick Stewart*

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