Legal Centre News

Volume 59

Making a Difference in the Community Since 1989

Fall 2023

This volume of the Peterborough Community Legal Centre newsletter features articles on a few of the many overlapping issues of inequality facing people in our community today, including:

- A description of our Trans ID Clinic, a service offered in support of our local Trans community
- Explanations of two of the most common reasons for eviction
- An overview of the MyBenefits portal and a discussion of its pros vs. cons
- A blog about the options for protection orders for IPV in Ontario
- A critique of the lack of a tort of harassment in Ontario
- A description of a precedent setting sexual assault case from this year
- A piece acknowledging an unfortunate increase in defamation cases against survivors of abuse
- Some tips for lawyers and social agencies identifying and helping clients struggling with IPV
- An announcement of the claim period for individuals impacted by OxyContin and OxyNeo between 1996 and 2017

All images in this newsletter are from Canva and some articles include links to sources. These links are accessible on the digital copy of the newsletter, or visit our website using the QR code on the back cover for a list.

Thanks for reading!

PCLC Supports the Local Trans Community with Trans ID Clinic

The Peterborough Community Legal Centre has an essential message for Transgender, Two-Spirit and gender-diverse people: ***You are valued and deserve to feel protected by society.***

The Peterborough Community Legal Centre (PCLC) is proud to share that our Trans ID Clinic has operated for three years now. In 2020, our clinic identified an un-serviced need in the community and acted to improve access to suitable identification (ID) for Trans people by assisting with name and gender marker change applications. Since then, the PCLC Trans ID Clinic has been running a Trans-specific ID service that has supported over 46 name or gender marker change applications. We want to thank all of the people who have accessed the clinic, shared their experiences with us and supported this important service.

PCLC knows first-hand that lacking access to suitable identification can inhibit one's ability to participate in crucial areas of social life like health care, social services, housing, and employment. For Trans people, having government-issued identification that is incongruent with one's identity or presentation can also subject someone to transphobic harassment, discrimination and gender-based violence.

The Trans ID Clinic aims to reduce the barriers associated with obtaining a name and gender marker change and appropriate ID by: funding the costs associated with the application process to eligible participants; advising and assisting on the application process; troubleshooting issues that arise; connecting participants to necessary community services; and commissioning and mailing applications.

Last year, the Trans ID Clinic also engaged in a law reform project to make changing one's sex designation on their birth certificate more accessible. We wrote to the Ontario Ministry of Public and Business Service Delivery, who is responsible for administering the Vital Statistics Act (VTA), which determines the process for changing one's sex designation (gender marker) on birth certificates in Ontario.

The submission urged the Ministry to amend the VTA and remove the requirement that a person applying to change the sex designation on their birth certificate must provide a letter from a practicing physician or psychologist who deems the sex designation is "appropriate." If the Ministry was unwilling to remove the letter requirement altogether, the submission recommended that in the alternative, the Ministry could expand the list of professionals permitted to write the letter to include social workers, nurses, teachers or community members as well as doctors and psychologists. Our submission to the Ministry stated that they should seriously consider moving towards the removal of sex designations on short-form birth certificates altogether.

While the Ontario Ministry of Public and Business Service Delivery did not adopt the recommended changes or even respond to our submissions, we are committed to continued advocacy to increase access to appropriate government-issued ID and improve access to justice for Trans people. In a climate of moral panic, it is more important than ever to stand with Trans people and actively support their ability to live with dignity and safety.

Trans Lifeline's Hotline is a peer support phone service run by Trans people for Trans people that operates 24/7.

Trans Lifeline Hotline: 1-877-330-6366

Evictions for Landlord's Own Use

Like many tenants nowadays, you may have been served with an N12 Notice of Eviction claiming that the landlord or the purchaser require your rental unit for their own use or the use of an immediate family member. If you do not move after receiving an N12 notice, your landlord must serve you with an L2 Application. This means that there will be a hearing before the Landlord and Tenant Board (LTB). At the hearing, the landlord will be required to prove, on the balance of probabilities, that the landlord in good faith requires the unit for a period of at least one year, as stated in s. 48(1) of the *Residential Tenancies Act.*

Although the landlord is required to prove good faith, we have noticed that many Tribunal adjudicators switch this around and insist that the tenant has to prove that the landlord did not intend to move into the unit. This is an error of law and was the subject of a recent Divisional Court decision. The case is Grewal and Eilers v. Nukkala, 2023 ONSC 5758.

In this case, the tenants had lived in the unit since 2015. The landlord served them with an N12 notice. The tenants did not move out. The landlord started an L2 application to evict the tenants which was heard on May 29, 2023. During the hearing, the LTB adjudicator forced the tenants to prove that the landlord did not intend to move into the unit when the adjudicator should have been focussed on examining the landlord's evidence to determine whether the landlord was being truthful as to their need for the unit.

The Divisional Court, in a very strong decision, found that the Tribunal member made an error of law by requiring the tenants to prove that the landlord did not intend to move in to the unit. The decision states in part:

> [8] Paragraph 31 of the LTB decision states that "... the Tenants here must lead sufficient evidence to establish it is more likely than not the Landlord did not give the Tenants the N12 notice of termination in good faith." ***This is an incorrect statement of the law.*** As counsel for the LTB notes in his factum: "It is the Landlord, as the applicant, who bears the burden of establishing on the balance of probabilities that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year in accordance with section 48(1) of the Act." (Emphasis added).

The Divisional Court also criticized the Tribunal decision for failing to provide reasons for accepting the landlord's evidence and rejecting the evidence of the tenants. The lawyer for the LTB attempted to argue that detailed reasons could not be expected because the LTB has a high volume of cases. The Divisional Court stated:

> *In finding that the reasons of the LTB are inadequate, I also have regard to the context, which involves a high-volume adjudicative body that must adopt an expeditious method of determining cases. However, a challenging workload and a pressing need for efficient adjudication does not excuse an utter lack of reasoning.*

The Divisional Court also indicated that there might be some merit to the tenants' claim that the hearing was procedurally unfair. However, having granted the tenants' appeal on the basis of an incorrect burden of proof and a lack of reasons, the Divisional Court did not go into the issue of fairness at the hearing. Instead, the application was returned to the LTB for a new hearing before a different adjudicator. The landlord was ordered to pay the tenants costs in the amount of $2,500.

Evicted in Bad Faith

In Ontario, tenants protected by the Residential Tenancies Act (RTA) can only be forced to leave their tenancies for the reasons set out in the RTA. Not every renter is protected. Call the Legal Centre if you have concerns.

You may get one of the following notices from your landlord:

- N13: Renovation, demolition or conversion;
- N12: Landlord's or purchaser's own use;

If you receive one of these notices or are told by your landlord, their real estate agent or the purchaser of your unit that you need to move out because somebody needs the unit for their own use or it has to be renovated, call the Legal Centre for advice.

You can also consult the following resources:

- Legal Centre News Vol. 55, page 8
- ACTO: What can I do if my landlord or someone buying my place wants to move in?
- CLEONET: Does your landlord or a buyer want to move in?
- Stepstojustice.ca Checklist: Checklist: If you get an eviction notice for landlord's use
- Stepstojustice.ca Checklist: If you get an eviction notice for purchaser's use

The purpose of this article is to talk about what happens **after you've moved out.** You may have chosen to move out pursuant to an N12 or N13 Notice or been forced out by an Order from the Landlord and Tenant Board.

What if you discover that you have moved out or have been forced out of your place unfairly?

If any of the following are true, your landlord may have evicted you in ***BAD FAITH:***

- You discover that the person that the landlord said would be moving into your rental unit did not move in.
- You discover that the person that the landlord said would be moving into your rental unit did not occupy it for at least one year.
- You discover that the landlord has previously given a tenant an N12 at your unit, address or any other rental unit in the past 2 years.

Evicted in Bad Faith (continued...)

You may suspect motives other than those declared on the N12 or N13 form. For example, the Landlord, Purchaser or Real Estate agent may have told you something that suggested an alternative motive before you moved or were forced out.

If this is the case: you have one (1) year from the date you moved out of your rental unit to file an Application to the LTB: Form T5: Landlord gave a Notice of Termination in Bad Faith. For Bad Faith, an individual landlord could be fined up to $50,000 and a corporate landlord could be fined up to $250,000.

To legally pursue your landlord successfully for evicting you in bad faith, you must gather evidence to support your claim.

As a general practice, it's helpful to keep track of where you saw your unit listed initially (a PDF/print-out of the online ad or photocopy of the printed ad), keep a copy of your lease, keep a record of your utility bills if applicable, and maintain a log of interactions (date/time/details) with your landlord, the landlord's maintenance people, and your neighbour-tenants throughout your tenancy.

Once you receive an N12 Notice and before you move out:

- If you haven't been keeping a log, you should definitely start. In addition to interactions with the people named above, you should add to it interactions with home inspectors, real estate agents and prospective purchasers.
- The landlord is required to give you one month of rent as a condition to validate the N12. However, sometimes they may offer you more money to gain your cooperation. You should take note of these offers and get legal advice about them before agreeing to them.
- Look at the rental listing where you first saw your rental unit to see if it has been advertised. If it has, save a PDF or photocopy.
- Use social media and search engines to check out your landlords and the person they claim will be moving in and make note of where they live, plans they disclose, etc…
- Make acquaintanceship with your neighbours and/or other tenants in the same building. Tell them what's happening. Compare your rental rate to theirs. They may have also been given N12 Notices. Get their contact info so that you can stay in touch with them after you move out so you can find out who is living in your place.
- Take photos of your place.
- Take measurements of your place including the square-footage.
- Take note of the conditions of your tenancy… utilities included, washer/dryer, dishwasher, A/C, proximity to essential spots.
- Keep PDF's or print-outs or photocopies of the rental listings that you look at. Note the prices, whether utilities are included or not, and the size of the prospective tenancies when you look at them.

After you've moved out:

- Keep any bills related to moving and storage.
- Keep the listing for your new rental unit.
- Note the square-footage and price of the new rental unit, whether utilities are included or extra, and any new costs you've incurred as a result of the move.
- Check the rental and real estate listings periodically where the landlord may advertise your former rental unit for rent or sale.
- If you see the house is for sale, take a photo of the for-sale sign, and make a PDF of the real estate listing.
- Check social media and search engines periodically for your landlord, purchaser, and their relative and take note of anything that suggests they are not living at the unit.
- Check in with your former neighbours periodically to see if the unit is vacant or occupied, if they've seen anyone move in or out and whether the new tenant is the person on the N12 who the landlord claimed will move in.

Contact the Legal Centre (705-749-9355) as soon as possible after realizing you have been evicted in bad faith. Remember, you have only one (1) year from the date you moved out to pursue the T5.

MyBenefits – Good or Bad?

As of March 2020, Ontario has been using an online system called MyBenefits to try to get people receiving Ontario Works (OW) or Ontario Disability (ODSP) to go digital and paperless. This means that when you get a MyBenefits account, you will not get paper copies of your documents from OW or ODSP. You may not get a paper copy of a decision letter that affects you. You may not get a paper copy of your benefit statement.

However, you do not have to use MyBenefits. You can decide how you want to communicate with OW and ODSP. Here's what you need to know so that you can make a choice that works for you:

MyBenefits may be good for you if:

- You are comfortable using digital services and you have access to appropriate technology (computer, phone etc.)
- You want to have all your documents in one digital place;
- You want to be able to send messages to your caseworker;
- You want to file a monthly income statement;
- You want to report a change in your address or phone number.

MyBenefits may not be good for you if:

- You are not comfortable using technology and you do not have a computer or phone;
- You do not speak English or French;
- You do not think that you will check your MyBenefits portal on a regular basis for decision letters;
- You do not think that you will regularly download and save your communications from OW or ODSP.

Here are some additional things to think about:

- OW and ODSP are required to send you a letter about any change to your benefits that affects your right to social assistance. For example, if your application for assistance is denied or the amount of benefits that you receive changes or you are told that you have an overpayment – you are entitled to get a **notice of decision** in writing. The notice should include the reasons why the decision was made and should tell you that you have **30 days to start an appeal of the decision**. If you check MyBenefits on a regular basis, chances are that you will see the notice of decision in time to start an appeal. If you don't check it regularly, you may miss the appeal period. If you do not think you will check MyBenefits regularly, it might be safer for you to get your notices in writing, by regular mail. **If you think you need to appeal a decision, contact the Legal Centre right away.**

- Notices of decisions are stored in MyBenefits for one year. You may need to access a decision letter after the one year period has passed. If you have not downloaded and stored the letter on your computer, it may be difficult for you to get a copy. You can make a Freedom of Information request but this will cost money and take time. Plus, OW and ODSP may have deleted the file.

- Although you may find it useful to have all your documents stored on MyBenefits, you should know that they will not be stored there forever. At the moment, MyBenefits **only stores messages from you to your worker for one year**. This can be a big problem. For example, suppose OW or ODSP says that you did not tell them about a change in your income and now you have an overpayment. You know that you sent them the information that they wanted through MyBenefits but you sent it over a year ago and did not download your copy. You may not be able to prove that you sent the information because the document is no longer stored on your account. This could be a problem if you decide to appeal.

- Some documents sent through MyBenefits may be deleted in as little as 90 days. You will not be told if your document is going to be deleted.

- People using MyBenefits have to provide extra information that people without a MyBenefits account do not. MyBenefits will ask you to declare whether you or a member of your household has been outside of Ontario for more than 7 days for OW recipients or more than 30 days for ODSP recipients. You will have to answer this question every month. If you do not answer, your benefit cheque may be put on hold until a caseworker has contacted you to confirm that you have been in Ontario.

If you do not want to use MyBenefits you can:

- Change your MyBenefits profile and get your communications delivered to you by regular mail. Here are the steps you need to take:

  1. After logging into MyBenefits, click on the MyProfile Icon.
  2. Navigate to 'Communications' & click 'Change'.
  3. Click on the "Paper mail" Radio Button & "Save".
  4. Once completed, you will receive a Success message. Going forward, all communication will be delivered to the mailing address on your MyBenefits Profile.

- Ask your caseworker to change your MyBenefits profile.
- Contact the Legal Centre.

With thanks to CLEO: On the Radar – Weighting the benefits of MyBenefits.

CLEO

CLEO (Community Legal Education Ontario) is a free online resource providing clear, accurate, and practical legal rights education and information to help people understand and exercise their legal rights. Resources include:

- Steps to Justice
- Guided Pathways
- CLEO Connect (for community workers)
- and more!

Seeking Protection Orders for Intimate Partner Violence in Ontario: What are the Options?

People who are attempting to flee violent relationships in Ontario often face hurdles when trying to obtain a protection order. They may report the violence to the police, hoping that the perpetrator will get arrested and charged and they will be safe. In this case, there may be terms of release preventing the perpetrator from returning to the home or communicating. Another option is to go to family court and seek a restraining order against the perpetrator from a family court judge. It may also be possible to seek a peace bond from a Justice of the Peace. ***Sound simple enough? The reality is anything but!***

There is information and advice about how to go about obtaining a protection order on the **Steps to Justice website** which will guide you in choosing the appropriate option in your situation. Victims can also call their local **Victim Witness Assistance Program** office for further guidance and support in enforcing protection orders. As well, nine **community legal clinics**, including the Peterborough Community Legal Centre, have received funding from the Government of Canada to provide support to victims of sexual assault and intimate partner violence.

To obtain a criminal protection order, a victim of intimate partner violence first has to report the violence to the police. There are many barriers preventing victims from taking this step including fear of retaliation, fear of losing custody of their children, financial dependence on the perpetrator, distrust of police officers, language barriers, and/or other obstacles caused by a disability (Barett et al., 2011). Of the roughly 30% of victims who called the police to report violence, only 27.3% reported that the police removed the violent person from the premises much less charged them (Barett et al., 2011). Police reports can be used as evidence in obtaining a family court restraining order and/or peace bond.

A victim of intimate partner violence can also obtain a **restraining order from a family court judge**. This option is only available for those who are living with the person at the time of the violence, or who have a child with them (CLEO, 2023). This type of order can be requested on an urgent, and even ex-parte (without notice) basis in some cases, but the average time for obtaining a protection order is **three months** (Ciavaglia-Burns, 2021). Victims may be reluctant to go to family court due to concerns about their privacy, inability to find adequate legal representation, fear for their safety, and lack of knowledge or understanding of the family court process (Carmen et. al, 2022). When victims do bring the violence to the attention of the court without the assistance of counsel, they **often find that their concerns are minimized and not taken into consideration when it comes to custody and access** arrangements (Carmen et. al, 2022). It is strongly recommended to seek legal advice from a family law lawyer for guidance in bringing this type of application. Victims of intimate partner violence in Ontario are eligible to receive **2 hours of legal advice from a lawyer for free**.

Another option for obtaining a protection order is to apply for a **peace bond**, which is done through a Justice of the Peace or directly through the provincial court office (CLEO, 2022). A peace bond **can contain conditions** that prohibit communication, attendance at locations such as the victim's home or work, and possession of weapons (GOC, 2021). The conditions may also require keeping the peace, being of good behavior, and other terms to keep the victim safe (GOC, 2021). In order to succeed at obtaining a protection order, the victim must provide sufficient evidence to show that they have a reasonable basis to fear for their safety, the safety of their property, or pets (CLEO, 2022). The process of obtaining a peace bond can take **as much as two or three months** (President, 2019). If a peace bond is issued and then breached, the **police should enforce it** through the criminal court (OWN, 2022). For assistance in enforcing a protection order, victims can call their local Victim Witness Assistance Program office.

Legal Aid Ontario encourages you to call their contact center at toll-free: 1-800-668-8258 for more information about your legal options and how to access these certificates. You can also contact your **local shelter** for more information about where to access legal and other support. As mentioned above, there are nine legal clinics across Ontario that are providing legal advice and support to victims of intimate partner violence, the contact information for which can be found **here**.

Sexual Violence Support at PCLC

SHAPE
Sexual Harassment | Advice | Prevention | Education

YOUR WAY FORWARD

SHAPE (Sexual Harassment Advice, Prevention, Education) is a Collaboration of 20 community legal centres across Ontario to provide Public Legal Education for workers and employers on their rights and responsibilities in maintaining a psychologically healthy workplace environment free of toxic behaviours like sexual harassment and discrimination. The project provides free legal advice to those impacted by sexual harassment at work and assistance to employers in developing appropriate policies for addressing sexual harassment in the workplace.

Your Way Forward brings together nine Ontario community legal clinics to provide holistic legal services and support for people who have experienced Intimate partner and sexual violence. Through this project we provide legal advice to those experiencing violence and assist them in navigating the complex services and justice sector.

For more information about this project contact Anne-Marie Langan at anne-marie.langan@ptob-nogo.clcj.ca.

There is No Tort of Harassment, at least in Ontario

Over the last three years, a number of cases have come before the Courts in Ontario looking for recognition that workplace harassment is a tort. While a number of lower court decisions found that harassment could be its own tort, the Court of Appeal has closed that door, in fact to the point where lower courts are now making similar findings.

However, in Alberta, a recent decision of the Court of the King's Bench, found that workplace harassment could in fact, be a tort. In *Alberta Health Services v. Johnston*, 2023 ABKB 209, the Honourable Justice Feasby, distinguishes his decision from the precedent set in Ontario by reviewing and assessing the various court decisions and laws on torts. In the end, Justice Feasby creates four criterion that he suggests be used to determine if there is a tort of harassment. To address concerns that have been previously raised in other decisions, Justice Feasby writes, "Taking this step does not create indeterminate liability nor does it open the floodgates; to the contrary, it defines the tort of harassment in a measured way that will guide the courts in the future."

The Court of Appeal's decision in *Merrifield v. Canada (Attorney General)* 2019 ONCA 205, did not preclude that there could never be a tort of harassment, just that existing torts and laws provided sufficient remedies for harassment.

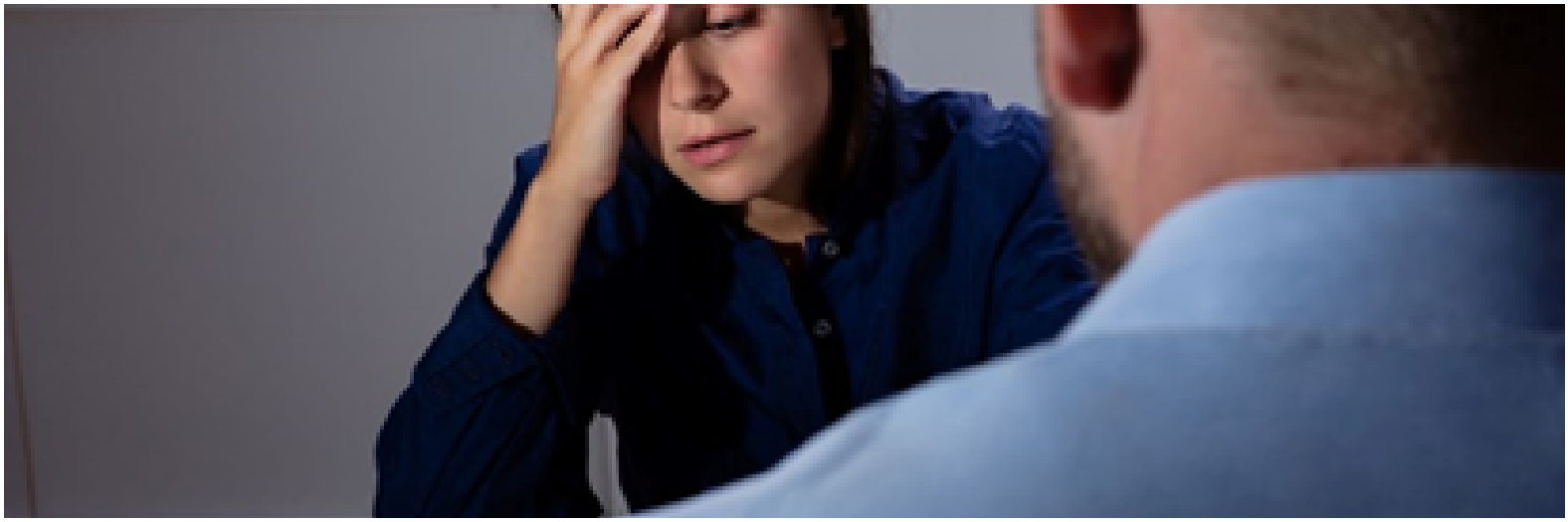
So what does this mean for workers in Ontario who experience workplace harassment? The old options for asserting your rights against harassment still stand until Ontario catches up with Alberta.

Those options include, filing an *Occupational Health and Safety Act (OHSA)* complaint with the Ministry of Labour, potentially bringing a Human Rights application, and depending on your workplace and whether you suffered an injury from the harassment, filing a *Workplace Safety and Insurance Board* claim. The latter, has a stringent test that is often difficult to meet.

These above options have limits. In particular, *OSHA* complaints often result in compliance orders for the employer, fines, and in extreme cases prosecution against the employer for violations. There is nothing in the OSHA legislative scheme that provides restitution to a worker who has been harassed, and suffered any type of psychological or physical harm. The Human Rights process has its own myriad of issues, including lengthy delays. The various existing torts also have their own limitations, as outlined by Dan Priel, in his article, *"That is Not How the Common Law works": Paths to Tort Liability for Harassment*. Dan's review of existing torts and judicial decisions provides a path forward for the Courts in Ontario if they chose to follow the same route as Alberta: that is it within the Court's ability to expand the law to meet the advancements of society, namely the recognition that harassment is an every day issue for workers. Until then, workers in Ontario are left with a variety of administrative processes and a civil system that has yet to fully acknowledge the experience of workers facing harassment.

If you have experienced workplace harassment, or sexual harassment, contact PCLC today for free, confidential legal advice.

Precedent Setting Case Finds O.P.P Discriminated Against Victim Reporting Sexual Assault – Leach vs. Ontario (Solicitor-General)



In the 2023 Leach v. Ontario (Solicitor General) decision, the Human Rights Tribunal made a precedent-setting finding that the Ontario Provincial Police (O.P.P.) "breached the applicant's Code protected rights on the grounds of sex" during a police interview.

In coming to its' conclusion that the police discriminated against Ms. Leach in the provision of services the Tribunal confirmed that Ms. Leach is "a member of a group protected by the Code, namely women who report sexual harassment and sexual assault".

During the interview in question, Ms. Leach reported two incidents of sexual assault that she had experienced, one of which she had previously reported to a male O.P.P. officer. She had specifically requested to be re-interviewed by a female officer, as is her right pursuant to the Victim Bill of Rights. The male officer who had taken her report had not taken it seriously. She was hopeful that a female officer would be better able to understand and would take action.

Regardless of the reasons for Ms. Leach's requesting a police officer, as someone reporting sexual assault, she has a right to be interviewed by a person of the same sex pursuant to s. 5 of the Victim Bill of Rights which states:

> 5. Victims of sexual assault should, if the victim so requests, be interviewed during the investigation of the crime only by police officers and officials of the same gender as the victim.

Instead, Detective Sargent Watkins, who at the time was the head of the Major Crimes Unit for the Eastern Region, refused her request to be interviewed by a female officer. When he called to arrange the interview, he informed Ms. Leach that he would do the interviewing with the assistance of a fellow officer, Detective Constable Saunders. As described by the Tribunal, Detective Saunders "essentially deferred at all times to the more senior male officer, did not engage in the questioning of the applicant, and did not respond in a supportive manner to the requests made by the applicant about the actions of the male officer and his questioning of the applicant".

Ironically, during her testimony, Detective Saunders presented herself as an expert in trauma-informed interviewing. She testified that she had trained her fellow officers in how to conduct a trauma-informed sexual assault interview and had years of experience conducting these types of interviews. Neither she nor Detective Watkins could provide a valid reason why he had conducted the interview when Detective Saunders was clearly available or why Detective Saunders sat passively by while Detective Watkins asked all the questions. According to the Victim Bill of Rights, Detective Watkins ought not to have been present in the room during Ms. Leach's interview.

The Tribunal points to several other factors that supported their finding that Ms. Leach was discriminated against by Detective Sargent Watkins during the June 13th interview including, that his telephone rang three

times during the interview, he sat opposite Ms. Leach with his legs spread apart, he "played" with his glasses between his legs on and off throughout the interview and he touched the evidence she had brought with her with a look of disgust on his face as if they were contaminated with "cooties".

Detective Watkins also asked several questions during the interview that were inappropriate in a sexual assault interview as they could easily be interpreted as assigning the blame for the assault on the victim rather than the perpetrator. For example, **he asked what Ms. Leach was wearing** when one of the assailants had placed his hand between her legs when she was a passenger in his vehicle. He also questioned whether Ms. Leach was in a "compromising position" in a photograph. Ms. Leach described how these behaviours and questions made her feel "**she was not believed that she was disrespected and that she was ultimately blamed for the circumstances that led to the interview...**"

The Tribunal also commented on the stark contrast between the cold unsupportive treatment by the two detectives during Ms. Leach's interview and the way they treated one of the alleged perpetrators during his suspect interview. Their discriminatory view of the Applicant was very evident during the perpetrators' interview. The Tribunal member summarizes their differential treatment well in **the following passage**:

> I have to note the very different approach taken by D.S. and D.C. Saunders. Ranging from the cordial handshake at the start of the interview, through the agreement that G.B. could record the interview, the discussion of, or at least reference to the "Me-Too" movement between the two men, the reference to the fact that the police have an obligation to respond to the public and even to the "false calls" cited by G.B., as well as explaining that even if Paul Barnardo were to call, they would still have to respond. I must also note D.S. Watkins' comments to G.B., who suggested that he might file a defamation of character allegation against the applicant, to which the D.S. responded that "you are on the right path" and later that "you may have a case", and an explanation later about how to get a "peace bond", all support the alleged differential treatment of G.B. compared to the applicant.

The Tribunal expressed "concern" that in her testimony Detective Constable Saunders used the fact that Detective Sargent Watkins was her boss as an excuse for her passive behaviour throughout the investigation even though she was listed as the lead investigator. Detective Watkins had disregarded the detailed summary of the evidence that Detective Saunders had prepared for a senior Crown. Instead Detective Watkins proceeded to go speak to another, less experienced Crown in Detective Saunders' absence to seek an opinion on whether the offences had any likelihood of conviction. The result was that neither of the assailants was charged.

In summary, the Tribunal noted the following factors were determinative to its finding of discrimination:

- The applicant is female and most victims of discrimination on the grounds of sex are female;
- The applicant was treated differently from the treatment experienced by the alleged assailant when they were interviewed by the same police officers;
- The applicant was not offered the support of a victim services support person for the interview;
- The applicant was not provided with the option of being interviewed by a female police officer, as directed by the Ontario Victim Services Bill, even though an appropriately trained and experienced female police officer was available to do so;
- The reference to the "Me Too" movement, while not directly raised by the police, but accepted by the police, and the reference to the police's obligations regardless of who contacts them, i.e., the reference to Paul Bernardo, again support the assertion of discrimination;
- The exclusion of the female police officer from the discussions with the Crown Attorney about laying charges against G.B. on the basis of and arising from the applicant's assertions, also **further supports the allegation of differential treatment and discrimination**.

This will hopefully be an important precedent for use by the many victims who have had similar negative experiences in reporting sexual assault to police, thereby holding the police accountable for their discriminatory behaviour towards victims of sexual assault and perhaps even inspiring them to do better in the future.

Increase in Defamation Cases Against Survivors of Abuse

It is not uncommon for survivors of sexual abuse to never file a report, especially when there is fear, stigma, and vulnerability involved. However, in the age of everything at our fingertips, it is also becoming more common to see survivors speak out on social media platforms to share their experience, in fact the #MeToo movement took off on "X" (previously Twitter).

We offer a word of caution for survivors who do wish to share their experiences publicly or even with select people. Recently there has been an increase in survivors seeking legal advice about being sued for defamation.

Generally, defamation is the act of making untrue statements about a person, in a public forum, that could result in damage to the other person's reputation.

It is up to the person (the "plaintiff") filing a defamation claim to first prove that the statement; was defamatory in nature, referred to the plaintiff, and was "published." Once all three elements have been proven the burden shifts to the person who made the statement (the "defendant") to justify their statement.

There are several defences that can protect a defendant from liability, the most common when dealing with sexual cases, are justification and qualified privilege. Justification is the ability to prove that the statements are true. With sexual abuse allegations, proving that the abuse happened is often difficult as there are generally no witnesses to sexual abuse. For qualified privilege, the person who made the defamatory statement must be able to show that they had an interest or duty to make the statement and that the person who the statement was about had a corresponding duty to receive/hear it. This often looks like survivors trying to protect others from the same abuse they experienced and is most often what we see on social media; statements made about a personal experience directly naming the perpetrator so that others know about the perpetrator's behaviour /conduct.

However, doing this can land a survivor in court. Although there are laws to protect survivors who speak out there are no free legal services available to survivors to defend themselves against these claims and such cases can cost a lot of money and time. This is why if you find yourself in a situation where you want to share your story, you should seek legal advice, and if you find yourself being sued, find legal help right away. There are many deadlines to meet, and decisions can be made without you if you do not participate.

If you are experiencing sexual harassment, assault, or intimate partner violence, or having questions about defamation contact our office.

Tips for Lawyers and Social Agencies: How to Identify and Help Clients Struggling with Intimate Partner Violence

Many victims of intimate partner violence (IPV) are reluctant to disclose what they are experiencing at home publicly or even to their lawyer due to concerns that there may be reprisals from the perpetrator, that the Children's Aid Society (CAS) may become involved, that they won't be believed and/or other reasons related to impression management. Yet this could be very important information for lawyers and judges to be aware of as it could impact a client's ability to absorb legal advice and be relevant to various aspects of their case and to ensure the **safety of your client and your staff**.

IPV can take many forms including **physical abuse, sexual abuse, threats, harassment, neglect, and financial abuse**. Some of the signs of IPV to look for include visible injuries, a fear reaction when the ex-partner is mentioned, mental health symptoms related to trauma, involvement of police or CAS with the family and/or an inability to access to financial accounts and records. It is important to screen every client even if there are no obvious signs of IPV by asking questions in your initial meeting such as "**have you or your children ever felt emotionally or physically unsafe due to your partner's behaviour**".

If the client shares that they have experienced IPV you can **validate them** by commending them for trusting you with this information and explaining how the information could be relevant to their case. You should also ascertain whether there are any immediate safety risks for the client in accessing your services and refer them to a resource that could assist them in safety planning in general such as **Shelter Safe** or the **Assaulted Women's Help Line**. It is also prudent to have a conversation with the client and your staff about their safest method(s) of communication between them and your office and how best to keep their information safe from interference by their ex-partner. **Check in with them on a regular basis** about whether there has been any escalation in the ex-partner's behaviour or change in contact information or preferred method of communication. In cases that involve an element of financial abuse it is prudent for the client to save copies of any documents that they may require to prove their ex-partner's income or assets on a USB and leave this information with you for safekeeping.

Canvass the option with your client of **obtaining a protection order** for the client early on in the process which can be done on an ex-parte or urgent motion basis. **Restraining orders can include** provisions granting exclusive possession of the home, prohibiting communication between ex-partner your client and/or their children, granting temporary care of the children, interim support and prohibitions against dissipating property and for obtaining financial records that are in the ex-partner's sole possession. It is important to discuss safety planning around court appearances to ensure that your client is not harassed by the ex-partner at court. There are **court support workers** available to accompany clients to court in many communities. If there are ongoing criminal court proceedings related to the IPV it is helpful to be aware of what is happening as this could impact your client's safety planning and parenting plan. Your client can access information about the criminal court proceedings and assistance in providing witness statement and requests for restitution through the **Victim Witness Assistance Program**.

If you are not a family lawyer and you become aware that your client is at risk of IPV consider referring your client to a family lawyer for advice and inform them that they may be eligible for **a certificate from Legal Aid Ontario for 2 hours of free summary advice** from a family lawyer. Also, **9 community legal clinics**, including the Peterborough Community Legal Center have been funded by Justice Canada to provide legal advice and support for victims of IPV through the Your Way Forward project.

Claim Period Open for Canadian OxyContin Class Action

A settlement has now been approved in the Canadian Oxycontin Class Actions.

***** THE CLAIM PERIOD IS CURRENTLY IN PROGRESS *****

File your claim on or before February 27, 2024, at www.oxycontinclassactionsettlement.ca

A Canada-wide settlement has been approved to settle several Canadian class actions relating to the prescription drugs OxyContin and OxyNEO, including cases filed by Siskinds LLP and Siskinds, Desmeules. The Settlement will compensate eligible class members for various injuries that they suffered due to addictions that they developed from using these prescription Oxy drugs.

The Canadian OxyContin Class Action Settlement is now open to claims. Anyone who was prescribed and ingested OxyContin and/or OxyNEO in Canada between January 1, 1996, and February 28, 2017, is eligible to claim under the settlement. Estates of deceased Canadian Oxy users are also eligible to file claims, as are spouses, children, and certain other family members. **Class members have until February 27th, 2024, to file a claim.**

For more information, please read the Notice of Settlement Approval, or visit the Canadian OxyContin Class Action Settlement website at: www.oxycontinclassactionsettlement.ca or contact the claims administrator at 1-888-663-7185 or oxycontin@ricepoint.com.

If you used prescription OxyContin or OxyNEO in Canada at any time between 1996 and 2017, and you suffered from opioid addiction, we encourage you to email Siskinds LLP at oxycontin_classaction@siskinds.com, call us toll-free at 1-800-461-6166, or complete the form on this page.

NOTE: The time period to file a claim is very short. Please visit the links above or on our website for directions on how to submit a claim.

Wondering how to get involved with the Peterborough Community Legal Centre? *Become a member!*

The Objects of the Legal Centre

The objects of the Legal Centre are:

- To provide legal services or paralegal services or both including activities reasonably designed to encourage access to such services or to further such services and services designed to promote the legal welfare of the low income residents of the County of Peterborough, on a basis other than fee-for-service;
- To provide legal information and education and to encourage access to knowledge of legal rights;
- To provide legal representation to low-income residents of the County of Peterborough;
- To identify areas of law affecting low-income members of our society and to advocate reform.

Membership

The Centre is directed by its members. If you live in the City or County, and are 16 years of age or older, you can become a member. If you are a member, you can:

- Vote at the Annual General Meeting
- Stand for election to the Board of Directors if you are over 18.
- Get the Legal Centre's newsletter twice a year.

There is no fee to become a member. You do not need to be a member to get help from us. Membership is for three years and takes effect 30 days after approval by the Board of Directors. A letter will be sent to you confirming your membership.

How to become a member of the Legal Centre in 4 steps:

1. Call the Legal Centre at 705-749-9355 and leave a voicemail with your Name, Telephone number and address.
2. We will mail you a Membership application with a stamped envelope addressed to the Legal Centre.
3. Complete the Membership application, insert it in the stamped envelope addressed to the Legal Centre.
4. Mail the sealed, stamped envelope addressed to the Legal Centre by dropping it in a Mailbox or bring it to the Post Office. You will not need to buy postage.

Contact us!

www.ptbo-clc.org
150 King St, 4th Floor East, Peterborough, ON, K9J 2R9
P: 705-749-9355 F: 705-749-9360
Facebook: Peterborough Community Legal Centre
Twitter: @PeterboroughCLC

Access a digital copy of this newsletter on our website or scan the following QR code:

**All references included in this newsletter are linked in the digital copy and listed on the website*