

SUPPORTING INDIVIDUALS  
AND OUR COMMUNITY BY  
PROVIDING QUALITY LEGAL  
SERVICES.

# Northwest Community Legal Clinic

SEPTEMBER 2020

We are working during Covid-19, providing advice by telephone during office hours.

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## Introducing New Staff Lawyer in Kenora

Erin O'Hara grew up in Kenora and has recently moved back to the region to join the Northwest Community Legal Clinic. Erin holds a bachelor's degree in English and Political Science from York University and a master's degree in Social and Political Sciences from the University of Cambridge. She received her law degree from the University of Ottawa and was called to the Ontario Bar in 2010. Erin has practised in the areas of human rights, employment, and labour law. Having spent several years as a labour representative for unions in both Ontario and Manitoba, Erin has experience advocating on issues such as disability rights, family status accommodation, occupational health and safety, employee benefits, and medical privacy.



## 5 Bill 184 Changes to the Law That Tenants Must Know

ACTO

Here are 5 changes to the law that tenants should know.

### **Fast-tracked eviction via repayment agreements**

Bill 184 changes the RTA provisions regarding repayment agreements made outside of the Landlord and Tenant Board (LTB). Now, a landlord can give a tenant (without prior consent) a take-it-or-leave-it repayment plan, with terms that are unaffordable for the tenant, and includes a section 78 clause that permits the landlord to seek an eviction order ('ex parte') without a hearing or notice if the tenant breaches the agreement. If a tenant receives an eviction order in the mail, they have 10 days to file a Motion to Set Aside the eviction order and request a hearing at the LTB to explain their circumstances.

Tenants who are offered repayment plans by their landlords should proceed with caution. Tenants should seek advice from their legal clinic or Tenant Duty Counsel. They must carefully read and understand every term and its consequences. A tenant is not required to sign anything they do not understand or cannot afford. Tenants also have the right to present their own repayment plan to the landlord with terms they are confident they can meet on their income. If the landlord and tenant cannot agree on a reasonable repayment plan, the matter will be heard at the LTB. However, at the hearing, the adjudicator will consider whether the landlord offered the tenant a repayment plan in their decision. A tenant should explain why they felt it was not fair or feasible for them to sign it.

### **Landlords can bring former tenants to the LTB**

Landlords now have 12 months after a tenant vacates the unit to bring a former tenant to the LTB, instead of Small Claims Court. While the Small Claims Court has robust rules on serving former tenants legal documents to ensure they are aware of the legal proceeding against them, the Board entrusts the landlord to notify the tenant of the application and hearing. In other words, a former tenant may not know there is a proceeding against them at the LTB and may fail to attend the hearing, which results in an Order against them that the landlord can proceed to enforce. If a former tenant receives an Order against them, they should seek legal assistance and file a Request for Review with the Board.

### **Tenants must give advance notice to raise a s.82 defence at their arrears hearing**

Section 82 of the RTA provides tenants with the right to talk about problems with their unit at an arrears hearing, which may have contributed to the tenant falling into rent arrears or may reduce the amount of the arrears owed by the tenant. The most common issue raised by tenants is their landlord has not done necessary repairs. Tenants are now required to provide advance written notice to their landlord to inform them of the tenant issues they plan to raise at the hearing. Tenants who do not provide notice will need to explain to the Board why they failed to provide the landlord with advance written notice of their issues. If the LTB bars the tenant from raising their issues at the hearing, a tenant would have to file their own tenant application against the landlord if they wanted to raise these issues.

## 5 Bill 184 Changes to the Law That Tenants Must Know - Cont'd

### ACTO

The new changes to the law require tenants to be legally savvy or have legal representation to plan their arguments well in advance of their hearing. As ACTO's latest report shows, almost all tenants did not have representation at their hearing (less than 3% of tenants did) in comparison to nearly 80% of landlords who attended their hearing with representation. Most tenants are not familiar with legal processes nor do they have the experience or education to gather data, make legal arguments and represent themselves in a legal proceeding.

### Illegal rent increases become legal after 12 months

Bill 184 allows for an illegal rent increase to be deemed legal if the tenant does not challenge it within 12 months of the increase. This means if the tenant learns that their rent increase was illegal after the 12 months of paying that rent amount, they are no longer able to dispute the increase because the rent is deemed to be legal. Tenants should carefully read their Notice of Rent Increase. The landlord must give tenants 90 days notice before the rent increase takes effect. Tenants in rent regulated units should look up the annual rent guideline and confirm the landlord calculated the rent increase correctly. If the notice is incorrect a tenant does not have to pay the rent increase. If a tenant discovers an error after starting to pay the new rent amount, they can bring an application to the LTB to have the funds returned.

### Increased compensation, disclosure, fines for no-fault evictions

Rather than dealing with the main driver behind bad faith evictions – vacancy decontrol – Bill 184 added additional requirements and remedies to the no-fault eviction provisions in the RTA.

Landlords must include their affidavits with their application for eviction for landlord's own use and purchaser's own use. They must also disclose whether they have filed any no-fault eviction notices in the past two years. Like tenants of no-fault evictions, tenants living in a building of less than five units that is being renovated or demolished, and tenants evicted for purchaser's own use, are also entitled to receive one month rent compensation, which the landlord must pay before the termination date. If these requirements are not met the notice is void.

Where a tenant successfully brings a bad faith application against their landlord, the LTB can order the landlord to pay the tenant a new remedy called "general compensation" of an amount not exceeding 12 months' rent – this is in addition to other remedies available to the tenant such as the 12 month "rent differential" amount. In addition, the limitation period for the denial of a tenant's right of first refusal to return to their renovated unit has been extended to two years after the tenant vacated the unit. Fines for illegal evictions have been raised to \$50,000 for an individual and \$250,000 for a corporation.



## Nishnawbe Aski Launches New NAN Hope Program

Rebekka DeCorte, 211North/Support Staff, Atikokan

On Aug 10<sup>th</sup>, the Nishnawbe Aski Mental Health and Addictions Support Access Program was launched in light of the Covid-19 pandemic which exposed gaps in existing mental health supports. The free and culturally safe services are provided for anyone experiencing a wide range of mental health challenges including addictions, domestic violence, suicidality, self-harm behaviours, depression, anxiety or grief/bereavement. As well as the confidential crisis line, services include connection to ongoing mental health and addictions support services and access to clinical and mental health counselling.

The crisis line is available 24/7 and the text and web-chat are available Mon-Fri 8 am-midnight. The service is provided for all 49 Nishnawbe Aski communities and citizens.

Toll-free line is 1-844-626-4673 (1-844-NAN-HOPE); Text is via 705-702-4673 (1-705-702-HOPE).

## Annual General Meeting Notice

**NOTICE to the GENERAL  
MEMBERSHIP of the Northwest  
Community Legal Clinic Association and the  
PUBLIC .**

**Our Annual General Meeting will be held  
Tuesday October 27, 2020 @ 5:00pm via  
ZOOM.**

**To participate, please contact  
Tara Grant @ 807-274-5327 or email  
nclcfortfrances@gmail.com  
prior to Oct.26th  
to receive the meeting link.**

**Agenda**  
*Reports of Clinic Activities  
President's Report  
Treasurer's Report  
Executive Director's Report  
MOTION to accept 2019-2020 Auditor's Report  
Election of 2020-2021 Board of Directors  
Other Business*

*~EVERYONE WELCOME~*

# Canada Payment to Persons with Disabilities

Fay Moore, CLW, Kenora

The Canada Revenue Agency is set to provide a one-time, tax-free, payment of \$600 to “persons with disabilities” sometime in the next 4 months. The intent of the payment is to offset additional costs that people with disabilities have faced during the COVID-19 pandemic.

The payment will automatically be made to those who have a valid Disability Tax Credit (DTC) Certificate, receive Canada Pension Plan Disability (CPP-D) benefits or any one of the named Veterans Affairs Canada (VAC) benefits. Although any additional benefits during these unprecedented times are helpful, this benefit will fall short of being fairly distributed to a historically marginalized population. The problem is complicated and one with a long history; how do governments define a “person with a disability”? This particular benefit’s eligibility is determined by the federal definitions of disability, but even these differ depending on the application. One may qualify for CPP-D benefits, yet would not be eligible for a DTC as the criteria for each differ. Many disabled Ontarians may not have applied for, or may not have been eligible for the federal benefits, yet are deemed to be disabled by the provincially mandated programs such as the Ontario Disability Support Program (ODSP).

The application for each disability related government program is time consuming, confusing and usually requires the completion of long forms by not only the applicant, but their physician as well. A person with a disability may require 4-5 separate applications just to access all benefits that they may be entitled to. This presents many obstacles, difficulties and often complete road blocks to the process. Seniors with disabilities are eligible for the benefit but only if they meet the same criteria as those under 65 (or partial payment if they already received the July 2020 one-time Old Age Security (OAS) or Guaranteed Income Supplement (GIS)). The payment fails to include seniors who had been receiving CPP-D benefits and transitioned to CPP retirement benefits before July 1, 2020, unless they applied for the DTC.

Our leaders are well aware of the difference between the federal and provincial definition of “person with a disability”. In 2018 the former Ontario Minister of Children, Community and Social Services announced that the provincial definition would be changed to more closely align with the federal definition. This sparked outrage throughout the province. The coalition of **Defend Disability** quickly responded to the proposed change. In February 2020 the group wrote to the Minister of Finance stating that it is known that the federal definition is flawed and “[t]hese definitions [federal] miss two groups of people with disabilities: people who have never worked as a result of their disability and people who can or do work but face disability-related barriers (some of which could be intermittent and episodic) in their daily living. ODSP, however, is intended to support all of the aforementioned groups and the definition is designed to identify who would benefit from these supports. Aligning with a federal definition would prevent certain people with disabilities from accessing a program that is intended to meet their needs.”

A newly launched campaign, **Just Recovery Ontario** was formed by those concerned about how problems such as eligibility for this benefit have presented harm toward marginalized people. The campaign feels that “The pandemic starkly showed just how badly our support systems work for people who face marginalization due to poverty, oppression and inequality. It is time we fixed our safety net to guarantee quality living conditions for all communities. COVID-19 has proven that governments can act swiftly to change policies and create programs”. It is important that we continue to remind our governments of the need to ensure that the benefits and credits intended for a specific demographic such as persons with a disability are adequate to meet their needs and allocated inclusively and fairly. We also need to ensure that those who rely on these benefits receive assistance in accessing them through places like the legal clinic.

For more information about the campaigns mentioned above visit: [www.defenddisability.ca](http://www.defenddisability.ca) and [www.justrecoveryontario.ca](http://www.justrecoveryontario.ca) . And for more information about the one-time payment or other government credits and/or benefits, contact your local legal clinic.





**Supporting individuals and our community  
by providing quality legal services.**

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**[www.NorthwestCommunityLegalClinic.ca](http://www.NorthwestCommunityLegalClinic.ca)**

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## Office Closures

Monday October 12th - Thanksgiving Day

Wednesday November 11th - Remembrance Day

December 24th - reopening January 4th

## Sub-Offices

We are not travelling to Red Lake and Ear Falls at this time. If you have any questions, please call our toll free number 1-800-403-4757.

## Transitioning from CERB to EI - FAST FACTS

CCPA

### FAST FACTS:

- More than 4 million Canadians will be affected when the Canadian Emergency Response Benefit (CERB) winds down on September 27.
- 2.1 million CERB recipients will be eligible for CERB's replacement, Canada's revamped Employment Insurance (EI)—but 781,000 of them won't be automatically ported to EI. They will have to manually apply and hope for success.
- Almost a half million—482,000—CERB recipients won't transfer to anything else and will stop receiving federal income supports all together.
- On average, CERB recipients will receive \$377 a week pre-tax from the various CERB replacement programs, including EI. By comparison, CERB has provided \$500 a week, with no taxes withheld.
- 2.7 million (or 74%) of CERB recipients will be worse off after CERB ends:
  - \* 1.6 million women on CERB will be worse off financially after the switchover, compared to 1.2 million men.
  - \* 605,000 CERB recipients in Toronto will be worse off financially after the switch along with 299,000 in Montreal and 260,000 in Vancouver.
- 336,000 additional Canadians who didn't qualify for CERB could gain support through EI after it restarts on September 27.
- Detailed recommendations follow the analysis.

**DISCLAIMER:** These articles provide information only and are not to be considered as legal advice. Content reflects the laws that were current at the time of publication and the law may have since changed. Consult your community legal clinic or legal representative for legal advice on your specific situation.



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