

# NEXT STEPS TOWARD LAW & POLICY REFORM

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2015  
A Research  
Endeavor in  
cooperation with  
ARCH Disability  
Law Centre

# WHAT AM I DOING HERE?

- Project began in cooperation with ARCH Disability Law Centre
- Law and Policy Reform in the Disability Sector
- Initial feedback from agencies
- Arising trends in the data to be shared

# WHAT AM I DOING IN THIS PROJECT

- Examining Complaints Mechanisms
- Compliance?
- Trends
- Best Practices
- Next Steps

# WHY AM I DOING THIS?

- Historical context of services and supports for persons with disabilities
- Area of legislation that required attention as it relates to a dialogue on Rights
- To recognize the strengths in service within Ontario and other models
- To open dialogue for discussion regarding the complexity of the issue and possible next steps for ensuring transparency and reassurance for service providers and folks who use services
- frequency of persons seeking legal support

# WHAT DO I HOPE TO ACCOMPLISH?

- Curiosity
- Awareness
- Understanding
- Engagement and Dialogue
- Information sharing

# METHODOLOGY

- Literature Review
  - Internet search
  - Agency Policies
  - Legislation
  - Policy and Regulation
  - Academic Journals
  - Law Commission of Ontario
  - ARCH Disability Law Centre Publications
  - Australia
  
- Letter Campaign
  - OASIS Membership
  
- Self Advocates Counsel
  - Focus group discussion

# METHODOLOGY

- **Compliance & Non-Compliance?**

# OUTCOMES

- 171 agencies listed as members of OASIS.
- 17 agencies responded directly
- 25 more policies obtained through the hyperlinks on the OASIS website.
- 42 agencies 11 made available clear language policies
- 129 agencies did not have policies readily available.
  - 24 agencies had no hyperlink available on OASIS and
  - 8 agencies with broken hyperlink.
  - There remains 97 agencies that either did not have their policies readily available, nor did they provide policies upon request through the letter campaign
- 30 out of 171 had an online feedback form available

# OUTCOMES

- Policies were evaluated according to the MCSS Services Compliance Checklist, pages 63-67, items 25-41  
Feedback/Complaints

# DEFINITIONS

WHAT IS A COMPLAINT?

Services  
Supports

WHAT IS NOT A COMPLAINT?

# DEFINITION OF A COMPLAINT

- “an expression of dissatisfaction related to the services and/or supports that are provided by a service agency. A complaint may be expressed by a person with a developmental disability who is receiving services and supports from the service agency, or a person acting on their behalf, or by the general public, regarding the services and supports that are provided by the service agency. A complaint may be made formally (such as a letter written to the agency) or informally (such as a verbal complaint expressed to a staff person). A complaint does not include feedback on matters unrelated to the agency and the services and supports that it provides”.

# OUTCOMES

- 25) Feedback/Complaints, Individual:

- A service agency shall have written policies and procedures regarding the process for receiving and addressing feedback and complaints about the services and supports that it provides that may be received from: An individual with a developmental disability who receives services and supports from the service agency

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

- 39
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- 26) Feedback/Complaints, Person Acting on Behalf:

- A service agency shall have written policies and procedures regarding the process for receiving and addressing feedback and complaints about the services and supports that it provides that may be received from: A person acting on behalf of the individual with a developmental disability who receives services and supports from the service agency

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

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# CONTINUED

- 27) Feedback/Complaints, Public:

- A service agency shall have written policies and procedures regarding the process for receiving and addressing feedback and complaints about the services and supports that it provides that may be received from: The General Public.

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

- 31
- 11

- 28) Information, Plain Language:

- A service agency must provide information in plain language on the complaints/feedback process to all individuals with a developmental disability who come in to service with the agency, and/or a person acting on their behalf (where applicable)

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

- 11
- 31

# CONTINUED

- **29) Request, Policies and Procedures:**

- A service agency must provide a copy of its written policies and procedures to any person who requests it.

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

- **(This data is an overall response regarding my request from the 171 agencies)**
  - 17 (represents a 10% compliance rate)
  - 154

- **30) Complaints/Feedback, Way Received:**

- The policies and procedures shall account for differing ways that complaints/feedback may be received (e.g., complaints/feedback submitted in writing, or provided verbally to an agency representative)

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

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- **31) Complaints/Feedback, Expected Times:**

- The policies and procedures shall identify: Expected time period for the complaints/feedback process (i.e., for each step of the process)

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

- 26
- 16

# CONTINUED

- 32) Complaints/Feedback, Process for Responding:
- The policies and procedures shall identify: the process for responding to complaints/feedback

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

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- 33) Complaints/Feedback, Roles and Responsibilities:
- The policies and procedures shall identify: **The roles and responsibilities of persons who may be involved in receiving complaints/feedback, documenting, investigating, resolving and providing notification or confirmation with the individual who submitted the complaint/feedback.**

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

- 40
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# CONTINUED

- 34) Complaints/Feedback, Board of Directors/Roles and Responsibilities: The policies and procedures shall identify: The roles and responsibilities of the Board of Directors in the complaints/feedback process.

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

- 26
- 16

- 35) Resolution, Reasonable Efforts:

- The service agency shall receive, document and review all feedback and receive, document, review and attempt to resolve all complaints. Wherever possible, the service agency shall make reasonable efforts to resolve or address the matter to the mutual satisfaction of both the person who has made the complaint and the service agency.

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

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# CONTINUED

- **36) Resolving Complaints/Serious and Frivolous:**

- A service agency shall take all complaints seriously, and review and investigate all matters. As service agency is not, however, expected to attempt to resolve complaints that it may determine to be frivolous or vexatious.

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

- **(6/42 agencies use the language of ‘frivolous and vexatious’ when articulating the kinds of complaints that will not be addressed)**

- 6
- 36

- **37) Complaint.Feedback, No Risk to Person:**

- A service agency shall ensure that a person who submits a complaint or provides feedback is not at risk of having his/her services and supports negatively impacted or withdrawn, as a consequence of submitting the complaint/feedback.

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

- 21
- 21

# CONTINUED

- 38) Complaints/Feedback, Reporting to Police:

- The service agencies policies and procedures on the complaints and feedback process shall comply with reporting requirements set out in the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act 2008* and its regulations. Where necessary a service agency shall ensure that a complaint/feedback is: Reported to the police (i.e., as in the case of alleged, suspected or witnessed abuse that may constitute a criminal offence, as required by the Ontario Regulation 299/10 regarding quality assurance measures made under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act 2008*)

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

- 19
- 23

- 39) Complaints/Feedback, Reporting to Ministry:

- The service agencies policies and procedures shall comply with reporting requirements set out in the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008* and its regulations. Where necessary, a service agency shall ensure that a complaint/feedback is: Reported to the ministry as a serious occurrence through the Ministry's serious occurrence reporting process (based on the nature of the complaint/feedback)

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

- 23
- 19

# CONTINUED

- 40) Complaints/Feedback, Review and Analysis:
- In order to promote continuous quality improvement, a service agency shall conduct a review and analysis of the complaints and feedback received to evaluate the effectiveness of its policies and procedures that the agency may have in place.

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

- 25
- 17

- 41) Complaints/Feedback, Risk Assessment:
- A service agency shall share information about its complaints/feedback process, and/or about its complaints/feedback, as part of the ministry's risk assessment process, upon request by the ministry.

(Policy Directives for Service Providers: 1.0 Complaints/Feedback Process)

- 23
- 19

# REQUIREMENTS ARTICULATED IN THE POLICY DIRECTIVE (EXPLICITLY)

- Free of coercion, intimidation or bias
  - 23
  - 19
- Explanation of how conflict would be avoided
  - 19
  - 23
- Documentation of complaints throughout the process
  - 38
  - 4
- External resolution mechanisms
  - 17
  - 25

# WHAT THIS ALL TELLS US

- Some of these trends reflect the concerns that folks who use services have expressed when considering accessing a complaints mechanism. For example, the fear of reprisal or loss of services is one issue expressed and this current data indicates that only 50% of agencies in this group explicitly state that a person need not fear reprisal or retribution.
- Murky area between what can be done internally and externally
- Agencies have tried to ensure an air of openness by providing for an informal approach for resolution

# CON'T

- Many agencies have also tried to fill the gaps from the Ministry by developing a language of “rights” within their services.
- Many agencies have also established Self-Advocate Groups as a part of the process toward empowerment
- Many agencies have given attention to issues of abuse through their development of Rights dialogue

# TRENDS

- What is happening
  - Commonalities
  - Distinctions

# ACCESSIBILITY

**“All requests for alternate formats shall be communicated in writing”**

- **Feedback from Self-Advocates**
  - How to complain
  - Where to find the complaints policy
  - Accessible technology?
  - How long does it take?
  - What can/will the Ministry Do?
  - Who/What is the Ombudsman?

# SELF-ADVOCATE FEEDBACK

- To know what our rights are when we use services, which also includes a clear definition for what a complaint is
- To know what our counselors rights are-like their responsibility to us because we need to level the playing field. Counselors have all of the information and can abuse their power
- For a neutral body, outside of the organization because you have to speak to your worker first and some people are afraid to speak to their worker, although it does depend on what worker a person has
- To know how to complain. This isn't always clear
- Need to be able to access other languages and technology for communication.

# TYPES OF COMPLAINTS

**Self-Advocates shared that some of the issues that arise as service users are:**

- **encountering mean staff;**
- **not having cultural needs met through diet;**
- **the concern that staff have access to their bank card and finances;**
- **the concern that they couldn't always chose what they wanted to do, or being told how or where to spend their money, and generally not having a choice.**

# BARRIERS TO ACCESSING CM

- **was being able to only complain verbally or in writing.**
- **not everyone can write in a traditional manner and that access to usable technology would be a better way to allow for a person to act on their own behalf.**
- **Also where the policy encouraged people to take their complaint to the person that they may have had an issue with, was intimidating because it is difficult to confront someone.**
- **not knowing where to locate the complaints policy or process, and any corresponding forms that might be included.**
- **understanding the many details of the internal and external process for filing a complaint.**
- **too many steps in the process, and the time frame for getting a resolution was confusing.**

# EXTERNAL RESOLUTION

- **Where the service provider indicated seeking external support, many individuals weren't sure how to reach the Ministry of Community and Social Service or what they could possibly do to help. Many individuals were also unclear about the role of an Ombudsperson, as this office was provided as an alternative to the MCSS.**

# FRIVOLOUS & VEXATIOUS

**Complexity of language**

**Words, Phrases & Colloquialisms**

# HUH?

- Coercion
- Vexatious
- Frivolous
- Not withstanding
- Endeavor to rectify
- Extenuating circumstances
- “Or his delegate”
- Unsatisfactory resolution
- Working days
- Business days
- Solicit feedback and concerns
- Strategies may be employed
- Allegation
- Disseminated
- Negative repercussions
- “All requests for alternate formats shall be communicated in writing”
- Impasse
- “Policy is available upon written request”
- Procedural fairness
- Natural justice
- Resolve deficiencies in the provision of services”
- Improve administrative practices

# HUH?

- Wherein
- Ideally
- As appropriate
- “Manner which best meets their needs”
- “May constitute a criminal offence”
- “As to the disposition of his/her complaint”
- Investigation and deliberation
- Accolades
- “Deemed to have liability implications or media involvement”
- Aforementioned
- Suffice
- “Touch base”
- “To keep appraised of the situation”
- “Elicits feedback”
- “Should a complaint be lodged”
- “The parties involved”
- “Our ardent hope”
- “Will assess the seriousness of the information and act accordingly”
- “Complaint be heard in an expeditious manner”
- “Seek external consultation and review as they see fit”
- “Free from retaliation both subtle and overt”

# GROUP EXERCISES

**Activity #1**  
**Word games**

# NEXT STEPS

## The evolution of change: principles and values

- Does anything need to change?
- Why should it change?
- What would cost us nothing to change?
  - <http://www.cleo.on.ca/en>
  - <http://www.lco-cdo.org/en>
- Challenges to change

# LOOKING OUTSIDE

- What is the LCO saying?
- What's going on in elsewhere?
- Principles and Values
- Petitioning the Ministry
- Third party?

# LCO

- **The Framework for the Law as It Affects Persons With Disabilities**
- **Guiding Principles:**
  - Respecting the dignity and worth of persons with disabilities;
  - Responding to diversity in human abilities and other characteristics;
  - Fostering autonomy and independence;
  - Promoting social inclusion and participation;
  - Facilitating the right to live in safety, and;
  - Recognizing that we all live in society.

# OTHER JURISDICTIONS

- British Columbia
- Alberta
- Quebec
- New Brunswick
- Australia

# BRITISH COLUMBIA

- Informal Complaint Mechanism
- Internal Formal Mechanism → Director of Quality Assurance
- External Mechanism
  - Ombudsman
  - Advocate for Service Quality

# ALBERTA

- Informal/Internal
- Formal Internal
- Formal External
  - Best practices are the responsibility of the Province

# NEW BRUNSWICK

- the right to be free from mental and physical abuse; to be treated with courtesy and respect, in a way that recognizes dignity and individuality; to be sheltered, fed, clothed, groomed and cared for in a way that is consistent with the resident's needs; to be told who is responsible for and who is providing the resident's direct care; to be permitted to exercise rights of citizenship, and raise concerns or recommend changes in policies and services on behalf of oneself and others, without fear of discrimination, coercion, reprisal, or interference; and to be informed in writing of the laws, rules, and policies that govern the operation of the home and the procedure for lodging complaints

# QUEBEC

- Services are delivered under a tiered structure of governance, under health and social services, which are regulated by some 30 different statutes.
- Community needs assessments are a large part of creating accessible and quality services
- Gov't instituted Complaints Commissioner and Ombudsperson
  - Informal/internal process first then formalized process
  - Decisions are not binding, but to have influence on the resolution process
- Key distinction is the accountability built into the structure through the statutory framework
- User Committee's

# AUSTRALIA

- <http://www.odsc.vic.gov.au>

State is responsible for monitoring and ensuring quality of services

Failure to comply with ministry standards is an offence.

Most recent report: Indicates that “the need to work on improved relationships and communication with families continues to be identified as the key learning from complaints”

Relationships are the cornerstone of effective service delivery

# WHY RIGHTS

- Working from a rights based framework

*HCCSA Bill of Rights s.3*

- **1. A person receiving a community service has the right to be dealt with by the service provider in a courteous and respectful manner and to be free from mental, physical and financial abuse by the service provider.**
- **2. A person receiving a community service has the right to be dealt with by the service provider in a manner that respects the person's dignity and privacy and that promotes the person's autonomy.**
- **3. A person receiving a community service has the right to be dealt with by the service provider in a manner that recognizes the person's individuality and that is sensitive to and responds to the person's needs and preferences, including preferences based on ethnic, spiritual, linguistic, familial and cultural factors.**
- **4. A person receiving a community service has the right to information about the community services provided to him or her and to be told who will be providing the community services.**

# CON'T

- **5. A person applying for a community service has the right to participate in the service provider's assessment of his or her requirements and a person who is determined under this Act to be eligible for a community service has the right to participate in the service provider's development of the person's plan of service, the service provider's review of the person's requirements and the service provider's evaluation and revision of the person's plan of service.**
- **6. A person has the right to give or refuse consent to the provision of any community service.**
- **7. A person receiving a community service has the right to raise concerns or recommend changes in connection with the community service provided to him or her and in connection with policies and decisions that affect his or her interests, to the service provider, government officials or any other person, without fear of interference, coercion, discrimination or reprisal.**
- **8. A person receiving a community service has the right to be informed of the laws, rules and policies affecting the operation of the service provider and to be informed in writing of the procedures for initiating complaints about the service provider.**
- **9. A person receiving a community service has the right to have his or her records kept confidential in accordance with the law. 1994, c. 26, s. 3 (1).**

# SUMMARY OF RESOURCES

- [www.cleo.on.ca](http://www.cleo.on.ca)
- [www.lco-cdo.org](http://www.lco-cdo.org)
- <http://www.odsc.vic.gov.au>
- Advocate for Service Quality of BC
  - <http://www.eia.gov.bc.ca/advocate/Index.htm>

# DISCUSSION

Thank You

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