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TRANSFORMING DEVELOPMENTAL SERVICES - OASIS RESPONDS

In light of comments received from the majority of OASIS members, the Board of OASIS, under the leadership of Board President, George Braithwaite, recently submitted the following recommendations to the Ministry of Community and Social Services in relation to the "Transforming Services in Ontario for People who have a Developmental Disability" initiative.

OASIS has recommended that the current funding model be revamped in order to respond to regulatory and legislative change initiatives, cost pressures, for planning and budgeting needs and to maintain quality services on a longer term basis.

OASIS also recommended that a new vision be established that will demonstrate leadership in developmental supports and services in Canada. Goals and commitments should be established that will respond to high quality, life-long and seamless supports and services for persons with developmental disabilities and their families. The goals should respond to the elimination of wait lists.

The transfer payment agency system must also be strengthened in the new vision such that developmental services becomes a "profession of choice".

With the strengthening of the transfer payment system, OASIS recognized

the importance of achieving improved accountability by all partners of the sector.



**GEORGE BRAITHWAITE,
PRESIDENT, OASIS**

The new vision must also incorporate the ability to move funds between ministries and sector stakeholders, based on coordination and collaboration between the partners.

The need for adequate and accessible professional supports (medical, dental, psychiatric, behavioural and therapeutic) in support of the developmental services sector throughout Ontario was highlighted by OASIS.

Last but not least, OASIS recommended that the new vision make a commitment for the full inclusion of persons with developmental disabilities in all aspects of Ontario society.

PRESIDENT'S MESSAGE

As I write, we are all focused on the new 'calendar' year.

What about Transformation of DS Services? In September, when I last wrote to you, the Partnership table had formed and was in the final stages of drafting a consultation paper to solicit advice from the most experienced 'actors' within our sector. That advice was focused upon the major challenges to be confronted in making a difference in the lives of people with intellectual disabilities and their families. All provincial organizations engaged their members in discussion of the 6 questions posed in the consultation paper during November. Eighty (80) people representing fifty (50) OASIS members met in Toronto to consider those questions; the report of that session was submitted to the Ministry and is on the OASIS website for your review. The Board of Directors met later in November to consider and approve a paper intended to reflect the Board's viewpoint on Transformation. We considered the same 6 questions and we believe the Board reflected your input.

Where are we now? The Ministry received about eighty (80) submissions and is now busily engaged in a collation exercise under the direction of John Lord. John's work will be presented to the Partnership Table in late January.

Many of you will know that the Ministry has also sponsored two expert fora; specifically, Specialized Services and Residential Options. Four additional expert fora, focusing upon funding, quality assurance, families and advocacy will be held in early winter, 2005. Separate reports on Recruitment/Retention and other research topics will be fed into the 'mix' in the months ahead. The Ministry will undertake to draft a Developmental Services Transformation Plan (DSTP) in late winter/early spring. This will be followed by a full public consultation process; timings will be advised in due course. Stay tuned and be ready with your additional input in the months ahead.

In the meantime I wish you and your families all the best for the year ahead.

George Braithwaite, President

Upcoming OASIS Board Meetings

Feb. 24, 25
2005
Ottawa

May 4
2005
Oakville

All

Invited

To Attend

2004/2005 OASIS BOARD OF DIRECTORS (AND OFFICERS)

PRESIDENT	George Braithwaite	OACAPDD
PAST-PRESIDENT	Paul Wilson	Community Living Brant
VICE-PRESIDENT	Dick Todd	Middlesex Community Living
	Sherry Kerr	Alderview Services
TREASURER	John Bedell	Community Living North Halton
SECRETARY	Ann Kenney	Community Living South Muskoka
DIRECTOR AT LARGE	Gerald Sutton	Community Living Oakville
Director	Doug Anderson	Ottawa Carleton Lifeskills Inc.
Director	Molly Croke	Community Living Toronto
Director	Brian Dunne	Participation House Support Services
		London & Area
Director	Helen Havlik	Lambton County Developmental Services
Director	Mike Humes	Brockville & Area Community Living Association
Director	Denis McClelland	Elgin Association for Community Living
Director	Brian Young	Simcoe Community Services

2005 OASIS CONFERENCE HALTON REGION- "WORKING TOGETHER"

Mark your
calendar!

May 4,5,6,
2005

2005 OASIS
Conference
Halton Region

2005 OASIS
Conference
Planning
Committee

John Bedell
(CL North
Halton)

Sheila
Masters
(Oaklands)

Judy Pryde
(Burlington
Association
for the
Intellectually
Handicapped)

Andy Rotsma
(CL Oakville)

We fully expect that the 2005 Halton Conference will be the biggest yet!

Start off the conference with a round of golf at the world famous, Glenn Abbey Golf Course.

Then consider sessions on:

- Working with your local MPP with insights from MPP Cam Jackson
- Understanding your Service Contract featuring representatives from a Board, the Ministry and a legal firm.
- Learn how to effectively evaluate your Executive Director and why this is important.

At dinner, listen to Maureen McTeer talk about her life experiences and reflect on "A Vision of Change -what will our future be?" Be entertained on both Wednesday and Thursday evenings.

End the Conference on Friday morning by listening to Kevin Flynn, (Liberal), Cam Jackson, (PC) and Peter Kormos, (NDP) in the first ever bear pit session, giving their parties perspective on the issues that are important to OASIS members.

Plan to be at the Oakville Conference Centre on May 4, 5 and 6. Our focus is "working together" - you need to be there to be part of it.

THE POWER OF WORKING TOGETHER

Halton Region has a history of "working together". Together, CL Oakville, CL North Halton, Burlington Association for the Intellectually Handicapped and Oaklands (Halton Support Services) have created unique day options, referred to as "Passages".

Based on the relationship that had been created for central referral, the organizations collectively set forth to create day options based on the needs in their local communities. Administered by Oaklands', Halton Support Services (HSS), the three local organizations made a joint application for Foundations funding. Upon approval each local agency designated staff to provide supports to individuals, based on individual choice and need.

The options are delivered independently in each community - in Oakville, two unused classrooms in Oaklands were transformed into a video and a grocery store, a hotel room and an office for the purpose of giving individuals skills and knowledge before going into a community job; in Burlington, a case manager provides hands on experience, while in North Halton activities include transition planning with the individual, their family and their school, as well as social skills training for all aspects of the individual's future. While the options may not appear to be different than those provided elsewhere, the important aspect of working together to create options for families and individuals is unique!

ATTENDANCE MANAGEMENT POLICIES - OVERVIEW CONTINUED

BY LAURI A. WALL,
HICKS MORLEY HAMILTON STEWART STORIE LLP

Employers should seek legal advice before terminating an employee for excessive absence when any of those absences have been taken as Emergency Leave or Family Leave.

There is also some legal controversy over whether or not absences due to workplace injuries can be included in absences under an Attendance Management Policy.

In the Fall 2004 edition of Focus, we reviewed the right of employers to establish and implement Attendance Management Policies. In particular, we reviewed 3 basic principles key to valid Attendance Management Policies:

- (1) The policy must be consistent with any applicable collective agreement.
- (2) The policy must distinguish between innocent absenteeism and culpable absenteeism and the innocent absenteeism portion of the policy may not be disciplinary.
- (3) The policy must be reasonable.

This Article will review the fourth basic principle: The policy must comply with any applicable employment-related statutes, such as employment standards, human rights and workplace safety legislation.

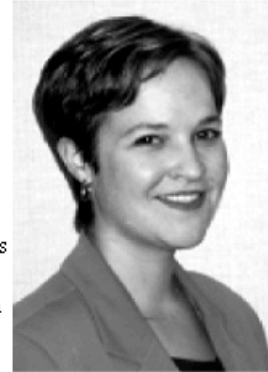
Consistency with Human Rights Legislation

The *Human Rights Code* in Ontario requires employers to accommodate all chronic illnesses and disabilities to the point of undue hardship. This means that where an employee is absent from work due to illness or disability, an employer has an obligation to assess the employee's limitations and restrictions and provide accommodation including modified duties or hours of work, to the point of undue

This concept of 'tolerance' that the *Human Rights Code* imposes on employers means that it is not permissible for a policy to attach disciplinary consequences to innocent absenteeism. Rather, attendance management policies must incorporate, in their contents, an element of discretionary application to individual circumstances. Having said this, it is permissible for an Attendance Management Policy to require medical documentation in order to determine if a disability exists within the meaning of the *Human Rights Code*.

Building Human Rights principles into one's innocent absenteeism policy will also provide the backdrop necessary for an employer to take action based on innocent absenteeism. In order to uphold a termination on the basis of innocent absenteeism caused by disability, an employer will have to establish that the individual circumstances were considered and accommodated to the point of undue hardship. This will be much easier to prove if these considerations are simply built into the Policy itself.

(Continued on page 5)



The provisions of the *Employment Standards Act, 2000* ("ESA") often impact Attendance Management Programs. Of particular concern are the Emergency Leave provisions (s.50) and the new Family Medical Leave provisions (s.49.1).

In the event that you have specific questions respecting attendance management in your workplace, a Hicks Morley lawyer will be happy to assist you and can be contacted at (416) 362-1011 (Toronto) or (613) 234-0386 (Ottawa).

ATTENDANCE MANAGEMENT

(CONTINUED FROM PAGE 4)

Consistency with Employment Standards

The *ESA* entitles all employees, who work for an employer that employs 50 or more employees, to up to 10 unpaid emergency leave days per year for defined personal reasons. Prescribed reasons include: personal illness, injury or medical emergency of the employee; death, illness, injury or medical emergency of a listed family member, and urgent matters concerning a listed family member. The Emergency Leave days may be taken consecutively or at different times throughout the year and there is no minimum service requirement in order to be entitled to these days. An employer retains limited discretion as to whether to grant such leaves; that is, it can require evidence reasonable in the circumstances to show the employee is entitled to the leave (ex. a medical note).

On June 29, 2004, the *ESA* was amended to permit employees to take up to 8 weeks of unpaid leave to provide care to a family member suffering from a serious medical condition with a significant risk of death occurring within 26 weeks. This entitlement is separate from Emergency Leave and is not limited to workplaces that regularly employ 50 or more employees. The Ministry of Labour policy provides that employees can break down the 8 weeks into 1 week blocks that can be taken at any time within the 26 week period.

The *ESA* does not prevent employers from monitoring attendance including Emergency and Family Medical Leave days.

Having said this, there is some jurisprudence which suggests that counting of such days under an Attendance Management Policy and counseling employees for exercising their entitlement under the *ESA* may be a violation of the *ESA*. Emergency and Family Medical Leave are essentially a form of innocent absenteeism, except that they are legislated. Employers should seek legal advice before terminating an employee for excessive absence when any of those absences have been taken as Emergency Leave or Family Leave.

The Inclusion of Workplace Safety and Insurance Absences

There is also some legal controversy over whether or not absences due to workplace injuries can be included in absences under an Attendance Management Policy. This controversy is rooted in human rights concerns.

The general rule is that while such absences may be included, the Attendance Management Policy tracking absences due to workplace injuries must make it clear that the employer will accommodate the workplace injury to the point of undue hardship. This will be especially important where the absence would jeopardize continued employment. Once again, the key is to ensure that the Policy provides for employer discretion in deciding whether to excuse absences resulting from workplace injuries.

Please keep in mind that this Article provides only a general overview of attendance management principles and is not intended as legal advice.

EMAIL ETIQUETTE

It is amazing to find that in this day and age, some organizations have still not realized how important their email communications are. Many individuals send email replies late or not at all, or send replies that do not actually answer the questions you asked. By educating employees as to what can and cannot be said in an email, you can protect your organization from awkward liability issues. This article discusses the main etiquette rules and provides advice on how employers can ensure that they are implemented.

Why do you need email etiquette?

An organization needs to implement etiquette rules for the following three reasons:

1. Professionalism: by using proper email language your company will convey a professional image.
2. Efficiency: emails that get to the point are much more effective than poorly worded emails.
3. Protection from liability: employee awareness of email risks will protect your company from costly law suits.

Tips for Email Etiquette:

1. Be concise and to the point
2. Answer all questions, and pre-empt further questions
3. Use proper spelling, grammar & punctuation
4. Make it personal
5. Use templates for frequently used responses
6. Answer swiftly
7. Do not attach unnecessary files

More Tips for Email Etiquette?

8. Use proper structure & layout
9. Do not overuse the high priority option
10. Do not write in CAPITALS
11. Don't leave out the message thread
12. Add disclaimers to your emails
13. Read the email before you send it
14. Do not overuse Reply to All
15. Mailings > use the bcc: field or do a mail merge
16. Take care with abbreviations and emotions
17. Be careful with formatting
18. Take care with rich text and HTML messages
19. Do not ask to recall a message.
20. Do not copy a message or attachment without permission
21. Do not use email to discuss confidential information
22. Use a meaningful subject
23. Use active instead of passive
24. Avoid long sentences
25. Don't send or forward emails containing libelous, defamatory, or offensive remarks
26. Don't forward virus hoaxes and chain letters
27. Keep your language gender neutral
28. Use cc: field sparingly.

How do you enforce email etiquette?

The first step is to create a written email policy, including all the do's and don'ts concerning the use of the organization's email system and should be distributed amongst all employees. Secondly, employees must be trained to fully understand the importance of email etiquette.

Reference: www.email.com

'By requiring employees to use appropriate, businesslike language in all electronic communications, employers can limit their liability risks and improve the overall effectiveness of the organization's e-mail and Internet copy in the process'

- Excerpt from 'Writing Effective E-mail', by Nancy Flynn and Tom Flynn.

The need for governance exists anytime a group of people come together to accomplish an end.

Most agree that the central component of governance is decision-making.

In voluntary sector organizations this entity is the board of directors.

One simple definition of governance is "the art of steering societies and organizations. " Governance is about the more strategic aspects of steering, making the larger decisions about both direction and roles.

GOVERNANCE - Practical Problems and Solutions

Clear Separation of Board/CEO Roles

DO clearly define the roles of the board and CEO.

Poorly defined division between the roles and responsibilities of the CEO and the board is a recipe for organizational chaos.

Lines of accountability become blurred to the point where it is not clear who is responsible for successes and failures.

Also it allows CEOs and board members to interfere in areas where they should have no role. Board members may begin to interfere in the day-to-day operations of the organization. Micro-managing by board members undermines the work of the CEO and sends conflicting messages to other senior managers, staff and the public. This form of interference can be damaging to staff morale, funder and stakeholder confidence in management, and the organization's public image.

Obviously it can be an obstacle to the healthy functioning of the organization.

From another perspective, CEOs can intrude on the responsibilities of the board and make board members feel their ideas and participation are not wanted. The board's role might be marginalized to the point where the board members become disengaged and apathetic, and serve only to "rubber stamp" management decisions.

Separate and defined roles with clear lines of responsibility are essential for organizational health. New board members must be made aware of their role and what classifies as appropriate behaviour.

DON'T let the board become involved in labour/management conflicts.

Allowing board members to become involved in labour/management relations is extremely dangerous for any organization. While board members have a responsibility to understand union negotiations or conflicts with management, putting themselves in the middle can seriously damage the leadership of the organization.

Board intervention in labour or management conflict is a public expression that the board lacks confidence in the CEO, and undermines the employer's bargaining position. It can also cause the board to lose credibility in the eyes of the staff, or even pit board members with differing views against one another. It is almost always better for the board to address these issues after the dust has settled.

DO make sure board members resign when assuming the CEO or any other staff position.

In times of crises, a board member may be required to assume the CEO position until a suitable replacement is found. They should resign from the board during this time. If the CEO position is only temporary, the board member should not return immediately to the board after their term. A waiting period will allow the person some time to distance themselves from the CEO position before returning to duties as a board member once again.

Reference: www.iog.ca

Check Us Out

OASIS website
www.oasisonline.ca
 OASIS email
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OASIS mission:

To facilitate the sharing of ideas, resources, systems and information, OASIS will liaise with government on behalf of member organizations with the goal of improving the development of cost effective quality supports for individuals with developmental disabilities.

FOCUS is published quarterly by Ontario Agencies Supporting Individuals with Special Needs

Ideas and articles are welcomed for FOCUS. Contact the Editorial Committee.

Look for the next issue of FOCUS in the spring of 2005

Court Refuses to Enforce Donation Pledge

BY RACHEL L. BLUMENFELD, MILLER THOMSON, LLP

A recent Ontario case, *The Brantford General Hospital Foundation and the Brantford General Hospital v. The Canada Trust Company and Anne Linda Tedder, Estate Trustees of the Estate of Helmi Aino Marquis*, illustrates the challenges charities face in enforcing donor pledges.

About a year and a half before her death in 2000, Mrs. Marquis, who was described as a "regular donor" and appeared on a list of "potential lead donors" to the Brantford General Hospital Foundation (the "Foundation"), signed a \$1 million pledge to the Foundation's capital campaign, payable over a period of five years. She paid the first installment of \$200,000 in April 2000, but unfortunately died the following month. Under her Will, Mrs. Marquis left the Foundation a bequest of one-fifth of the residue of her estate, in addition to a number of bequests and legacies to other charities. The Estate Trustees refused to pay the outstanding balance of \$800,000 on the pledge and the Foundation and the Brantford General Hospital sued the Estate Trustees to enforce the pledge. The Ontario Superior Court of Justice was asked to determine if the pledge form that Mrs. Marquis had signed constituted "a legal and binding contract enforceable at law." The case turned on whether the facts supported an argument that there was sufficient consideration between the Foundation and Mrs. Marquis to make the pledge a binding contract.

Even though Justice Milanetti did not doubt that Mrs. Marquis would have wanted the Foundation to receive both the pledge and the bequest, "based on the Canadian law as currently framed," the Court could not find the pledge to be enforceable.

Had Mrs. Marquis been a different type of donor, concerned about seeing her and her husband's names on the unit she was donating, perhaps the pledge would have been enforceable. Further, had the pledge document been drafted differently, or made under seal, perhaps it would have been binding on Mrs. Marquis' estate. Yet in this instance, the court agreed with the Estate Trustees that the pledge did no more than "document a proposed gift."

For significant pledges, charities should keep this case in mind. Depending on the situation, it may be prudent to discuss with the donor what the intention is in relation to a pledge and any bequest made in a Will. If a charity wants a particular pledge to be enforceable, it should obtain specific legal advice regarding the pledge.

Rachel Blumenfeld practices in the areas of estate planning and administration and charities and not-for-profit law at Miller Thomson LLP and can be reached at rblumenfeld@millerthomson.ca. This article is based on an article from Miller Thomson's Charities and Not-for-Profit Law Newsletter. A complimentary subscription can be obtained by sending an email to charitieseditor@millerthomson.ca.