

Epilepsy & The Law

What are the legal rights of a person with epilepsy?



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This booklet was made possible through a grant
from The Law Foundation of Ontario.

Editor, Andrea Fenson
Information Counsel, Dr W. McIntyre Burnham
Legal Counsel, Howard Fletcher, LL.B.
Design/Photography (except otherwise noted), Thomas Cheng

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308—1 Promenade Circle
Thornhill ON L4J 4P8
800-463-1119
905-764-5099
info@epilepsyontario.org

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Introduction

“It is an unfortunate truth that the history of disabled persons in Canada is largely one of exclusion and marginalization. Persons with disabilities have too often been excluded from the labour force, denied access to opportunities for social interaction and advancement, subjected to invidious stereotyping and relegated to institutions...”

- La Forest J, for a unanimous court
in *Eldridge v. British Columbia*

Epilepsy is a neurological disorder that likely affects sixty million people around the world at any one time. Regardless of its prevalence, it is one of the most commonly misunderstood disorders.

The past century has brought an explosion of knowledge about epilepsy and the functions of the brain. Epilepsy research continues at a vigorous pace, with research ranging from how microscopic particles and channels in the brain trigger seizures, to the development of new seizure medications, and to a better understanding of how epilepsy affects social and intellectual development.

For the millions of people with epilepsy, the social and legal consequences of the disorder can be far more burdensome and disruptive than the medical condition itself.

People with seizure disorders face many kinds of barriers on a daily basis. These can be physical, attitudinal or systemic. Under section 10(1)(a), the *Ontario Human Rights Code* explicitly protects the rights of people living with epilepsy, specifically, the right to equal treatment and opportunities and freedom from discrimination. However, many people with this disability continue to face discrimination and legal barriers within various social settings.

This booklet is intended to address the potential legal issues, statutes and policies that currently affect people living with epilepsy. Our goal is to stimulate public awareness of the legal obstacles that people living with epilepsy face and to encourage the enforcement of equitable measures to alleviate discrimination.



Epilepsy and the Ontario Disability Support Program

Common Issue: In many cases, ODSP income support has been denied because epilepsy was not considered a “substantial impairment”. At the same time, many people are denied employment due to their disabilities. How then does someone with epilepsy combat this economic hurdle? How does one appeal a Director’s denial of ODSP?

Mr. A was a 45-year-old man with epilepsy with absence seizures. He had studied landscaping and agriculture in college and was employed as a farm equipment operator. He experienced seizures four to six times a year, lasting three minutes, and usually occurring at night. After a seizure, he usually felt very tired and experienced severe headaches for the following two to three days.

Mr. A had stopped driving heavy farm and lawn mowing equipment out of concern that he might have a seizure while doing so. Although he had not had restrictions on his driver’s licence, and was taking Dilantin to help reduce his seizures, he chose not to drive as a precaution. His family doctor testified that Mr. A experienced spells of absence seizures that were uncontrolled and was unable to function when he got stressed.

Mr. A was denied ODSP income support because the Social Benefits Tribunal found that he was not substantially restricted or impaired in any of his daily living activities. His seizures, the tribunal decided, did not pose a substantial restriction in the workplace because he could call in sick periodically. The restrictions on Mr. A’s recreational activities, usage of heavy machinery and driving were prudent accommodations rather than indications of a substantial restriction.

Cited as: SBT 0502-02065 12 September 2005; Brown

Mr. S was a 41-year-old man with epilepsy. He had a Grade 12 education and a college computer support certificate. His employment history included work mainly in industrial settings as a shipper/receiver and forklift operator. He testified that he had approximately four seizures a year. He had not seen his neurologist in two years because the doctor practiced in another community

hundreds of kilometers away and he could not afford to see him. He often did not see his neurologist until months after a seizure occurred. He had been denied his re-application for a driver's licence and had relied on the bus system to get around his previous community.

Mr. S's neurologist reported that his condition limited his ability to work with machinery or in situations in which he could injure himself should he have another seizure, and that his ability to work was limited because he did not have a driver's licence.

The Social Benefits Tribunal denied ODSP income support to Mr. S as it found he did not have a substantial impairment because he did not see his neurologist in two years, even though he had four seizures since then. There was no aggressive treatment plan and his condition was controlled by medication. Mr. S was not "substantially restricted" in any of his daily living activities, and his inability to find work was not relevant to the assessment of whether he was restricted in his ability to function in the workplace. The tribunal found that Mr. S had failed to make a reasonable effort to explore employment opportunities other than industrial work.

Cited as: SBT 0506-05710 16 February 2006; Riccio

The Ontario Disability Support Program (ODSP)

The ODSP is designed to meet the unique needs of people with disabilities who are in financial need, and who want and are able to work but need support to do so. The program has two components: income support and employment supports.

Eligibility

In order to qualify for ODSP benefits, you must meet the definition of a "person with a disability". This means:

- You have a substantial physical or mental health problem that is expected to last a year or more, that is continuous or permanent,
- Your health problem substantially limits your ability to work, look after yourself or carry out daily activities at home and in the community and
- Your health problems have been verified by an approved health profes-

sional.

You also need to qualify financially for income support. This means:

- You cannot have income above a certain amount, which is determined by your family size and housing costs.
- You cannot have savings, or assets, above a certain level, also determined by family size.
- Note - A person may not be eligible if they are dependent on or addicted to alcohol or take unauthorized prescriptions.

How to Apply

- You can only apply for ODSP through Ontario Works or a local ODSP office to set up an interview. If you need money right away, you should apply at an Ontario Works (ow) office so that you can get ow benefits while you wait for your ODSP application to be decided.
- If you cannot apply in person you should contact the local ow office and you will be given the telephone number of the regional Intake Screening Unit (ISU) to apply.
- If you are found to be eligible for assistance, you will be sent a disability determination package (DDP) to complete and forward to the Disability Adjudication Unit (DAU) within 90 days of the date of your interview.

If You are Refused ODSP Benefits

- If you are found to be ineligible, you should immediately ask for the reasons in writing.
- You will have 10 days to object in writing to an ISU decision and ask for an Internal Review—this objection and request **MUST** be made in writing.
- If you miss the 10-day time limit, you should still ask for an internal review. You will need to ask for an extension of time in your written request for an internal review.
- You should get a decision regarding the internal review within 10 days of requesting it. If the decision to refuse benefits is confirmed, you have 30 days from the date of the decision to appeal to the Social Benefits Tribunal (SBT).

Internal Review

- If an application has been denied or a recipient's benefits have been reduced or suspended, the individual should receive a notice of decision including: the decision, the date of the decision, the reasons for the decision and an indication that a request for an internal review has to be made if the applicant intends to appeal to the SBT.
- An internal review request should include: the applicant's name, date of birth OR case ID number, address, a statement that a review is requested, and the reason for the request.
- Make sure you determine if you were refused based on a disability status or for financial reasons and address these problems stated in your letter.
- You should get a decision regarding the internal review within 10 days of requesting it. If the decision to refuse benefits is confirmed, or you have not received a decision within 10 days, you have 30 days from the date of the decision to appeal to the Social Benefits Tribunal (SBT) if you do not agree with their decision and you may receive the opportunity to argue your case at a hearing.
- If you do not agree with the decision based on the Internal Reviews, you may be able to appeal to the Social Benefits Tribunal (SBT)

Appeal to the Social Benefits Tribunal (SBT)

- In order to appeal to the SBT an approved form must be used for the notice of appeal, it must be submitted within 30 days and include reasons for the appeal request. This form is available at the local ODSP or OW office and it can be sent to the SBT when completed.
- When you appeal, you can ask the SBT to order interim assistance. If this request is denied, you can write and ask SBT to reconsider.

Interim Assistance

- Interim Assistance is money paid to the applicant while he or she waits for a SBT hearing.
- An application for interim assistance is part of the SBT appeal form. The SBT may order the local office to pay the applicant interim assistance if they are satisfied that he/she will suffer financial hardship during the time it takes the SBT to decide the case.
- If the applicant withdraws the appeal, loses the appeal to the SBT, or does not attend the hearing, the interim assistance is deemed to be an overpayment.

Getting Ready for the Hearing

- About two months after you appeal, you should get a package from the DAU, which will be called “Submission to the Tribunal”. This package will include such things as the medical reports that were included with your application, as well as the decision letters in your case. This is the DAU’s argument about why they decided you were not disabled. It is NOT the decision of the Social Benefits Tribunal. If you do not get this package before your hearing, you need to call the Client Service Representative at the Social Benefits Tribunal to get a copy.
- When you get the DAU’s “Submission to the Tribunal”, you should look through it carefully. You want to be sure that all of the information that supports your appeal is in that package. You also want to be sure that every medical condition that you had at the time of your application is shown on the medical documents in the DAU Submission. The DAU Submission will also have the “DAU Adjudication Summary”. This will show you why the DAU turned you down. This can give you a starting point as to other reports you might want to get to help you in your appeal. If you have other medical reports, letters from specialists or test results that are not in the DAU submission, you should gather them together and send them to both the DAU and the SBT.
- Remember: Any documents, such as medical reports, that you want to use at your hearing must be submitted at least 30 days before your hearing. Otherwise, the Tribunal may refuse to accept the document at your hearing. You must submit all your documents to the Client Services Representative at the Social Benefits Tribunal and to the Appeals Unit at the Disability Adjudication Unit 30 days before your hearing. The documents can be sent by fax, mail or courier. Make sure you allow enough time so they arrive 30 days before the hearing date. Mail or fax them to:

(Your Client Services Representative)
Social Benefits Tribunal
1075 Bay Street, 7th Floor
Toronto ON M5S 2B1
fax 416-326-5135

and to:

Appeals Unit
Disability Adjudication Unit
Ontario Disability Support Program
Box B18
Toronto ON M7A 1R3
Courier Address:
2 Bloor Street West, 11th Floor
Toronto ON M7A 1E9
fax 416-326-2985

The DAU's phone number is 1-888-256-6758

- About two or three months after filing your appeal, you should get a Notice of Hearing, which is the most important letter you will get from the SBT. It sets out the date, time and place of your hearing.

What Will Happen at the Hearing?

- You should make sure that you arrive a little early for your hearing. If you are late, the Tribunal could dismiss your appeal. The hearing will probably last between 1 and 1 1/2 hours. Usually, the SBT sends one Tribunal member to make the decision in your case. The DAU/Director can also send someone to your appeal to represent their office.
- A hearing at the SBT takes place in the room, less formal than a courtroom, written on your Notice of Hearing. Everyone sits around a table, with the Tribunal member at the head.
- The Tribunal member must decide, based on all the medical evidence, the evidence you give at the hearing and the evidence of any other witnesses, whether you are a person with a disability.
- In order to be found a "person with a disability", you must show that you have a substantial physical or mental impairment, which is continuous or recurrent, and is expected to last for one year or more.
- You also must show that your impairment results in a substantial restriction in your abilities in one or more of the following areas:
 - attend to your personal care
 - participate in the community
 - participate in a workplace
- It is not enough to just show that you are disabled at the time of the Hearing. You are trying to show that you were a person with a disability at the time you applied for benefits, at the time you were denied benefits, and since that time.
- The main part of the hearing will involve you giving evidence about your

medical conditions and how they affect you on a daily basis. This is your chance to tell the Tribunal about each of your medical conditions, how serious (or substantial) they are, and the impact of your conditions on your daily activities. When thinking about what you would like to say at your hearing, keep the 'test' for the definition of a person with a disability in mind. After you are finished giving your evidence, if someone from the DAU is there, she/he may have some questions for you. Also, the Tribunal member may ask you some questions. Answer them as best you can and, if you don't understand what they are asking, ask them to make clear what they want to know.

- The Tribunal member generally does not give you a decision at your hearing. Instead, they have 60 days to write the decision, which will be sent to you by mail.
- If you are successful and win your appeal, it will be a few months before you begin to receive ODSP benefits. If you are not successful in your appeal you may wish to reapply for ODSP benefits. Your chance of success will be greater if you have new medical information about your conditions.

For more information about ODSP, please call 1-888-789-4199 or go to www.mcsc.gov.ca/mcss/english/pillars/social/odsp

Other Benefit Programs

The Canada Pension Plan (CPP)

People with disabilities qualify for benefits under the Canada Pension Plan. The rules about CPP disability pension are different from the ODSP.

The CPP disability benefit is available to people who have made enough contributions to the CPP, and whose disability prevents them from working at any job on a regular basis. The disability must be long lasting or likely to result in death. People who qualify for disability benefits from other programs may not qualify for the CPP disability benefit.

Benefits are paid monthly to eligible applicants and their dependent children. The monthly disability benefit payment includes a fixed amount (\$388.67 per month in 2005), plus an amount based on how much and for how long the contributor paid into the Plan. Payments are adjusted once a year in January if necessary, to reflect changes in the cost-of-living index.

The maximum benefit payable in 2005 was \$1,010.23 (the average monthly payment in 2004 was \$734.45). The monthly children's benefit is a flat rate that is adjusted annually. In 2005, the children's benefit was \$195.96.

You must apply for a disability benefit in writing. There are also benefits available to the children of a person who receives a CPP disability benefit. The CPP disability benefit is administered by Social Development Canada (SDC), a federal government department. The application kit is available at www.hrsdc.gc.ca.

For more information, refer to the CPP link:
www.hrsdc.gc.ca/en/oas-cpp/cpp_disability/index.shtml

Depending on your situation, you might be entitled to other benefits such as Employment Insurance sickness benefits (see page 18), Veterans Affairs disability benefits, or pension benefits from another country where you once lived.

Disability Credit

To access Canada Revenue Agency's T2201 Disability Tax Credit Form, go to: <http://www.cra-arc.gc.ca/E/pbg/tf/t2201/>.

This form can be filled out by a person with epilepsy or his/her representatives to apply for a non-refundable tax credit, used to reduce income tax payable on your tax return. You are eligible for the disability amount only if a qualified practitioner certifies, on this form, that you have a prolonged impairment, and certifies its effects.



Discrimination and Accommodation in the Workplace

Common Problem: I didn't tell my employer I had epilepsy and I had a seizure at work. The next day I was fired. Is this wrongful dismissal? Do I have to disclose the fact that I have epilepsy to my employer?

JK is a 24-year-old student who was diagnosed at age 13 with juvenile myoclonic epilepsy. On average, she has two to three tonic-clonic seizures per year, although it is not uncommon for her to go years at a time with no seizures. JK applied for a summer job as a counter person at a bagel shop franchise. During her job interview, she told RC, the owner of the franchise, that she had epilepsy and could perform the required job duties, which included preparing sandwiches and serving. JK was hired. A week later, she experienced a tonic-clonic seizure at work and went home early to rest and recuperate. No one was injured and nothing was broken in connection with the seizure. That evening, RC called JK and terminated her employment, neglecting to seek information about her medical condition or discuss the relationship between that condition and her job performance. JK testified that her termination made her upset, caused episodes of distress, and has made her reluctant to disclose the fact of her epilepsy to friends or potential employers. RC had not raised concerns with JK's work performance prior to the seizure.

The Ontario Board of Inquiry held that RC discriminated against JK by terminating her employment because of her disability. The Board found that the triggering reason for termination was fear that her epilepsy would cause JK to have another seizure at work, which might scare away customers. Secondly, RC's discriminatory actions were motivated by stereotypical assumptions regarding JK's epilepsy. Finally, RC had failed to meet his duty to accommodate. Even if JK had been unable to perform certain duties, RC failed to make inquiries regarding the nature of her medical condition.

Cited as: Kalbfleisch v. 1321257 Ontario Ltd. and Ruel Carillo [2002] O.H.R.B.I.D. N. 16

Mr. R did not have epilepsy when he first became employed by the Canadian Armed Forces. He was a member of the Forces for 29 years and was trained as a flight engineer. In 1981, he was prescribed medication for blackouts and

was forbidden to fly for several months. He was later pronounced fit for duty and continued work as a flight engineer for two years until he experienced a seizure. He was diagnosed as having epilepsy and removed from his position. Mr. R was a recovered alcoholic with experience in rehabilitation and began working part-time as an alcoholism counselor. He later applied for a full-time position but the position was given to a more junior, less qualified member of the Forces. At the same time, he was released as unfit for service, as the Forces had a mandatory inflexible classification for persons with epilepsy, which requires that all people with epilepsy be deemed unfit for service.

The Human Rights Tribunal rejected the Forces' argument that Mr. R was unemployable at any trade because of his epilepsy. Although he may have been a risk in his position as flight engineer, he was skilled in other trades and his epilepsy certainly didn't prevent him from performing satisfactorily as an alcoholism counselor. Therefore, he shouldn't have been refused the position. The Tribunal also found that the mandatory classification for persons with epilepsy was discriminatory, because it does not allow for individual assessments, which are necessary to comply with the *Canadian Human Rights Act*.

Cited as: *James Robinson and Canadian Human Rights Commission v. Canadian Armed Forces* [1992] C.H.R.R. D/9

Ontario law states that every person has a right to freedom from discrimination in employment because of a disability, as prescribed by section 5 of the *Ontario Human Rights Code*. Harassment by an employer or co-worker due to an employee's disability is prohibited (under section 5 (2)). Employment decisions, including recruitment, hiring, training and promotion, are based on merit and not on criteria that are unrelated to job performance. In Ontario, it is illegal to ask questions about physical health or medical problems on an employment application form. Medical problems during an interview must be restricted to inquiries that will determine if reasonable accommodation will be necessary. "Do you have epilepsy?" is not a permissible question. However, if a prospective employee reveals that they have epilepsy during an interview, it is reasonable for the employer to inquire about the type of seizure the person experiences and what accommodations might be required.

The Code states that employers must accommodate people with disabilities unless the disability interferes with performing the essential aspect of the job or unless such accommodation causes the employer "undue hardship". This means an employer must, in most cases, make every reasonable effort to adjust the duties or conditions of work to meet the constraints of the disability.

Having seizures may make it more difficult to find a job or to work at

certain occupations. It appears that individuals with epilepsy have twice the unemployment rate of the general population, and that 40% of employed persons with epilepsy work at jobs requiring less skill than their potential.

People with epilepsy entering the workforce often face negative and uninformed attitudes, outright (and illegal) discrimination, unnecessary driving requirements, fear of repercussions after disclosing and under-utilization of their skills. At the same time, employers worry about productivity, absenteeism, liability, job performance, the reactions of customers or co-workers, accommodation costs and workplace safety. Nevertheless, an employer's "duty to accommodate" requires the co-operation between the employer and the employee to determine the best way to address the special needs an employee may have.

When epilepsy is the disability, common accommodations might be keeping the worker away from ladders and other height-related areas, scheduling a steady day or evening shift, altering lighting to eliminate flickering, not requiring lots of overtime, being flexible about how to make up time or taking work home, etc. Workplace accommodations for epilepsy are inexpensive, easy to make, and only require a little creativity and flexibility.

In 1993, Bill 79, the federal *Employment Equity Act* (EEA) was passed. The EEA applies to the federal public sector and federally regulated private firms in banking, communications and transportation. The premise of the act is that all people, including people with disabilities, are entitled to equal treatment by an employer. The Act protects differently abled people from discrimination with respect to recruitment, hiring, retention, treatment and promotion.

Constructive Dismissal

Constructive Dismissal occurs when an employee resigns because of the changes an employer makes to their job description and daily tasks. For example, Ms. F, a real estate agent, was constructively dismissed by her broker after having an epileptic seizure at the office. Her duties were downgraded, salary reduced and she was forced to do mundane tasks that were not in her job description and that she wasn't responsible for before her seizure. Eventually, she decided to resign because of her demotion.

Under section 56(1)(b) of the *Employment Standards Act*, an employer terminates the employment of an employee if the employer constructively dismisses the employee and the employee resigns from his or her employment in response to that within a reasonable period.

It is an implied term of any employment contract that an employer does

not make substantial changes to the duties, status or remuneration of an employee so as to constitute a fundamental breach of contract. Where an employer's conduct alters a fundamental term of the employment contract, a constructive dismissal will exist, permitting the employee to terminate the employment contract and treat himself as being wrongfully dismissed and seek damages. Constructive dismissal has two essential elements: 1) changes imposed by the employer must be unilateral, and 2) must also fundamentally alter a term of the contract.

Constructive dismissal is recognized under both the provincial *Employment Standards Act* and the *Employment Insurance Act*. Where an employee is not at fault and may have good reason and no other alternative but to terminate his/her employment, employment standards and insurance benefits may compensate the constructively dismissed employee.

Echlin and Fantini, *Quitting for Good Reason: The Law of Constructive Dismissal in Canada* (Canada Law Book, 2001)

Can my Employer Require a Driver's Licence as a Condition of Employment?

A driver's licence contains personal information about an individual which could lead to the classification of a job applicant according to a prohibited ground of discrimination, contrary to subsection 23(2) of the Code. Therefore, unless a driver's licence is required to enable a person to perform the essential duties of a job, it should not be requested in an application form or during an employment interview.

Information on a driver's licence could yield information about whether or not an applicant has a handicap. This in turn could lead to the classification of applicants as members of a group identified by a prohibited ground of discrimination.

On March 6th, 2009, the Photo Card Act came into force in Ontario, introducing a new piece of identification allowing non-driving Ontarians to have access to a government issued photo card. These cards can be used when completing everyday transactions requiring photo identification. The Ministry of Transportation plans to make these cards available in the Spring of 2011 through Service Ontario locations across the province. It is estimated these cards will cost roughly \$35 or more.

The Ministry of Transportation is currently considering introducing a photo card for those individuals who do not qualify for a driver's licence or choose not to drive.

Anyone who believes they have experienced discrimination or harassment on the job or been denied work because of their epilepsy has a legal right to complain to the Human Rights Commission.

How do I file a complaint if I have experienced work-related discrimination?

Human Rights Tribunal of Ontario (The Tribunal)

If you have a human rights complaint, you may apply directly to the Tribunal. You can contact the Tribunal and get a copy of its application form and Applicant's Guide by visiting www.hrto.ca

The Human Rights Legal Support Centre provides legal advice and assistance to individuals across Ontario who believe they have experienced discrimination in areas such as their rights under the Human Rights Code, filing applications to the Tribunal or Tribunal Hearings.

If you want the Tribunal to address your concerns, you should submit an application within six months from the last incident of discrimination. This time limit is set out in section 34 of the Code.

When you file a complaint, Tribunal staff will work with you and the person/company you have filed against, to try and resolve the complaint through mediation.

The Tribunal may consider not dealing with a complaint under section 34 if:

- another Ontario law would be better suited to deal with the situation, such as the Labour Relations Act;
- you have no reasonable basis to support a claim of discrimination, or that you have made the complaint in bad faith, or that you have already obtained a remedy somewhere else;
- the matter is outside the Tribunal's legal authority (ie. Outside Ontario);
- you have waited longer than six months from the last incident of discrimination to file a complaint.

Ministry of Labour

If you have a complaint about your pay, hours of work, overtime, vacation or holiday entitlements, termination or severance pay, and you are not repre-

mented by a trade union, you should call the Ministry of Labour Employment Standards Call Centre. Ministry staff can help you understand your rights, answer your questions and investigate your complaint. Your employer cannot punish you for talking to the Ministry of Labour about your rights. Unionized employees should talk to their union representative first.

Three Steps to filing a claim:

- Contact the Ministry of Labour. If you believe your rights have been violated, you should try to resolve the matter first with your employer. You can get a Self-Help Kit from the Ministry of Labour that contains a form letter you can send to your employer. The Self-Help Kit is available at ServiceOntario Centres and online at www.labour.gov.on.ca.
- If you are unable to resolve the matter with your employer, fill out a claim form. Claim forms are available at ServiceOntario Centres and online at www.labour.gov.on.ca.
- File the claim form. Call the Employment Standards Information Centre at 416-326-7160 or toll-free at 1-800-531-5551 or Hearing Impaired TTY 1-866-567-8893 for information on where to file your claim.

Once your claim is filed, the Ministry will try to help you solve the problem directly with your employer. If the issue cannot be settled, an investigation may begin.

The Employment Standards Officer conducts investigations by telephone, through letters, by visiting the workplace and/or by arranging a meeting with you and your employer. If the Employment Standards Officer finds that your employer has not violated your rights, the officer will tell you. If you don't agree with the decision, you have 30 days to apply to have it reviewed.

If the Employment Standards Officer finds that your employer broke the law, the officer can order your employer to:

- pay wages that are owed to you
- follow the rules of the ESA
- reinstate you to your job
- compensate you.

The officer can also charge your employer with an offence, including a (summons) ticket. If convicted, your employer may be fined or sent to jail.

Employment Insurance and Sickness Benefits

Sickness benefits may be paid up to 15 weeks to a person who is unable to work because of sickness, injury or quarantine. To receive sickness benefits you are required to have worked for 600 hours in the last 52 weeks or since your last claim. A medical certificate must be obtained to confirm the duration of your incapacity. The fees requested by your doctor or dentist are entirely at your own expense.

A person who makes a claim for sickness benefits is not only required to prove to be unable to work but also that he or she would be otherwise available for work.

Particular Situations

You may qualify for sickness benefits even with less than 600 hours as long as you did not stop working because of illness, injury or quarantine. In fact, if you are already receiving regular benefits and you become ill while you are on that claim, you may receive the sickness benefits you are entitled to.

If you are receiving sickness benefits and you ask for maternity and parental benefits, you will want to know more about the maximum number of combined weeks of benefits you may be able to receive.

Who is eligible?

To be entitled to sickness benefits you must show that:

1. your regular weekly earnings have been decreased by more than 40%; and
2. you have accumulated 600 insured hours in the last 52 weeks or since your last claim. This period is called the qualifying period.

To receive benefits you must submit an EI application on-line at: www100.hrhc-drhc.gc.ca/ae-ei/dem-app/english/home2.html or in person to your Service Canada Centre (find your closest location at www1.servicecanada.gc.ca/en/gateways/where_you_live/menu.shtml#100). You should apply as soon as you stop working, even if you receive or will receive money when you become unemployed.

You must request your Record of Employment (ROE) from your last employer. If you have your ROE from your last employer, apply immediately. If you did not receive your last ROE, submit your application along with proof of employment—for example, pay stubs. If one or more ROE covering

periods prior to your last employment are missing, you must still submit your claim for benefits.

If getting your ROE is a problem, your Service Canada Centre can help you. You will have to fill out a form “Request for Record of Employment” explaining what efforts you have made to obtain it. You will have to provide proof of your employment, such as: pay stubs, cancelled pay cheques, T4 slip, work schedules. Delaying in filing your claim for benefits beyond 4 weeks from the time your earnings have decreased by more than 40% may cause loss of benefits.

If you work while on sickness benefits, your earnings will be deducted dollar for dollar from your benefits.

How much will you receive?

The basic benefit rate is 55% of your average insured earnings up to a yearly maximum insurable amount of \$42,500. This means you can receive a maximum payment of \$447 per week. Your EI payment is a taxable income, meaning federal and provincial taxes will be deducted.

Factors that determine payment amounts include the region you reside in, total earnings and weeks you have worked in the last 52 weeks. You could receive a higher benefit rate if you are in a low-income family—an income of less than \$25,921—with children and you or your spouse receive the Canada Child Tax Benefit (CCTB), you are entitled to the Family Supplement.

Appealing a decision

If you disagree with an EI related decision, you have the right to appeal. Information on how to file and prepare for an appeal can be found at www.ei-ae.gc.ca/en/home.shtml.

For more information about Employment Insurance and sickness benefits, call 1-800 206-7218 or check out: www1.servicecanada.gc.ca/en/ei/menu/eihome.shtml.

STOP

ALL-WAY

Precision Signs I

Driving Restrictions

Common Problem: I am a firefighter and require a Class “D” licence to drive and operate the fire truck. I had my first and only seizure seven years ago. My Class “G” licence returned after one year, but my Class “D” has still not been returned. Since I’ve been seizure-free and taking medication, why does the Ministry of Transportation continue to withhold my licence?

If you live in Ontario and have epilepsy you may not drive if you:

- Experience uncontrollable seizures
- Have had seizures in the past 12 months
- Are presently taking anti-seizure medication which causes drowsiness or poor muscle control
- Require medication to prevent seizures but persistently drink alcohol to excess, or do not comply with a physician’s anti-seizure medication recommendations.

Driver’s Licence Suspension and the Highway Traffic Act (HTA)

The Highway Traffic Act is enforced by the Ministry of Transportation (MTO). Section 203 of the Act requires that all legally qualified medical practitioners must report to the Registrar of Motor Vehicles, the name, address and clinical condition of any patient sixteen years or older who “is suffering from a medical condition that may make it dangerous for the person to operate a motor vehicle”.

The Canadian Medical Association published the “CMA Driver’s Guide” to assist physicians in determining which conditions may make it dangerous to drive safely. Under section 10 of the guide, people with epilepsy may drive any class of vehicle if they have been seizure-free for a period up to five years on a commercial licence, with or without anti-convulsive medication. Obviously the conditions on a commercial licence are much stricter than on a “G” class licence, where the suspension period is considerably less. The ultimate decision of when to reinstate a licence rests with the MTO.

The guide is available at:
www.cma.ca/index.cfm/cj_id/18223/la_id/1.htm

Under section 47(1) of the HTA, the Ministry considers the details of the

individual's clinical condition reported by the attending physician, using guidelines established by the Canadian Medical Association, and advice from the Ministry's Medical Advisory Committee to make a decision regarding licence suspension.

Once you have been notified of the suspension, you can request an Administrative Review with a representative of the Registrar of Motor Vehicles by calling the Medical Review Section at the telephone number on the letter that you received. The purpose of the Administrative Review is to give you an opportunity to provide additional information that might not have been available to the MTO at the time that they made the decision to suspend your licence.

The person conducting the Administrative Review will not tell you if your licence will be reinstated because it is not his/her decision to make. He/she will simply report back to the MTO the information that you have provided and the Medical Review Section will review your file and notify you in writing of the outcome. If the MTO has told you that you cannot drive, you must immediately return your licence to the MTO and cease driving.

Can I challenge the decision to continue the suspension of my licence?

Yes. You can apply to the Licence Appeal Tribunal (LAT) to appeal the decision to continue the suspension of your driver's licence. However, you should consider this as your last step in the process and not the first. The Licence Appeal Tribunal (LAT) is an independent, quasi-judicial tribunal authorized under the Highway Traffic Act and created to hear appeals from drivers who have had their driving privileges suspended or changed from a commercial licence for not meeting the medical standards. You can contact the Tribunal at (416) 314-4260 or toll free at 1-800-255-2214 for more information about the process, and what is required of you if you file an appeal.

What can I do to get my licence back?

In addition to, or instead of, asking for an administrative review or an appeal to the LAT, you may submit new information to the MTO. The MTO requires that you submit a "satisfactory medical report" from your doctor that clearly states that you are no longer a risk to drive and that your medical condition is under control.

The "satisfactory medical report" may include a physician's assess-

ment detailing your medical history, diagnosis, treatment, medication, hospitalization(s) including a discharge summary of the most recent hospitalization, period of stability, current status and prognosis. You can talk to the MTO about what is expected of you, given your individual circumstances.

For additional information contact:

Ministry of Transportation
 Driver Improvement Office
 416-235-1773 *general inquiry*
 1-800-268-1481 *toll free*

Note: Have your driver's licence number available when calling the MTO

If a person believes that the decision of the LAT was wrong or unfair, he or she can either contact Ombudsman Ontario, which helps people resolve complaints against provincial government organizations, or may appeal to the Superior Court of Justice.

It is important to let the Ombudsman's Office know how the treatment that you are complaining about has harmed you. Keep records of the facts:

1. People who have been contacted about the problem.
2. Dates of contact with people and organizations.
3. Papers and letters relating to the complaint.

Contact Information

Ombudsman Ontario accepts complaints in English, French and other languages. Ombudsman Ontario can arrange for sign (ASL) and spoken language interpreters for service in other languages. All complaints are handled in the strictest confidence.

Ombudsman Ontario contact information

Access Centre
 1-800-263-1830 *all languages*
 1-866-411-4211 *tty*
 416-586-3485 *fax*
 info@ombudsman.on.ca
 www.ombudsman.on.ca



Rental Housing and Duty to Accommodate

Common Issue: Individuals with disabilities often face particular challenges in the rental housing market due to negative attitudes and stereotypes. Is a landlord allowed to deny my application for rent because I have epilepsy?

An Ontario Board of Inquiry has found that a landlord engaged in a vexatious course of conduct in order to control the life of the complainant, a woman with cerebral palsy and epilepsy, as both a tenant and individual. The respondent was also found to have made verbal slurs regarding her disability.

In another case, a landlord imposed specific rules on the complainant that were not forced on anyone else, once he became aware of her epilepsy. The complainant did not move in, under the impression that the landlord did not want her there and would strive to make her life miserable. The Human Rights Tribunal found that there had been discrimination on the basis of the complainant's disability and awarded compensation.

The Residential Tenancies Act prohibits discrimination based on a disability. Discrimination can be direct or indirect. For example, a landlord might refuse to make reasonable changes to accommodate a person living with epilepsy, which is considered indirect discrimination.

What is being done?

In May 2007, the Ontario Human Rights Commission began consulting with the public, holding meetings and discussions regarding rental housing and human rights. Subsequently, the Commission released "Right at Home: Report on the Consultation on Rental Housing and Human Rights". This report addressed the significant challenges tenants face under Ontario's rental housing system, including discrimination and its associated effects.

As the *Human Rights Code* prohibits discrimination in housing accommodation on the basis of disability, housing providers have a duty to accommodate the needs of tenants with disabilities to the point of undue hardship. Accommodation for people with epilepsy may include waiving a "no pets" policy to allow service dogs that are trained to help their owner while he/she is experiencing a seizure.

The principles underlying the duty to accommodate are: respect for dignity, individualized accommodation, integration and full participation. The

person who requires the accommodation must establish that discrimination has occurred and must make a request for accommodation. The individual will also need to provide some evidence as to why the accommodation is required.

The *Accessibility for Ontarians with Disabilities Act* (AODA) provides a mechanism for developing, implementing and enforcing accessibility standards in order to provide full accessibility to Ontarians with disabilities in goods, services, facilities, accommodation, employment, buildings, structures and premises by January 1, 2025. Under the AODA, housing providers will be required to set accessibility standards for persons with disabilities in housing.

Contact the Advocacy Centre for Tenants Ontario (ACTO) if you require further information. ACTO is involved in:

- advocacy with all levels of government to preserve existing rental housing supply and to build new, affordable rental housing
- seeking fair treatment for tenants before the Landlord & Tenant Board
- joint action with social justice and housing advocacy groups for a long term solution to homelessness

Advocacy Centre for Tenants Ontario
425 Adelaide Street West, 5th Floor
Toronto ON M5V 3C1
416-597-5855
1-866-245-4182 *toll free*
www.acto.ca

To make a complaint about discrimination, you can phone the Ontario Human Rights Commission at 1-800-397-9080 or 416-326-9511.

For help filling formal human rights complaints with the Tribunal, you can contact the Centre for Equality Rights in Accommodation:

CERA—Toronto
340 College Street, Suite 101A, Box 23,
Toronto ON M5T 3A9
416-944-0087
1-800-263-1139 *toll free*
www.equalityrights.org



PASSPORT

PASSEPORT

Epilepsy and the Immigration and Refugee Protection Act

Common Issue: A visa officer denied my application for permanent residence in Canada because my daughter was found medically inadmissible due to her epilepsy. Can I challenge the officer's decision?

Mr. C applied for judicial review of an officer's decision refusing his application for permanent residence because his daughter, V, was found medically inadmissible due to her epilepsy. Mr. C, his wife, and other two children had applied for permanent residence in the entrepreneurial category. A previous application had been refused because V was found to be medically inadmissible under section 19 (1)(a)(ii) of the *Immigration Act*.

Mr. C's application for judicial review was allowed. A new medical assessment was to be done with V considered as a dependant child who would be living at home for the foreseeable future. The officer's reasons for finding V medically inadmissible were clear. However, the medical assessment did not consider the support of V's family, the severity of her condition, her economic and physical self-sufficiency, and the fact that she would be cared for in the family home for the foreseeable future. The assessment was improperly grounded in economic standards applicable to people who would not be living at home.

Cited as: *Chun v. Canada* (Minister of Citizenship and Immigration) [1998] F.C.J. No. 1551

The Immigration and Refugee Protection Act, 2002

Under section 19(1)(a)(ii) of the old *Immigration Act, 1976*, people with disabilities were inadmissible to Canada because they were expected to be a drain on state resources. The legislation prohibited any person with a disability from becoming a permanent resident of Canada if the person "might reasonably be expected to cause excessive demands on the health and social service systems." The bar to admission applied to all categories of immigrants including members of the family class.

The *Immigration and Refugee Protection Act, 2002* has replaced the old *Immigration Act*. It no longer prohibits immigrants with disabilities who are: (a) being sponsored by a Canadian spouse; (b) being sponsored by a Canadian parent in the case of dependent children; or (c) individuals who have been granted refugee status in Canada. Under section 38(2) of the Act, these three categories of immigrants are now permitted to become landed immigrants in Canada regardless of any impact on the health care system or social services.

Additionally, in *Vashishat v. Canada* the Supreme Court instructed immigration authorities to look at the family circumstances of disabled children of immigrants, including financial resources and community supports. In other words, immigrants who would normally be excluded because of their disabled children or other family members may now come to Canada if they can show they have financial and other resources to support them without posing an “excessive burden on social services.”

Appeals and Judicial Review

Appeals on a variety of matters under the Immigration and Refugee Protection Act are heard by the Immigration Appeals Division (IAD) of the Immigration and Refugee Board (IRB). The Board is independent from Citizenship and Immigration Canada, and its members are trained in immigration law.

Both the person in question and the Minister of Citizenship and Immigration can apply to the Federal Court of Canada for a review of an IAD decision. However, they must first obtain leave (permission) of the Court to make the request. If the Federal Court grants permission, it will then review the request and either dismiss it or set aside the IAD’s original decision and order a new appeal hearing.

Any matter under the Act is subject to judicial review by the Federal Court, providing that all rights of appeal under the Act are exhausted. The Court must grant permission before a judicial review hearing can be held.

For more information on the IRB, see its web site at www.irb-cisr.gc.ca or write to the following address:

Immigration and Refugee Board
Minto Place
344 Slater Street, 12th floor
Ottawa ON K1A 0K1
Tel: (613) 995-6486



Custody and Seizure Disorders

Common Issue: Sometimes in a divorce proceeding, the fact that a parent has epilepsy is offered as a basis for denying that parent custody of his or her child. How can I assert my rights as a parent in a stressful custody battle?

A father and mother were in a dispute regarding a custody/access order that was granted by the court. The mother applied to vary the order to re-establish sole custody of her five year old child, to require the father's access to be supervised and to vary his access times and conditions. The father cross-applied to gradually increase his access time to the child. The mother had denied access on several occasions, due to her concerns about the father's epilepsy. During one access visit, on a trip to the mall, the father had symptoms indicating the onset of a generalized tonic-clonic seizure, so he and the child tried to return home. The father called the mother twice and was unable to reach her. While at the bus station with his son, he had an epileptic seizure and was taken to the hospital. The child was calm throughout the entire incident and showed no signs of trauma. Following that incident, an interim access order was made imposing supervised access. Under this order, the father was unable to exercise his access rights most of the time due to the unavailability of supervisors and the mother's denial of his access to the child. The father had taken many steps to control his epilepsy since the incident.

The court dismissed the mother's application and allowed the father's cross-application, ruling that due to the steps the father had taken, the safety risk to the child was considerably less than when the order was made requiring supervision of his access visits. The requirement for supervision of the access visit was not in the child's best interests. Joint custody was ordered.

Cited as: *P.M.S. v. K.B.* [2006] A.J. No. 206

Note: In a generalized tonic-clonic (grand mal) seizure, the person will usually emit a short cry and fall to the floor. Their muscles will stiffen (tonic phase) and then their extremities will jerk and twitch (clonic phase). Bladder control may be lost. Consciousness is regained slowly.

After a seizure, the person may feel fatigue, confusion and disorientation. This may last from 5 minutes to several hours or even days. Rarely, this disorientation may last up to 2 weeks. The person may fall asleep, or gradually become less confused until full consciousness is regained.

The Divorce Act, 1985

Custody of children is a broad concept encompassing the rights and obligations related to a child or the children of a marriage. In cases of divorce, custodial rights and obligations, which during the marriage have been equally vested in both parents, are usually divided; thus, one parent has custody, and provides the main residence for the child, while the other parent is granted access, or visitation and information rights, to the child. Most couples are able to decide for themselves how they will share their custodial obligations toward their children.

Where the parents are not able to settle the custody and access issues themselves, a determination will be made by the court. The *Divorce Act*, section 16(8), requires the court to take into account the best interests of the child of the marriage.

A parent's epilepsy may have an effect on the determination of a child's best interests, but should not be a sole reason for the court to deny custody. To prepare for a custody proceeding, parents with epilepsy should be equipped with detailed information about their seizures, such as type, duration and frequency, as well as their medication.

Additionally, section 16(10) requires the court, in making a custody and access order, to give effect to the principle that a child of the marriage should have as much contact with each parent as is consistent with that child's best interests, and that therefore each parent's willingness to facilitate the exercise of access by the other must be considered. This provision is often referred to as the "friendly parent" rule. It is based on the premise that maintaining close contact with both parents is in the child's best interests, and that any conduct on the part of a parent that interferes with the other's relationship with the child is to be discouraged.

Parents with epilepsy should also be aware that there is no evidence to support the claim that witnessing seizures will psychologically damage a child. They should also be aware of their rights to request a change to the custody decision if their disorder becomes less severe or more controlled.

The Children's Law Reform Act, 1990 (CLRA)

The provincial counterpart to the *Divorce Act* also focuses on the best interests of the child, when determining custody, of or access to, a child. Section 24(2) states that the court should consider all of the child's needs and circumstances. The fact that a parent has epilepsy should have little or no effect on a court's custody or access decision.

If you require further information or support relating to access and custody, contact ARCH Disability Centre (originally Advocacy Resource Centre for the Handicapped). ARCH engages in test case litigation on behalf of groups and individuals, by appealing or intervening, primarily in higher courts. Test cases include those in which an issue is being considered by a court or tribunal for the first time and in which an appellate court is deciding an issue that will affect a large number of people. ARCH's objective in test case litigation is to provide a disability perspective when cases are being decided that affect the lives of persons with disabilities.

If you wish to contact them for legal information, summary legal advice or legal referrals, please use their telephone service. They can refer you to lawyers in private practice, where possible, for assistance with custody issues. Parents who cannot afford a lawyer might qualify for a legal aid certificate (contact 1-800-668-8258).

ARCH Disability Law Centre
 425 Bloor Street East, Suite 110
 Toronto ON M4W 3R5
 416-482-8255
 1-866-482-2724 *toll free*
 416-482-1254 *tty*
www.archdisabilitylaw.ca

If you are having a difficult time agreeing on custody and access terms, you can get information about mediation from the Ontario Association for Family Mediation by calling 1-800-989-3025, or visiting their web site at: www.oafm.on.ca.

Some communities have a special family court called the Family Court of the Superior Court of Justice. If you do not have a Family Court in your area, you can take family law matters to the Superior Court of Justice. All Ontarian courts that deal with family law matters provide information and referral through Family Law Information Centre (FLIC) services and duty counsel lawyers to assist low-income people who do not have a lawyer with them in the courtroom.



...
Performing full and complete
there is no division of
of this department.

16A. SIGNATURE

16B. RANK, TITLE OR GRADE

**FOR USE BY THE
SERVICEMEMBER
LIFE INSURANCE**

Difficulties in Obtaining Insurance

Common Issue: I had two sets of temporal lobe seizures eight months ago. These were the only two of my life and I have not had once since, as I am taking medication to control them. However, I am still having difficulty finding life insurance at an affordable rate, since epilepsy is currently viewed by the life insurance industry as a “substandard high risk” medical condition. How can I find lower premiums and what can I do if my application is rejected?

People with epilepsy can get insurance but it varies from company to company. An increasing number of companies are adopting a practice of assessing applications from persons with epilepsy on an individual basis, rather than relying on outdated information or broad assumptions about epilepsy.

When an agent reviews your application, there are several basic considerations taken into account:

- regular use of medication
- frequency and type of seizures
- complicating medical or physical condition, such as heart disease
- employment
- use of alcohol
- driving record

The Ontario Human Rights Commission has initiated a research project to examine human rights issues in the insurance industry. Its Discussion Paper reviewed insurance-related legislative authority and provisions of the Human Rights Code and discussed issues of discrimination in insurance.

In 1992, the Supreme Court of Canada in *Bates v. Zurich Insurance* encouraged the industry to begin looking more closely at non-discriminatory alternatives in rate setting in the auto industry. It ruled that the insurance industry could continue to use discriminatory criteria as a bona fide means of assessing risk, but that the industry could not do so indefinitely. Insurance companies can use sections 22 and 25 (of the *Human Rights Code*) defences to charges of discrimination. Section 22 provides that automobile, life, accident, sickness or disability insurance, group insurance, or life annuity policies, not part of an employment situation, may make distinctions based on age, sex,

marital and family status, or handicap, but these distinctions must be made on reasonable and bona fide grounds. Section 25(3)(a) provides that other employee disability or life insurance contracts may make distinctions based on disability provided the distinction is reasonable and bona fide and based on a pre-existing handicap that substantially increases the risk.

The insurance industry uses exclusion clauses in long-term disability contracts to restrict individuals from making claims for conditions that pre-existed the effective date of coverage. These exclusion clauses are apparently intended to protect the insurer from individuals who join an employer company primarily to obtain protection for an anticipated health problem that the insurer and employer are unaware of. The insurance industry calls this behaviour “adverse selection”.

Some Tips...

It is important that you check with several insurance companies and compare the value of policies, since both price and coverage vary widely. Also, don't take for granted that if one company rejects your application, all companies will do the same.

If an insurance agent rejects the application verbally, ask for the reason in writing. This may make the company look more carefully at the application and it will give you a chance to reply, describing your own situation. You may wish to find an insurance agent who deals with more than one insurance company.

If you have been recently diagnosed, wait 2 years before applying so that your seizure pattern is clearly established.

Where can I find further information?

The Medical Information Bureau, Inc. (MIB) is a non-profit organization of member life insurance companies maintaining medical information recorded on insurance applications throughout North America. The Bureau assists in the exchange of information among insurers to help prevent omissions or concealment of health information relevant to the question of insurability. Make sure the MIB has the correct information about your epilepsy by asking to see your file and revising it if necessary.

MIB (Medical Information Bureau)
330 University Avenue
Toronto ON M5G 1R7
416-597-0590

As the insurance industry's trade association, the Canadian Life and Health Insurance Association (CLHIA) strives to educate the public by developing a wide range of information and educational resources for the consumer.

Canadian Life and Health Insurance Association
1 Queen Street East, Suite 1710
Toronto ON M5C 2X9
416-777-2344 *local*
1-800-268-8099 *anywhere in Canada*

The Financial Services Commission of Ontario (FSCO) acts as an insurance regulator and performs a number of key functions. Complaints may be filed with the Ontario Insurance Commission if you feel that your application was handled unfairly. General information is available in the form of pamphlets.

Financial Services Commission of Ontario
Licensing & Market Conduct Division
Insurance Company Complaint
5160 Yonge Street
4th floor, Box 85
Toronto, ON, M2N 6L9
416-250-7250 *local*
1-800-668-0128 *anywhere in Canada*

Common Issue: My eight-year old child has epilepsy and requires costly medication to control her seizures. Will my health plan cover these expenses, since OHIP doesn't?

Obtaining health, life, or travel insurance may be an issue for someone with epilepsy since they may be considered to have a "pre-existing condition."

Canadian citizens or permanent residents have provincial health insurance, funded by taxes, that covers health care services provided in a hospital or by a physician. However, this insurance does not usually pay for medications or supplemental health services, which can be costly for people with chronic

health conditions.

Additional coverage for drugs and other health benefits is typically provided by the parents' health insurance (if any) until the child is 18 years old. Insurance coverage may vary after 18 years, depending on your particular plan. Some insurance plans will cover your child into his/her 20s if he/she continues to be a full-time student. If your child is not a full-time student, most insurance plans will not cover a child older than 18. Because your child has a pre-existing condition, obtaining insurance may be difficult and may only be possible at a higher premium.

If your child gets a job that offers benefits, these benefits may include partial coverage for drugs and other health services. Many employers offer group health, disability, and life insurance plans. Group plans usually do not inquire about pre-existing health conditions or require a medical examination.

In Ontario, if your child is turning 18 years of age, has a significant disability associated with his/her epilepsy (such as cognitive impairment), and cannot hold a job because of his/her epilepsy (for example, he/she has poorly controlled seizures), he/she can apply for Ontario Disability Support Program (ODSP) funding. This means he/she will have Ontario Drug Benefit coverage for her drugs, as well as a monthly stipend to cover other costs.

You will need to call the office nearest you to request an appointment to assess eligibility. The appointment should be scheduled about six months before your child turns 18. Once your child is confirmed to be eligible for the assistance, an application package must be completed. You may need to ask the epilepsy care team for a letter to go with the application. For more information about the ODSP, refer to the "Epilepsy and Ontario Disability Support Program" section (page 5).



Marijuana Use to Reduce Seizure Occurrences

Uncommon Issue: I was charged with possession of marijuana, the only drug that helps to reduce the frequency of my seizures. Unfortunately, since it's illegal under the Controlled Drugs and Substances Act, I'm facing jail time! I thought I was allowed to use marijuana for medicinal purposes. What can I do to avoid this criminal charge?

Terry Parker suffered two head injuries as a child and was diagnosed with epilepsy at the age of 4. For Parker, marijuana substantially reduced the incidence of his tonic-clonic seizures, which were often severe and potentially life threatening. He decided to fight the charges for possession against him by attempting to show that the prohibition on the cultivation and possession of marijuana is unconstitutional, as contrary to section 7 of the Canadian Charter of Rights and Freedoms (the right to life, liberty and security of the person). Parker claimed that he needed to grow and smoke marijuana as medicine to control his epilepsy. Because cultivation and possession of marijuana is illegal, Parker argued that threat of criminal prosecution and potential imprisonment amounted to a risk of deprivation of liberty, and therefore, had to accord with the principles of fundamental justice. At his trial, Parker led a great deal of scientific and other evidence demonstrating the therapeutic value of marijuana for treating epilepsy. The Court of Appeal found that the trial judge was correct in reading into the legislation an exemption for persons possessing or cultivation marijuana for personal, medically-approved use. Forcing Parker to choose between his health and imprisonment violates his right to liberty and security of the person.

Cited as: *R. v. Parker* [2000] 49 O.R. (3d) 481

Note: It is always important to remember that issues surrounding marijuana for medical use should not be confused with the movement to legalize it for general consumption. Marijuana continues to be an illegal and controlled substance.

As a result of the Parker decision in 2000, Health Canada implemented the Marijuana Medical Access Regulations (MMAR), which clearly defined the

circumstances and the manner in which access to marijuana for medical purposes would be permitted. A program was established whereby seriously ill persons could apply for permits to possess marijuana. Permit holders are also able to grow their own marijuana (or have a designated person grow it for them) if approved for a production licence.

The validity of the MMAR was subsequently challenged in *Hitzig v. Canada* (2003) (“Hitzig”). In that case, the Ontario Superior Court of Justice held that the MMAR violated section 7 of the Charter because they did not provide seriously ill Canadians with legal access to marijuana and individuals with permits were required to rely on the black market for access. The MMAR were declared invalid.

These events led to considerable disagreement as to the state of the law. A resolution was found in October 2003 when the Ontario Court of Appeal rendered its reasons in *Hitzig v. Canada*. The Court reviewed the MMAR and found that there were two violations of section 7 of the Charter that could not be saved by section 1. First, some applications for marijuana possession permits required the support of two medical specialists, whereas others only required the support of one specialist. The Court held that the requirement for a second specialist was an arbitrary barrier that served no purpose.

Second, permit holders who were too ill to grow their own marijuana were permitted to designate a person to produce marijuana for them. These licensed, designated producers could not be remunerated, could not provide marijuana to more than one permit holder, and could not combine their crops with other designated producers. These restrictions prevented the formation of legal “compassion clubs” and other efficient methods of supplying permit holders with marijuana. As a result, some permit holders were unable to legally access marijuana and were forced to rely on the black market to get their medication.

These problematic provisions of the MMAR were declared invalid and were struck from the MMAR. The modified MMAR became a constitutionally sound medical exemption to the marijuana prohibition in section 4 (1) of the *Controlled Drugs and Substances Act*. Finally, the concern about medical access to marijuana that was raised in Parker more than three years earlier was rectified. The Parker declaration of invalidity was no longer an issue, and the prohibition on marijuana possession became Canada-wide once again.

(McIntosh, Kathleen “Recent Developments in Marijuana Possession Law” in Appeal: Review of Current Law and Law Reform (2005) 10 Appeal 40-55)

What is the current state of the law on possession for medicinal purposes?

While we now recognize the value of marijuana as a form of medicine for the seriously ill, the state of the law on this topic remains uncertain.

Marijuana is categorized as a controlled substance. It is not legal to grow or possess marijuana except with legal permission by Health Canada. The Marijuana Medical Access Regulations allow access to marijuana to people who are suffering from grave and debilitating illnesses. It is important to note that the Regulations deal exclusively with the medical use of marijuana.

The regulations outline two categories of people who can apply to possess marijuana for medical purposes.

Category 1: This category is comprised of any symptoms treated within the context of providing compassionate end-of-life care, or the symptoms associated with the specified medical conditions listed in the schedule to the Regulations, namely:

- Severe pain and/or persistent muscle spasms from multiple sclerosis;
- Severe pain and/or persistent muscle spasms from a spinal cord injury;
- Severe pain and/or persistent muscle spasms from spinal cord disease;
- Severe pain, cachexia, anorexia, weight loss, and/or severe nausea from cancer;
- Severe pain, cachexia, anorexia, weight loss, and/or severe nausea from HIV/AIDS infection;
- Severe pain from severe forms of arthritis; or
- **Seizures from epilepsy.**

Applicants must provide a declaration from a medical practitioner to support their application.

Category 2: This category is for applicants who have debilitating symptom(s) of medical condition (s), other than those described in Category 1. Under Category 2, persons with debilitating symptoms can apply to obtain an Authorization to Possess dried marijuana for medical purposes, if a specialist confirms the diagnosis and that conventional treatments have failed or are judged inappropriate to relieve symptoms of the medical condition. While an assessment of the applicant's case by a specialist is required, the treating physician, whether or not a specialist, can sign the medical declaration.

How does someone apply to possess marijuana for medical purposes?

An application must be submitted in writing to Health Canada. Application forms and guidelines are available online or by calling Health Canada toll-free, at: 1-866-337-7705. Applicants must provide a declaration from a medical practitioner to support the application and must renew their authorization on an annual basis.

Health Canada's examination of the current available information suggests most individuals use an average daily amount of 1 gram to 3 grams of dried marijuana for medical purposes, whether it is taken orally, or inhaled or a combination of both.

For more information, log onto Health Canada's "Medical Use of Marijuana" web site at:

www.hc-sc.gc.ca/dhp-mps/marihuana/index_e.html



Epilepsy and Police Misunderstanding of Seizures

Uncommon Issue: I was diagnosed with epilepsy nine years ago and have been taking medication ever since. A month ago, I was in the grocery store and had a temporal lobe seizure while waiting in line. I kneed another customer, fell on top of her and blacked out. I am now being charged with assault. Since my actions were involuntary, am I still criminally responsible?

Note: A complex partial (psychomotor or temporal lobe) seizure occurs when epileptic activity occurs in the temporal lobes in the brain. A complex partial seizure often occurs after a simple partial seizure of temporal lobe origin.

A complex partial seizure does not involve convulsions, but consciousness is impaired. Someone experiencing one will no longer respond to questions after the seizure starts.

A complex partial seizure often begins with a blank look or an empty stare. They will appear unaware of their surroundings and may seem dazed. The seizure may progress to include chewing movements, or sometimes performing meaningless bits of behaviour. These “automatisms” may include actions such as picking at the clothes, trying to remove them, walking about aimlessly, picking up things, or mumbling. Following the seizure, there will be no memory of it.

A complex partial seizure usually lasts about 2 to 4 minutes. It may be followed by a state of confusion lasting longer. Once the pattern of seizures is established, it will usually be repeated with each subsequent seizure.

Mr. W was charged with criminal negligence in the operation of a motor vehicle. The evidence was that he had failed to stop for a red light and had killed a cyclist in the intersection. Mr. W had suffered from epilepsy for years and the evidence indicated that he had a seizure at the time of the accident. The trial judge found that Mr. W's acts were unconscious and involuntary and acquitted him. While there was no discussion in this case of any “disease of the mind” issues, the trial judge did not hesitate to conclude that this was a genuine case of automatism (an unconscious involuntary act, where the mind does not go with what is being done) and the accused deserved a complete acquittal.

Cited as: *R. v. Wasserman* [1986] O.J. No. 1084 Ont S.C.

Epilepsy is a neurological condition. Not a mental disorder.

In order to be found guilty in Canada's criminal law system, the Crown must prove the accused possessed both mens rea (the mental element) and actus reus (the actual act). When a person with epilepsy has a seizure, any activity during it is involuntary and unconscious, vitiating the minimum mental element of a crime.

The courts have distinguished between sane and non-insane automatism, as two forms of the defence that is based on what has caused the activity. A person whose behaviour during an epileptic seizure has resulted in a criminal action may want to use the automatism defence to prove their behaviour lacked the necessary mens rea element of a crime. The defence of non-insane automatism requires the accused to show that their automatism was caused by something external to themselves, such as an immense shock, and not by something that exists internally. Epilepsy is an example of a condition that is not well suited to this kind of analysis. This is because a seizure can be categorized as internal and external. It can be said, on one hand, that epilepsy is a condition that is internal, in that it is a neurological condition that affects the brain. On the other hand, however, epileptic seizures may be precipitated in a particular case by external factors such as physical exhaustion, stress, excitement, failure to take medication and failure to eat properly. Medical evidence supports the conclusion that epilepsy is a neurological condition rather than a mental disorder. It is not a disease of the mind and, therefore, the defence of sane (resulting in complete acquittal) rather than insane automatism (resulting in acquittal by insanity and indefinite confinement in a mental institution) is open to an accused who committed an illegal act while experiencing an epileptic seizure.



Sudden Unexplained Death in Epilepsy

Uncommon Problem: My sister was diagnosed with epilepsy at 11 years old. At age 31, she was on anti-epilepsy medication and her seizures seemed under control. One morning she went off to work like any other day feeling healthy and happy. By the end of the day, she was found dead in the first aid room of the company. She had felt unwell and went to lie down. Two hours later a colleague discovered her. The cause of death is unknown and has been classified as sudden, unexpected death in epilepsy, or SUDEP.

We had never heard the term before and none of my sister's friends and family knew you could die from epilepsy. I do not believe my sister knew either. Had any of us have known, would it have made a difference? Could we have done anything to have prevented this?

We believe so, but will never know for sure. And, more importantly, we believe she was, at least, entitled to know so that she could make an informed decision as to how to live her own life. That way, she might still be here with us today and her 2 and 3 year old children would have their mother to hug and hold.

Does a physician have the responsibility of educating his/her patient living with epilepsy about the risk of SUDEP? Would better education by health care professionals contribute to patients taking their medication more regularly, thereby reducing the risk of SUDEP?

SUDEP has been defined as “the sudden, unexpected, witnessed or unwitnessed, non-traumatic and non-drowning death in patients with epilepsy, with or without evidence for a seizure, and excluding documented status epilepticus, in which post-mortem examination does not reveal a toxicological or anatomic cause for death”.

Nashef L (1997), *Epilepsia* 38 (Suppl.11): 56S6-8

What is the cause of SUDEP?

Individuals with epilepsy have a risk of premature death that is 2-3 times higher than that of the general population. This may be due to underlying disease (eg stroke, brain tumour etc), medical/surgical treatments of epilepsy, suicides or seizure-related accidents (such as drowning, choking, etc). There are also instances where people with epilepsy die suddenly and unexpectedly without a known cause. These deaths are classified as SUDEP and are the most common cause of death in people with chronic epilepsy.

SUDEP engenders much controversy and discussion because the mechanism of death is not known. A consistent feature is that the majority of these deaths are unwitnessed and post-mortem examination reveals no significant anatomical cause for death. Therefore, it is difficult to ascertain what exactly occurs in the last moments. Most frequently, but not always, there is evidence for seizure activity prior to death and recent studies strongly support a close relationship between seizure episodes (especially generalized convulsions) and SUDEP.

A number of possible different mechanisms have been proposed for sudden death in epilepsy, mainly involving disturbances of the cardiac and/or pulmonary systems (for example, unstable cardiac rhythms and apnoea). It is unknown whether mechanisms are jointly or severally responsible, what leads to the fatal cardiac event and/or cessation of breathing or what role the brain and/or seizure play in the whole process but research is ongoing.

Identified risk factors related to SUDEP

- Having frequent changes of anti-epileptic drug dosage
- Experiencing nocturnal seizures
- Being alone at the time of the seizure
- Being a young adult, particularly male
- People with uncontrolled epilepsy
- People with a long history of tonic clonic seizures
- Alcohol abuse
- Disturbances of the cardiac and/or pulmonary systems

SUDEP appears to be an issue mainly for people with uncontrolled epilepsy. It is also a known fact that the more severe the epilepsy, the higher the risk of SUDEP.

Prevention methods

Research indicates that SUDEP is largely a seizure related phenomenon and the optimisation of seizure control is highly important in its prevention.

To help achieve this, methods may include:

- seeking regular medical consultation to ensure the best possible seizure control, review medication, side effects and impact on lifestyle etc;
- compliance/adherence with the medication regime;
- avoiding sudden drug withdrawal;
- identifying possible trigger factors for seizures and determining an effective management strategy for keeping these to a minimum (for example, maintaining regular and adequate sleep patterns, minimizing time spent alone, learning to manage stress, etc).

Family, friends, work colleagues, etc. should be informed of what to do during and following a seizure. This information is usually covered in basic first aid training and can be found on the Epilepsy Ontario web site. Of particular note is the fact that an ambulance should be called if a seizure lasts for more than five minutes or repeats without full recovery. It is recommended to stay with a person for 15-20 minutes after a seizure to ensure that recovery continues.

Do physicians have the legal responsibility to advise their patients with epilepsy about the risk of SUDEP?

“Every medical practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. He is bound to exercise that degree of care and skill which could reasonably be expected of a normal, prudent practitioner of the same experience and standing, and if he holds himself out as a specialist, a higher degree of skill is required of him than of one who does not profess to be so qualified by special training and ability.”

-Schroeder J.A., *Crits v. Sylvester* (1956)

A defendant is liable for any injuries or death caused or contributed to by his or her negligence. To sue a doctor, the patient must prove that the doctor owed him or her a duty of care, that the doctor breached the standard of care prescribed by law, that the patient suffered an injury or loss and that the doctor's conduct was the actual and legal cause of the patient's injury. If the injury or death would not have occurred "but for" the negligence of the defendant, causation is established. Similarly, if the defendant's negligence "materially contributed" to the occurrence of the injury or materially increased the risk of the injury occurring, causation is established. It is the task of the trier of fact to determine whether or not causation is established.

Informed Consent

If an epilepsy patient suffers harm as a result of a risk of which the patient was not informed, the question arises as to whether the physician should have informed the patient of that risk. According to the law of torts, if the physician should have informed the patient of the risk in question and did not, the physician will be liable for negligence if full disclosure of the risk would have induced a reasonable person in the patient's particular position to adopt preventative measures (for example, take medication regularly or avoid consuming alcohol).

Alternatively, there remains a legal and moral dilemma in terms of patient's right not to be advised or alarmed about a condition for which there may not be a definable remedy. To discuss such a condition, which may evoke fear and impair quality of life for both the patient and his/her family, there may be questions raised of negligence. As the doctor cannot adequately protect against SUDEP, it can be argued that the doctor has no obligation to discuss the condition, unless such an explanation is sought by the patient. To discuss it without consent from the patient may significantly diminish quality of life and may be grounds for litigation against that doctor.

The risk of SUDEP is relatively small. But, it is, nevertheless, real. Discussions with bereaved relatives have indicated a lack of awareness and knowledge of SUDEP and many would have preferred to have known of the possibility of premature death, however remote.

Robert Carr, a solicitor/advocate and medical negligence specialist, argues that to rely on patients seeking information on the risk of SUDEP is an illogical position as it requires the patient to know about the risk in order to raise the issue. While some patients wish to know very little information about risk, they should be offered such information, and, if such information is declined,

that should be recorded, albeit that opportunity must be provided to revisit the issue where wishes change. Additional speculation on this matter might look to the potential liability for harm to family members who suffer the shock and trauma of losing a loved one to SUDEP.

For more information about SUDEP, contact the SUDEP Awareness and Support Association (SASA). SASA is a network of people affected by SUDEP, and is associated with Epilepsy Ontario, Epilepsy Toronto and Bereaved Families of Ontario. The network offers information and support to people who have lost a loved one to SUDEP, and is working to raise awareness of SUDEP among people with epilepsy, doctors, coroners, and the general public. More research into this mysterious syndrome is necessary if SUDEP is to be prevented in the future. Contact info@epilepsytoronto.org or Tamzin Jeffs 416-964-9095 x.236 for information about SASA or how you can get involved.

In addition, Epilepsy Toronto has created a SUDEP bulletin board for people bereaved by SUDEP to connect with others who are going through, or have gone through, a SUDEP death. Log onto:
www.epilepsytoronto.org/cgi-bin/gforum.cgi?category=2

For a comprehensive overview and global perspective on SUDEP, see the following publication, borne from a partnership between Epilepsy Australia Ltd and Epilepsy Bereaved UK: “Sudden Unexpected Death in Epilepsy – a Global Conversation” (www.sudep.org/global_conversation.asp).



Other Resources

If you require further information, either legal or epilepsy-related, please contact:

Lawyer Referral Service is offered by the Law Society of Upper Canada, (covering all Ontario lawyers). For a nominal fee of \$6.00 (automatically charged to your phone bill), you will be provided with the names of three lawyers who deal with your issue. The fee includes a 30-minute consultation with a lawyer to help you determine your rights and options. You can contact the Lawyer Referral Service at 1-900-565-4LRS (4577) or visit their web site www.lsuc.on.ca/public/referral_en.jsp for more information.

Epilepsy Ontario (www.epilepsyontario.org) is a registered charitable non-profit non-governmental health organization dedicated to promoting independence and optimal quality of life for children and adults living with seizure disorders, by promoting information, awareness, support services, advocacy, education and research.

Through a network of agencies, contacts and associates, Epilepsy Ontario provides client services, counselling, information and referral services, education and advocacy services for children and adults living with seizure disorders, and for their families, friends, co-workers and caregivers.

Epilepsy Ontario offers long-term programmes to raise standards of care and supports medical research into seizure disorders. It hopes to improve public awareness and education through the Provincial Resource Centre, publications, its web site, conferences, and outreach programs. You can contact Epilepsy Ontario at 905-764-5099 or toll-free at 1-800-463-1119.

Legal Aid is available to low income individuals for a variety of legal problems, including disability support, Ontario Works, Employment Insurance and human rights complaints. To find a list of local Legal Aid Offices and legal clinics, visit their web site at www.legalaid.on.ca or call them at 416-979-1446 (Toronto area) or 1-800-668-8258 (outside Toronto).

Ontario INFO line is a service for vulnerable persons with disabilities and vulnerable seniors in Ontario provided by the Ministry of Citizenship, Culture and Recreation of the Province of Ontario.

INFO line provides free, confidential, one-stop information and referrals to vulnerable persons with disabilities, vulnerable seniors, their caregivers, family, friends and community professionals across Ontario.

INFO line provides referrals for:

- Eligibility for public and private income programs
- Funding programs which may cover the cost of medications, assistive

devices, and other expenses

- Avenues of appeal when benefits have been denied to a vulnerable adult or family members
- Circumstances that may require legal advice, and where and how to get it
- Competency assessment, guardianship, powers of attorney and related issues
- Social and community services available to vulnerable adults and their caregivers
- Long-term care, mental health, disability-related and abuse-related services

Contact INFO line at TTY (Toronto) 416-327-4282, TTY 1-800-387-5559 or toll-free at 1-866-532-3161.

ALL
about
EPILEPSY



All About Epilepsy

This section contains information from Epilepsy Ontario's brochure, All About Epilepsy.

What is Epilepsy?

Epilepsy is a neurological disorder—a physical condition—which causes sudden bursts of hyperactivity in the brain. This hyperactivity produces “seizures” which vary from one person to another in frequency and form.

A seizure may appear as:

- a brief stare
- a change of awareness
- a convulsion

A seizure may last a few seconds or a few minutes.

Epilepsy

- is not a disease
- is not a psychological disorder
- is not contagious

Causes

In approximately 60-75% of all cases, there is no known cause. Of the remaining cases, there are a number of frequently identified causes:

- brain injury to the fetus during pregnancy
- birth trauma (lack of oxygen)
- aftermath of infection (meningitis)
- head trauma (car accident, sports injury, shaken baby syndrome)
- brain tumour
- stroke

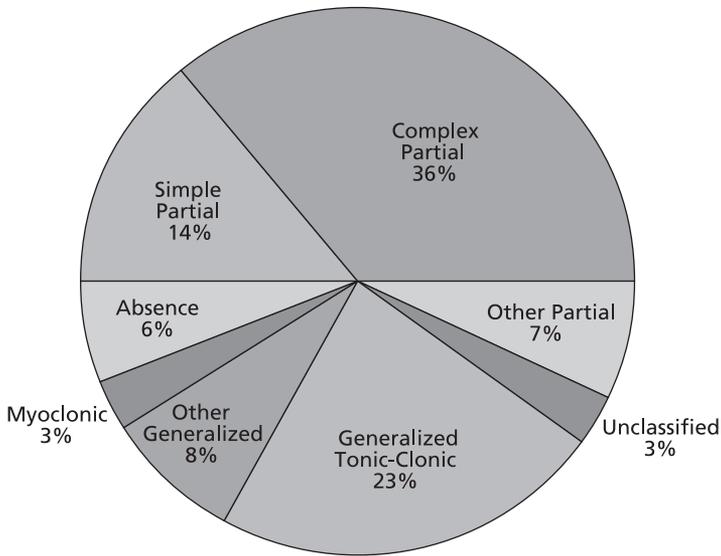
Is There a Cure?

Although treatments are available to reduce the frequency and severity of seizures, there is no known cure for most cases of epilepsy. For a small number of people with localized brain abnormalities, surgery may offer a cure.

Seizures

There are many different types of seizures. Most are classified within 2 main categories: partial seizures and generalized seizures.

Incidence of Seizure Types



Based on information from:

Epilepsy—A Comprehensive Textbook, J Engel Jr & TA Pedley, editors Lippincott-Raven, 1997.

Partial Seizures

Partial seizures occur when the excessive neural activity in the brain is limited to one area.

The 2 most common forms are:

- simple partial seizures and
- complex partial seizures.

In a simple partial seizure, the person may experience a range of strange or unusual movements or sensations, such as sudden jerky movements of one body part, distortions in sight or smell, a sudden sense of fear or anxiety, stomach discomfort, or dizziness. These sensations may be described as an aura. An aura is a simple partial seizure which can occur alone, or can be followed by a more generalized seizure.

In a complex partial seizure, the person loses awareness of the environment as the seizure begins, and appears dazed and confused. The person may exhibit meaningless behaviours such as random walking, mumbling, head turning, or pulling at clothing. These behaviours cannot be recalled by the person after the seizure.

Generalized Seizures

Generalized seizures occur when the excessive neural activity encompasses the entire brain. The 2 most common forms are generalized absence seizures and tonic-clonic seizures.

During an absence seizure, the person appears to be staring into space and his/her eyes may roll upwards. This kind of seizure is characterized by 5 to 15 second lapses of consciousness. When it has ended, the person will not recall this lapse of consciousness. Generalized absence seizures most often occur in childhood and disappear during adolescence. They are less prevalent in adulthood.

During a tonic-clonic seizure, the person will usually emit a short cry and fall to the floor. (This cry does not indicate pain.) The muscles will stiffen first and then the body extremities will jerk and twitch (convulse). Bladder control may be lost. Consciousness is lost and may be regained slowly.

Other Facts about Seizures

Some medical conditions may cause seizures in people who do not have epilepsy. These include: febrile seizures (caused by high fever in children), withdrawal seizures, and seizures caused by poisoning, allergic reaction, infection, or an imbalance of body fluids or chemicals (low blood sugar). These are not considered to be forms of epilepsy.

Persons who have lived with epilepsy for much of their lives may find that their seizures change as they age. The duration of their seizures may become longer or shorter; the intensity of their seizures may worsen or improve; seizure episodes may occur more or less frequently. Seniors also demonstrate a high rate for newly-diagnosed cases of epilepsy.

While there is a 10% chance that a person will experience a single seizure at some time during their lifetime, a single seizure is not considered to be epilepsy.

Postictal States

The “ictal” state is the time during which a seizure occurs. Postictal states commonly follow both tonic-clonic and complex partial seizures. As a person regains consciousness after a seizure, s/he may experience fatigue, confusion and disorientation lasting minutes, hours or even days (or, rarely, longer). S/he may fall asleep or gradually become less confused until full consciousness is regained.

For more information, please contact your local epilepsy association or visit www.epilepsyontario.org/seizures

Important

Status epilepticus, is a prolonged or repeating seizure state. It can be a life-threatening medical emergency. Status epilepticus can be convulsive (tonic-clonic or myoclonic) or non-convulsive (absence or complex partial). A person in non-convulsive status epilepticus may appear confused or dazed.

If seizures last 5 minutes or more, or if they occur one after another without full recovery between seizures, immediate medical care is required. Call 911.

Diagnosing Epilepsy

Diagnosis of a seizure disorder (epilepsy) is based on the following considerations.

Medical History

The physician needs to know when the seizures started, and to have a detailed description of the seizures. The family's health history is also considered.

Diagnostic Tests

CAT Scan

Computerized Axial Tomography, also known as CT (Computed Tomography) imaging, is a safe and non-invasive procedure which uses low radiation X-rays to create a computer-generated, three-dimensional image of the brain. It provides detailed information about the structure of the brain by using a series of X-ray beams passed through the head to create cross-sectional images of the brain. These may reveal abnormalities (blood clots, cysts, tumours, scar tissue, etc.) in the brain which may be related to seizures. This allows physicians to examine the brain's structure, section by section, as the test is being conducted. The CAT scan helps to point to where a person's seizures originate.

EEG

An electroencephalogram is a noninvasive test which detects and records electrical impulses on the surface of the brain. These impulses are transmitted from small metal discs, placed on the person's scalp, through wires which are connected to an electroencephalograph – the instrument used to register this activity and record it on graph paper or on a computer screen. This safe and painless procedure will not affect you in any way.

An EEG is used by a neurologist to determine whether there are any irregular electrical activities occurring in the brain which may produce seizures. It can help identify the location, severity, and type of seizure disorder.

An abnormal EEG does not necessarily diagnose epilepsy nor does a normal EEG reading exclude it.

MEG/MSI

Magnetoencephalography, also called Magnetic Source Imaging, is a non-invasive scanning technique which provides information about the function of the brain. It is a safe and painless procedure that detects small biomagnetic signals produced by the brain, by recording magnetic fields over the surface of the head. These signals provide information about the location of active brain areas. This technique allows doctors to investigate how different areas of the brain interact with one another.

MEG can help to identify brain zones which emit abnormal electric currents associated with epilepsy; “see” the magnetic fields associated with sensory areas of the brain by stimulating the senses during MEG recording sessions; view the brain zones which control language by having the patient perform linguistic tasks during MEG; and, identify the brain zones associated with learning and memory by having the patient perform cognitive tasks during MEG. It is useful in planning surgical treatment of epilepsy and for pre-surgical functional mapping of the brain. It quickly provides high resolution images of the brain, used to compare function in relationship to behaviour.

MRI

Magnetic Resonance Imaging is a safe and non-invasive scanning technique that uses a magnetic field, radio waves, and a computer to produce two or three dimensional images of the brain. This detailed picture of brain structures helps physicians locate possible causes of seizures and identify areas that may generate seizures. No X-rays or radioactive materials are used.

An MRI offers doctors the best chance of finding the source of seizures. Because seizures can arise from scar tissue in the brain, an MRI can show scar tissue and allow doctors to determine the nature of it. The images produced from the MRI are extremely precise. The information provided by MRI is valuable in the diagnosis and treatment of individuals with epilepsy and in determining whether surgery would be beneficial.

MSRI

Magnetic Resonance Spectroscopic Imaging is similar to MRI except that, while MRI looks at the signals detected from the protons of water in the body, MSRI looks at the signals detected from other proton-containing metabolites.

PET

Positron Emission Tomography is a scanning technique which detects chemical and physiological changes related to metabolism. It measures the intensity of the use (metabolization) of glucose, oxygen or other substances in the brain. This allows the neurologist to study the function of the brain. By measuring areas of blood flow and metabolism, the PET scan is used to locate the site from which a seizure originates.

The PET scan provides information about metabolic activities, chemistry or blood flow by detecting how quickly tissues absorb radioactive isotopes. A small amount of radioactive substance is injected into the body. When this substance reaches the brain during the scan, a computer uses the recorded signals to create images of specific brain functions.

The information provided by a PET scan is valuable in the diagnosis of seizure type and in the evaluation of a potential candidate for surgery. PET images may demonstrate pathological changes long before they would be made evident by other scanning techniques.

Functional MRI

Similar to PET, a functional MRI provides information about active brain tissue function and blood delivery. However, it is more precise in temporal and spatial resolution. It is an ideal tool in pre-operative planning because it can reveal the exact location of the seizure area.

SPECT

Single Photon Emission Computed Tomography is a functional imaging technique which creates 3-dimensional images of the brain on a computer, allowing physicians to visualize blood flow through different areas of the brain.

Individuals with epilepsy often have changes in blood flow to specific areas of the brain when a seizure begins. By measuring blood flow, the SPECT scan may help to identify where seizures originate. This test provides information about how well the various regions of the brain are functioning by measuring relative cerebral blood flow. This information helps your physician to more accurately diagnose the type of seizure, locate the site where a seizure originates, and evaluate a potential candidate for surgery.

The radiation exposure from a brain scan is small. It is in the range of 1 to 3 times your annual exposure to natural background radiation.

Diagnostic testing equipment is constantly improving but is not available in all areas. For more information, consult your specialist, your local epilepsy association, or your provincial Ministry of Health.

Treating Epilepsy

Drug Therapy

Many seizures are controlled by anti-seizure medications (sometimes called anti-convulsants or anti-epileptic drugs [AEDs]).

Monotherapy (using 1 drug), or polytherapy (using a combination of drugs) may be prescribed by your doctor. Different types of seizures require different medications. Some medications may produce unwanted side effects.

Response to Medication

Approximately

- 50% of seizures are eliminated by medication,
- 30% of seizures are reduced in intensity and frequency by medication,
- 20% of seizures are resistant to medication.

History of Medications

For more than 100 years, various kinds of medications have been used to treat seizure disorders.

1861 – Bromides

The first medication used to control seizures. Side effects were severe.

1912 – Phenobarbital

Effective, but sedating.

1936 – Phenytoin

Known as the “miracle drug” of its day.

Today

Many new medications are available, including a number approved since 1990.

The Future

Research continues to be done in an effort to find safe and effective anti-convulsants.

Vagus Nerve Stimulation

Vagus Nerve Stimulation (VNS) involves periodic mild electrical stimulation of the vagus nerve in the neck by a surgically implanted device similar to a heart pacemaker.

VNS has been found effective in controlling some epilepsies when anti-epileptic drugs have been inadequate or their side effects intolerable, and neurosurgery has not been an option.

Common side effects, which occur only during stimulation, may include a tingling sensation in the neck and/or mild hoarseness of the voice. Other possible side-effects may include coughing, voice alteration, shortness of breath, transient sensations of choking, throat pain, ear or tooth pain, and skin irritation or infection at the implant site. Unlike many medications, there seems to be no significant intellectual, cognitive, behavioural or emotional side effects to VNS therapy.

VNS is approved in more than 20 countries, and is now the second most common treatment for epilepsy in the USA.

Ketogenic Diet

This strictly supervised diet is prescribed for children. The diet is high in fat and low in carbohydrates. It is prescribed when seizures are drug resistant and surgery is not an option. Seizures are brought under control in many of the children who try the diet, and are eliminated—sometimes permanently—in some of the children who rigidly stick to the diet.

Surgery

Surgery is used when drugs have failed and when the brain tissue causing the seizures can be identified and safely removed without damaging psychological or major body functions. This applies only to a small percentage of persons living with epilepsy.

Different types of operations may be performed. In general, they fall into 2 main groups:

- removal of the area of the brain that is producing the seizures;
- interruption of the nerve pathways along which seizure impulses spread.

Facts about Epilepsy

Age

Epilepsy can develop at any age. About 50% of new cases of epilepsy begin in childhood and adolescence, with the highest incidence during the first few months of life. Many people who develop seizures during their childhood or adolescence tend to experience a reduction in the intensity and frequency of seizures as they approach adulthood.

There is also a sharp increase in incidence during later life, with some studies showing almost 25% of new cases of seizures occurring after age 60, perhaps as a result of small strokes.

Prevalence

It is estimated that 3-4% of the population have had, or will have, some form of seizure disorder during their lifetime. That's more than 1 person in 50.

At least 124,00 and possibly as many as 248,000 people in Ontario are living with a seizure disorder

Genetics

About 30% of seizures relate to a clear-cut abnormality in the brain. In the other 70% of cases, the brain appears normal. In these cases, genetic causes are suspected. Multiple genes are involved, however, and inheritance does not follow simple Mendelian rules.

Medical Assistance

If you think that you or any member of your family might have a seizure disorder, contact your family physician. You or the member of your family may be referred to a neurologist, depending on individual circumstances.

Living with Epilepsy

Epilepsy can carry with it a host of social and psychological problems. Friends' and family's lack of understanding about seizure disorders is often due to

ignorance and/or fear. This sometimes leads to over protectiveness or imposition of unnecessary restrictions on the individual.

Other personal issues may include insecurity, anger, frustration and depression.

Public Awareness

For many, it is not the seizure disorder itself, but negative public attitudes which create a greater disability. Public information and education are vitally important to eliminate societal prejudice.

School

General Guidelines

Students with seizure disorders can progress through growth and developmental stages normally. They are active and are interested in the same activities as their peers. They should be encouraged to take part in all regular school activities, including sports.

Problems at School

If a student with a seizure disorder is having academic or social problems at school, assistance is available. For academic problems, ask to see the Special Education Consultant for your area, or contact your local epilepsy association.

Employment

Career Goals

The majority of individuals with seizure disorders are able to enjoy meaningful employment. In fact, it has been demonstrated that people with epilepsy are often more productive, with less absenteeism, than their peers.

It is important for young adults with seizure disorders to work with their school's guidance department to establish meaningful and appropriate career goals. Programs have been designed to assist in training and employment. These change regularly. Contact your local epilepsy association for the most current information.

Financial Assistance

Drug Benefit Card

Special assistance is available for anyone who has extraordinary needs, such as high prescription medication costs. A special needs assessment is completed for each applicant. Eligibility is based on monthly income.

Apply through the Drug Programs Branch of the Ontario Ministry of Health and Long-Term Care, or your local municipal Community Services department.

Trillium Drug Plan

The Trillium Drug Plan is a supplementary insurance program offered by the provincial government. It is for people whose drug costs are not fully covered by a private insurance plan and who spend a large part of their income on prescription medications. Coverage is based on family income and expenses. It covers the costs of drugs listed in the Ontario Drug Benefit Formulary. Medications not listed in the Formulary may be covered if your prescribing physician submits a request under the “Section 8 Mechanism”.

Travel Grants

Travel grants are available for persons who must travel distances of more than 200 kilometres each way for medical attention. A doctor’s referral is required. Grant applications, available through one’s own family physician, may be submitted after each trip.

When reserving tickets, check with the carrier’s customer service department: many modes of transportation offer special fare discounts for those with a doctor’s certificate. Many offer free transportation for a medically-required attendant.

Support Services

A broad range of support services are available through Epilepsy Ontario and its network of affiliated local epilepsy associations.

Some of the many programs and services which improve the quality of life for people living with epilepsy include:

- information and education services
- toll free information phone line
- literature/videos/multimedia
- Resource Centre and lending library
- Kids on the Block™ puppet troupes for children in kindergarten through Grade 7
- “Perfection” interactive play for youth and children
- speakers bureau
- provincial and local newsletters
- medical forums and conferences
- workshops about employment, etc.
- children’s camp and youth weekends
- counselling and referral services
- advocacy and human rights support
- support groups
- prevention programs
- tips about living with epilepsy
- service dogs, trained to assist those with severe seizure disorders
- chapter/contact development

Please note: Services vary from region to region. Not all of these programs and services are available in every region of Ontario.

First Aid for Seizures

Tonic-Clonic (Convulsive) Seizures

Keep Calm.

- Seizures may appear frightening to the onlooker.
- They usually last only a few minutes and generally do not require medical attention.
- Remember that the person having a seizure may be unaware of their actions and may or may not hear you.

Protect from further injury.

- If necessary, ease the person to the floor.
- Move any hard, sharp or hot objects well away.
- Protect the person’s head and body from injury.
- Loosen any tight neckwear.

Do not insert anything in the mouth.

- The person is not going to swallow the tongue.
- Attempting to force open the mouth may break the teeth or cause other oral injuries.
- If the person starts to bleed from the mouth, do not panic. They probably have bitten their tongue and are not bleeding internally.

Roll the person on their side after the seizure subsides.

- This enables saliva to flow from the mouth, helping to ensure an open air passage.
- If there is vomit, keep the person on their side and clear out their mouth with your finger.

If a seizure lasts longer than 5 minutes, or repeats without full recovery – SEEK MEDICAL ASSISTANCE IMMEDIATELY. CALL 911.

- Although this rarely occurs, status epilepticus is life-threatening. It is a serious medical emergency.

Talk gently to the person.

- After any type of seizure, comfort and reassure the person to assist them in reorienting themselves.
- The person may need to rest or sleep.
- If the person wanders, stay with them and talk gently to them.

Check for a MedicAlert™ bracelet or other medical ID

- The bracelet or necklet may indicate the seizure type and any medication the person is taking. If you call the MedicAlert hotline, an operator can direct you in your first aid procedures and may direct you to call any emergency contacts and physicians listed in that member's file.

If a child experiences a seizure, notify the parents or guardians

Complex Partial Seizures

- Do not restrain the person.
- Protect the person from injury by moving sharp objects away.
- If wandering occurs, stay with the person and talk quietly.

Absence Seizures

- No first aid is required.
- Reassure the person.

Simple Partial Seizures

- No first aid is required.
- Reassure the person.

Seizures - Things to Remember

When you see someone having a seizure, do not be frightened. Remain calm and remember:

- If a person starts to bleed from the mouth, s/he has probably bitten the tongue and is most likely not bleeding for any other reason. This can be taken care of after the seizure ends.
- During a seizure, a person often stops breathing for only a few seconds, but will resume breathing.
- Most seizures last only 1-2 minutes, although the person may be confused for some time afterward.
- The brain almost always stops the seizures safely and naturally.
- Once a seizure has started, you cannot stop it – just let it run its course.
- People don't feel pain during a seizure, although muscles might be sore afterward.
- Seizures are usually not life threatening, but the risk is increased in seniors by extra strain on the heart, the possibility of injury, or reduced intake of oxygen.
- Seizures are not dangerous to others.

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308—1 Promenade Circle
Thornhill ON L4J 4P8
800-463-1119
905-764-5099
info@epilepsyontario.org

For local information and support, call
1-866-EPILEPSY (374-5377)