

Epilepsy And The Law

What are the legal
rights of a person
with epilepsy in
British Columbia?



**VICTORIA EPILEPSY &
PARKINSON'S CENTRE**
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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 [1977] 3 S.C.R. 624

Epilepsy is a neurological disorder that likely affects sixty million people around the world at any one time. Despite 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. Disability is a protected ground of discrimination under each area of the *BC Human Rights Code*. The *Code* prohibits discrimination on the basis of physical and mental disability with respect to publications (section 7), accommodation, services and facilities (section 8), purchase of property (section 9), tenancy (section 10), employment advertisements (section 11), employment (section 13), and with respect to membership in a union (section 14). The *Code* extends to all aspects of employment and to private and public services offered by municipal and provincial governments and provincially-regulated broader public sector organizations such as school boards and post-secondary institutions. 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 in British Columbia. 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 British Columbia Employment and Assistance (BCEA) Program

The BCEA is designed to meet the needs of people with disabilities who are in financial need, or who want and are able to work but need support to do so. The BCEA has 2 components: income support and employment supports.

Income Supports

To qualify for BCEA income support benefits, you must meet the definition of a “person with a disability”. As defined in s. 2(2) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”), a person with a disability is someone who is at least 18 years of age, and who has a physical or mental impairment which is likely to continue for at least 2 years and which significantly restricts his or her ability to perform daily living activities either “continuously or periodically for extended periods” and, as a result of these restrictions, requires assistance with daily living activities. Assistance could come from another person, an assistive device or an assistance animal.

Broken down, the definition requires you to establish 5 things:

- that you are over 18 years of age;
- you suffer from a severe physical or mental impairment;
- your impairment is likely to continue for at least 2 years;
- your impairment significantly restricts your daily living activities either continuously or periodically for extended periods; and
- you require assistance from another person, assistance device, or assistance animal to perform your daily living activities.

Any application for BCEA benefit requires the support of: a medical practitioner, who will attest to the physical or mental impairment which is likely to continue for at least 2 years; and a prescribed professional, who will attest to the restrictions on the person’s ability to perform daily living activities.

For the purposes of the EAPWDA, the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) defines what is considered a “daily living activity”, who is a “prescribed professional”, and outlines the application process.

For individuals with physical and mental impairments, daily living activities include: preparing own meals; managing personal finances; shopping for personal needs; using public or personal transportation facilities; performing housework to maintain place of residence in acceptable sanitary condition, moving about indoors and outdoors; performing personal hygiene and self-care; and managing personal medication. In relation to a person who has a severe mental impairment, the definition also includes: making decisions about personal activities, care or finances; and relating to, communicating or interacting with others effectively.

The list of prescribed professionals includes: medical practitioners, registered psychologists, registered nurses, registered psychiatric nurses, occupational therapists, physical therapists, social workers, chiropractors and nurse practitioners.

Your medical practitioner can attest both to your physical or mental impairment and to the restrictions on your ability to perform daily living activities. The strong emphasis on medical information, as opposed to information from you or from your family members, is important to remember. If your medical practitioner and other prescribed professionals are familiar with your situation, file supporting documentation from them all. You should also file information from others, like friends and family members, who are familiar with your situation.

Periodically, the ministry will review files. If, during the review, additional information from a health professional is needed, the person will be asked to submit a new physician's and/or assessor's report.

The EAPWDA establishes a disability “designation” (PWD designation) which qualifies you for disability benefits and which is maintained unless a review shows that your situation has changed. The legislation focuses on a person's functional limitations as opposed to diagnoses and extends to those with episodic illnesses by acknowledging that restrictions to daily living activities can either be continuous or periodic for extended periods of time.

A person with a PWD designation may be eligible for:

- monthly support and shelter assistance;
- medical coverage which includes Medical Services Plan and PharmaCare coverage with no deductible, as well as other health supplements such as dental and optical coverage;

- a \$500 earnings exemption per month;
- a low-cost annual bus pass; and
- exemptions from time limits and employment obligations for receiving assistance.

Common Issue: In many cases, BCEA income support has been denied because persons with epilepsy were not considered to have a physical or mental impairment which significantly restricted his/her ability to perform daily living activities either “continuously or periodically for extended periods”. The EAPWDA focuses on functional limitations. 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 the Ministry’s denial of benefits?

The appellant was a professional fisherman who was post brain surgery for epilepsy. He had ceased working. His medical practitioner supported that he had significant deficits in cognitive and emotional functioning. Particular concern was expressed about his memory, the impacts on his emotions, insight and judgment. The medical practitioner indicated that the appellant functioned well physically. His assessment report noted that the appellant was independent in his daily living activities except for needing continuous assistance in taking his medication. He also required periodic support in being able to deal appropriately with unexpected demands and in being able to secure assistance from others. The appellant testified that he had difficulty understanding and remembering things, talked more slowly and repeated himself. He received nightly phone calls to remind him to take his medication and to pay his bills.

The appellant was denied a PWD designation because the Employment and Assistance Appeal Tribunal agreed with the ministry that while there were some impacts on his daily living activities, and he required some assistance, for the most part, the appellant was independent and the evidence did not establish that his impairment had directly and significantly restricted his ability to perform daily living activities and that, as a result of those restrictions, he required help to perform the activities.

Cited as: *EAAT* 2010 – 418

The appellant experienced 3 to 5 seizures a month and was in considerable pain for days afterwards. Recent seizures had resulted in a broken jaw and damaged ribs. The ministry’s decision denying

him a PWD designation was upheld by the Employment and Assistance Appeal Tribunal because it agreed with the ministry that there was no professional opinion to support the appellant's evidence. The evidence from his doctor about the severity of his condition was insufficient to be able to determine that his physical or mental impairment was severe. While the appellant said that he required assistance from his landlord and the landlord's wife with cleaning, driving, shopping, laundry, and meal preparation, his doctor did not comment on the need for help from others in his report.

Cited as: *EAAT* 2010 – 109

The appellant, a construction worker, had been diagnosed with epilepsy in March 2008. He had given up work because he was not permitted to drive, work with machinery, or work at heights and was considered a risk of injury to his co-workers and/or himself. His wife said that he required her assistance with some daily living activities.

He experienced tonic-clonic and partial complex seizures at unpredictable times. His medical practitioner reported no severe physical impairment but significant deficits in his cognitive and emotional functions specifically with respect to consciousness, memory and sustained concentration. His medical practitioner did not report a need for assistance with daily living activities. His assessor also did not explain any restrictions in daily living activities. A neurological report identified a mood disorder and suggested a psychiatric consult. The psychiatric report indicated that the appellant suffered from depression.

The Employment Assistance Appeal Tribunal upheld the ministry's decision not to grant the appellant a PWD designation. The Tribunal agreed that there was no evidence of a physical impairment. Although there was evidence from the appellant and his wife that his mental impairment directly and significantly restricted the appellant in the performance of his daily living activities, a prescribed professional had not provided clear medical evidence of a restriction. The Tribunal explained that due to the strong weight that the EAPWDA places on medical evidence, evidence from the appellant or his wife needed to be confirmed by a medical practitioner or a prescribed professional.

Cited as: *EAAT* 2009 – 356

How to Apply

To obtain an application form for BCEA benefits, you may visit an Employment and Assistance Centre in your local community. A list of the centres is available sorted by region or by city or town at:

<http://www.hsd.gov.bc.ca/contacts/index.htm>. A sample application form is available on the Ministry of Social Development website at: <http://www.hsd.gov.bc.ca/forms/pdf/HR2883.pdf>

Alternatively, you may apply on line at: <https://www.iaselfserve.gov.bc.ca>

If you are found to be eligible for assistance, you will be contacted by a representative of the Ministry who will book an eligibility interview with you.

What to do if you are refused BCEA benefits

Request a reconsideration

Not all decisions of the ministry may be reconsidered. If you are unhappy with a ministry decision with respect to your application, the ministry encourages you to discuss that with your assigned employment and assistance worker. If you continue to be dissatisfied, and the decision resulted in a refusal, reduction or discontinuance of assistance or a supplement (under the EAPWDA, a supplement can mean a health supplement, a nutritional supplement and/or a crisis supplement for emergencies), or concerning the conditions of, or non-compliance with, an employment plan, you may request a reconsideration of the ministry's decision.

A reconsideration decision is a new ministry decision and is the final decision at the ministry level. It is your last opportunity to file new evidence in support of your application. Requests for reconsideration are made under section 16 of the EAPWDA .

You can request reconsideration of a ministry decision by obtaining and completing a Request for Reconsideration form. You can obtain this form at your local Employment and Assistance Office. It contains a number of parts.

Your worker will complete sections 1 and 2 of the Request for Reconsideration form, stating the decision made by the ministry, providing all of the reasons for the decision, and citing the legislation under which the decision was made.

You must complete sections 3 and 4 of the Request for Reconsideration form. You may include additional documentation or information that you believe supports, or is relevant to, your case. Be sure to sign and date the form. No new evidence can be submitted after a reconsideration decision has been made.

You have 20 business days from the date you were notified of the ministry's original decision to return your Request for Reconsideration to a local Employment and Assistance office.

Remember to record the date you were notified of the ministry's original decision and the date you submitted your Request for Reconsideration form. If you require assistance in completing the Request for Reconsideration form, you may wish to ask an advocate to assist you. You may request an extension of 10 additional business days if more time is needed to obtain and submit information before the reconsideration decision is made.

Once your Request for Reconsideration has been received, it will be reviewed and a decision made by a Reconsideration Officer. This decision will be mailed to you within 10 business days of the ministry receiving the completed Request for Reconsideration form or within 20 business days, if you have requested and been granted an extension to obtain and submit information.

If you are already in receipt of BCEA benefits, under section 54 of the EAPWDA, you may be eligible to receive supplemental benefits while awaiting the outcome of your reconsideration request or an appeal.

Appeal process

The EAPWDA sets up an appeal process for most ministry decisions. Appeals are to the Employment and Assistance Appeal Tribunal (the Tribunal) which is an independent, arms-length body that is responsible for the overall management and administration of the appeals process. The Tribunal Chair and Vice-Chairs are appointed by the Lieutenant Governor. The Tribunal members are recruited from communities throughout British Columbia and are appointed by the Minister for a set term.

If you are unhappy with the outcome of your Request for Reconsideration you may, in most cases, appeal the decision to the Tribunal by completing and submitting a Notice of Appeal form to the Tribunal within 7 business days of receiving your Reconsideration Decision. The appeal process is set out in the *Employment and Assistance Act and Regulation*. If you have any doubt about whether your Reconsideration Decision is appealable, file a Notice of Appeal with the Tribunal because the time in which you must do so is very short.

You should receive a Notice of Appeal form with the Reconsideration Decision when it is sent to you by the ministry. If not, you may pick up an appeal form from an Employment and Assistance Centre or from the Tribunal. A Notice of Appeal may also be found on the Tribunal's website at http://www.gov.bc.ca/eaat/down/notice_of_appeal_form.pdf

The Notice of Appeal may be filed with the Tribunal, within 7 days of your receipt of the ministry's Reconsideration Decision, by mail, fax or by email as follows:

MAIL: PO Box 9994 Stn Prov Govt
Victoria, BC V8W 9R7

FAX: Toll free: 1-877-356-9687
In Victoria: 250-356-6374

EMAIL: eaat@gov.bc.ca

Once the Tribunal receives a completed Notice of Appeal, it decides whether the matter can be appealed. Factors that are considered include whether the Notice of Appeal was submitted on time and whether the issue is appealable under the legislation. If you have filed an Appeal, you will be called the appellant.

If the matter is eligible for appeal, the Tribunal Chair will appoint a panel of up to 3 people to hear the appeal. A hearing is commenced within 15 business days of the completed Notice of Appeal being delivered to the Tribunal. Most hearings are conducted in person, usually in or near the community in which the appellant lives. Hearings can also take place by teleconference or, if both parties consent, in writing.

The Tribunal panel reviews the ministry's Reconsideration Decision and the appeal record, considers any supporting evidence provided by the appellant or the ministry, and renders a written decision, generally within 5 business days of the hearing. The Tribunal mails a copy of the decision to the appellant and the ministry within 5 business days of receiving it from the panel.

The Tribunal panel will determine whether the ministry reasonably applied the relevant acts and regulations or whether the ministry's decision was reasonably supported by the evidence submitted.

The decision of the Tribunal panel either confirms or rescinds the ministry's decision. The panel cannot replace the ministry decision with one of its own.

How to prepare for an appeal

You have the right to participate at the hearing of your appeal. You also have the right to request accommodation due to disability.

Support at your hearing

You can ask a family member, friend, or an advocate to come with you to the hearing or to help you prepare written information for the panel. There may be an advocate available to help you and you can visit PovNet's website at <http://www.povnet.org/> for a list

of advocacy agencies in or near your community.

You may bring an interpreter who is a friend or a family member. If required, the Tribunal will find an interpreter for you. You must tell them before the hearing that you need an interpreter.

If you want your advocate or a family member to communicate with the Tribunal on your behalf or receive information about your appeal, you will need to complete and return a Release of Information form. This ensures that you have control over who receives your personal information. The Release of Information form may be obtained by asking the Tribunal to send you it or on its website at: http://www.gov.bc.ca/eaat/down/new_release_of_information.pdf

Preparing your case

Hearings will proceed orally or in writing depending on which you choose in your application.

Your oral hearing

An oral hearing (in-person or by teleconference) will normally take place within 15 business days after you submit your Notice of Appeal. You will be notified of the date, time and place of the hearing at least 2 business days before the hearing. The hearing will take place in a room that is less formal than a courtroom and you and anyone who is there to support you, the members of the Tribunal, and a ministry representative will sit around a table. Make sure that you arrive a little early to allow yourself time to become familiar with the location of the room.

Bring your copy of the appeal package to the hearing. If possible, provide any new evidence to the Tribunal prior to your hearing so it can be distributed to the members of the Tribunal and the ministry representative on your behalf. Otherwise, bring copies to the hearing.

You will find it helpful to think about what you want to say to the panel to support your case. To help you prepare:

- Review the ministry's Reconsideration Decision. It will tell you why you were denied or found ineligible for benefits. Be prepared to tell the panel why that decision is incorrect or unreasonable. You will have to explain the nature of your condition and how it affects you.
- Think about whether a witness or additional evidence would help your case. Witnesses will be asked to remain outside the hearing room until they have testified.
- Review the sections of the acts or regulations that apply to your appeal.

- Read prior panel decisions. These decisions won't be followed by other panels; however, they give you a sense of how the Tribunal has dealt with similar appeals. Decisions about cases like yours are available on the Tribunal's website but are not searchable. Read a few to get a sense of what the Tribunal looks at. A list of some of the Tribunal's decisions involving people with epilepsy is available from the Victoria Epilepsy & Parkinson's Centre.
- Review the Tribunal Practices & Procedures.

The Tribunal has some helpful video clips on its website that show parts of an appeal hearing. They can be found at: **http://www.gov.bc.ca/eaat/popt/appeal_hearing_video.htm**

There are also some helpful videos about how to prepare and participate at tribunal hearings on the Justice Education website at: **<http://www.adminlawbc.ca/>**

Your written hearing

The Tribunal will write to you and tell you the deadlines for giving it information. You will have 7 business days to provide written reasons to support your case and to include any new information that you want the panel to consider. On receiving your submission, the Tribunal will forward it to the ministry, which has 7 business days to respond. You will receive a copy of the ministry's submission. The panel will review the written submissions, determine if any new evidence is admissible, and make a decision.

Adjourning your hearing

If you cannot make it to your hearing, or if you need more time to gather evidence, you can request to have your hearing at a later date. Fill out an Appeal Adjournment Request form, and state why you are asking for more time. An Appeal Adjournment Request form can be obtained by asking the Tribunal to send it to you or on its website at: **http://www.gov.bc.ca/eaat/down/new_appeal_adjournment_request_form.pdf**

Both the ministry and the Tribunal Chair must agree to the adjournment. If you make your request less than 1 business day before your scheduled hearing, it must be made to the panel at the hearing.

Dismissing your appeal

An appeal can be dismissed at any time before a panel makes a decision if both you and the ministry agree. This means that no decision will be made about your appeal.

Both you and the ministry must sign the Consent to Dismiss Appeal form and forward it to the Tribunal. The form can be obtained by asking the Tribunal to send it to you or on its website at: **http://www.gov.bc.ca/eaat/down/consent_to_dismiss.pdf**

Once the Tribunal receives the completed form, it will send you a letter confirming that the appeal has been dismissed.

After your hearing

The Tribunal panel decides whether the ministry's decision was:

- reasonably supported by the evidence; or
- a reasonable application of the legislation given your circumstances.

The panel will then either agree with (confirm) the ministry's decision or overturn (rescind) it in your favour. Generally, you will receive the written decision by mail within 10 business days of the date of your hearing.

Decisions in the available appeal cases involving applicants who have epilepsy, show that the Tribunal appears to focus on the impact of your epilepsy on your daily living activities. It also appears to be particularly important to provide information about the frequency of your seizures and the impact on your daily living activities following a seizure.

Next steps

The Tribunal's decision is final. However, you can file a petition in the BC Supreme Court asking a judge to review it. This is called a judicial review. Generally this must be done within 60 days of the Tribunal's decision (the time may be extended on application to the BC Supreme Court). An explanation of the judicial review process is available on the BC Supreme Court Self-help website at: **<http://www.supremecourtselfhelp.bc.ca/self-help.htm>**

To access judicial review decisions with respect to the Tribunal, you can search at **http://www.courts.gov.bc.ca/search_judgments.aspx** and enter "Employment and Assistance Appeal Tribunal", using quotation marks as shown, in the box asking for key words.

As well, if you believe you were treated unfairly by the ministry or the Tribunal during the process of your application, you can contact the Office of the Ombudsperson which investigates complaints about administrative unfairness by agencies of the government, settles complaints through consultation and makes recommendations to public agencies to resolve unfairness in their administrative processes. The Ombudsperson can be contacted at: **<http://www.ombudsman.bc.ca/>** or by telephone at:

Toll free access: 1-800-567-3247 (all of BC)

Local access: 250-387-5855 (Victoria)

Keep records of:

- the people you have contacted about the problem;
- the dates on which you contacted people and organizations; and
- papers and letters relating to your application and your complaint.

Employment Support Benefits

The Ministry of Social Development sponsors a province-wide Employment Program for Persons with Disabilities (EPPD).

The goal of the program is “to assist persons with disabilities to achieve their economic and social potential to the fullest extent possible”. The program provides a range of specialized services to help individuals with disabilities participate in their communities, pursue their employment goals to the extent they are able, increase their self-reliance, and build skills and experience that may lead to further employment or volunteer opportunities.

The EPPD provides individualized services provided through contracted Service Providers who work with clients to complete comprehensive individual plans to enhance the client’s job readiness and employability skills, and to obtain employment. They assist clients to set reasonable employment goals and provide the individualized services and supports needed to achieve those goals. The EPPD also delivers services to employed clients who are in imminent danger of losing their employment due to their disability.

Examples of the types of EPPD services include:

- In-Depth Planning – to build on the Service Planning activities outlined above, potentially including the completion of specific Formal Assessments;
- Pre-Employment Services – offering modules for Disability Management, Job Readiness, Employability Skills and Work Experience/Work Simulation;
- Employment Based Services – focusing on Employment Placement or Place and Train Placement; and
- Purchased Services – which include Disability Supports, Training/ Tuition Costs and related training expenses, Formal Assessments, and general Client Supports such as transportation, childcare and work clothing.

Participation in the EPPD is voluntary. The program’s clients are those whose primary barrier to employment is a disability, although

they may have other significant employment barriers that need to be addressed.

EPPD clients may or may not be in receipt of BCEA benefits. In 2006, under the original EPPD program, approximately 70% of clients were in receipt of Income Assistance.

How to Apply

Applications for the EPPD program are made at the offices of a contract service provider. The ministry's website does not list those offices but you can obtain the address of your local service provider by calling the ministry. You may contact the ministry by phoning Enquiry BC at the following numbers:

- In Victoria 250-387-6121
- In Vancouver 604-660-2421
- Toll free 1-800-663-7867
- By email EnquiryBC@gov.bc.ca

The first step in any application process is to decide whether your primary barrier to employment is a disability. If you have a designation as a PWD under the EAPWDA you will have automatically met the criteria. If not, the service provider will assess you for inclusion in the program.

Other Benefit Programs

The Canada Pension Plan (CPP)

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

The CPP disability benefit is available to people who have made enough contributions to the CPP, and whose disability prevents them from regularly working at any job. The disability or medical condition must be "severe" and "prolonged". Individuals who qualify for disability benefits from provincial programs or through private insurers may not qualify for the CPP disability benefit.

You must apply for a CPP 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 Service Canada on behalf of Human Resources and Skills Development Canada, a federal government department.

You may request to have the application kit mailed to you by contacting Human Resources and Skills Development Canada either

through their website at: <http://www.hrsdc.gc.ca> or by toll free telephone at: 1-800-277-9914 or you may complete the form online at: <http://www.hrsdc.gc.ca/cgi-bin/search/eforms/index.cgi?app=profile&form=isp1151&lang=eng>

Benefits are paid monthly to eligible applicants and their dependent children. The monthly disability benefit payment includes a fixed amount, plus an amount based on how much you contributed into the CPP plan when you were working and for how long. Payments are adjusted once a year in January if necessary, to reflect changes in the cost-of-living index. The maximum benefit payable in 2011 is \$1,153.37 (the average monthly payment in 2010 was \$810.46). The monthly children's benefit is a flat rate that is adjusted annually. In 2010, the children's benefit was \$214.85.

Once your application has been received, a medical adjudicator will review your medical condition and the functional limitations it imposes to determine whether it regularly prevents you from working. The Canada Pension Plan's framework for deciding entitlement to CPP disability benefits is explained on the Human Resources and Skills Development website at: http://www.hrsdc.gc.ca/eng/oas-cpp/cpp_disability/adjudframe/pdf/adjudication.pdf

Appeals procedures

If you are denied CPP benefits or are not satisfied that the level of your entitlement is correct, there are 3 levels of appeal.

1. Reconsideration

The first is to ask for a reconsideration of the Human Resources and Skills Development Canada decision. You must request reconsideration within 90 days of the date you receive the letter confirming that you have been denied benefits or setting out the level of your benefits. A reconsideration is a review of the decision based on the existing paperwork and medical reports and is unlikely to be successful unless you have new medical evidence that helps to substantiate your disability. The most common reasons for denial of benefits are that the disability is not severe or prolonged.

2. Office of the Commissioner of Review Tribunals

The next level of appeal is to the Office of the Commissioner of Review Tribunals (OCRT). Information about this office can be found on their website at: <http://www.reviewtribunals.gc.ca>

The request for an appeal to the Review Tribunal must be made within 90 days of the letter setting out the result of your reconsideration. You are entitled to appeal and can do so by sending

a letter or by completing an application form. If you decided to proceed by writing a letter, you should include:

- your first name and last name;
- your full address and the telephone number (including area code) at which you can be reached;
- your Social Insurance Number (SIN);
- the date of the decision that you wish to appeal; (You may include a copy of the decision letter from HRSDC if you wish.)
- the date on which you received the Reconsideration decision letter;
- your reasons for appealing, and a copy of any information you have that supports your appeal; and
- your signature.

The Notice of Appeal form is available on the OCRT website at:

<http://www.ocrt-bctr.gc.ca/frmfmr/noaada-eng.html>

Once you have completed your letter, or the Notice of Appeal, you should send it to:

Office of the Commissioner of Review Tribunals (CPP/OAS)

P.O. Box 8250, Station “T”

Ottawa, ON K1G 5S5

You will receive an acknowledgement letter from the OCRT letting you know that the appeal process has started. You will be assigned a Client Services Officer. The OCRT will ask HRSDC for a copy of your file containing all the information they used to make their Reconsideration decision.

The OCRT will also contact any “Added Parties” to your appeal; these are parties who may be affected by their decision. Usually in the case of CPP disability benefits, this will only include former spouses.

The OCRT will prepare a Hearing File for your appeal containing copies of all the papers they received from you, from HRSDC and from any Added Party. These papers will include all the information that HRSDC used to make their decision, such as:

- your application for CPP benefits;
- any decision letters; and
- any HRSDC Explanation of the Decision Under Appeal.

The papers may also include:

- T4 or T1 slips, or statements from your employer; and
- past medical records.

The OCRT will courier you a copy of the Hearing File and courier

a copy to any Added Parties, the HRSDC representative and the Review Tribunal Panel Members.

The OCRT will schedule a hearing date for your Review Tribunal. The hearing date is usually set about 6 to 7 months after you initiated your appeal. This gives you time to prepare for your hearing.

If you cannot make it to the hearing on the date and time the OCRT has scheduled, call your Client Service Officer to let them know, no later than 2 weeks after you receive your hearing date. After that time, the OCRT may not be able to change the date or time of the hearing. Any of the parties to an appeal are allowed to ask for a postponement. If a postponement request is turned down, the party can request an adjournment at the Review Tribunal hearing.

Before the hearing, your Client Service Officer will call you to confirm the hearing date and answer any questions you may have. They will answer questions about the OCRT process, such as:

- What legislation applies to the benefits I'm asking for?
- What happens at the hearing?
- What do I need to do to present my case as well as possible?
- What if I cannot speak English or French?
- What about wheelchair access or other special needs?
- What about my travel expenses?
- What about my photocopying expenses?

Preparing for your hearing

Your Hearing File is important for you to use when preparing for your hearing. Once you receive the Hearing File from the OCRT, you should review it to make sure it is complete. Be sure you review the reasons why HRSDC denied your benefits, explained in the HRSDC Explanation of Decision Under Appeal. Make notes about why you disagree with it.

Identify any information that supports your case and that you want to tell the Review Tribunal about. You may wish to highlight important information that you want to bring up during the hearing or make reference to the page numbers you want to refer the Review Tribunal to.

If you need to get more information to support your case, be sure to get it before your hearing and send it to the OCRT as soon as possible.

After you review your Hearing File, you may decide that you want a Representative, who can be a lawyer, friend, family member, union representative, or someone else, to present your case at your hearing.

Do not choose someone to represent you if they could be a witness in your case. A witness may be asked to leave the hearing room when you give your testimony and your representative should be in the hearing room at all times during your hearing. Let the OCRT know that you have authorized someone to represent you by writing to them including the representative's name, address and phone number, your social insurance number, your signature. You may also complete an Authorization to Disclose Form which can be found on the OCRT's website at: <http://www.ocrt-bctr.gc.ca/frmfmr/atdadd-eng.html>

Preparing your case

It is up to you (or your Representative) to make sure that you provide the Review Tribunal with enough information to prove that you meet all of the requirements to qualify for CPP disability benefits. The Review Tribunal must be satisfied that it is more likely than not that the legislative requirements have been met. When reaching a decision, the Review Tribunal must use only the information in your Hearing File and any additional spoken or written information given at the hearing. Helpful information about preparing your case is available on the OCRT website at: <http://www.ocrt-bctr.gc.ca/hwtcmm/cpprpc/cphrpc/pphppa-eng.html#060>

The Review Tribunal is a panel of 3 individuals who will hold a hearing into the issues in dispute. The panel will include a member of the legal profession (usually a lawyer), a member of the medical profession (usually a registered nurse or physician), and a member of the public at large. The hearing is designed to be very informal and is closed to the public and only parties to the appeal, their witnesses and their advisers are allowed to attend. At the review, the usual rules of evidence do not apply as it is an administrative proceeding. The panel usually asks questions and tries to determine whether the claimant is disabled. The hearing usually takes 1 to 2 hours. After the review, the panel makes a decision that gets mailed out to the claimant usually in 10 to 12 weeks' time.

3. The Pension Appeals Board

The Pension Appeals Board is the third and final level of appeal for Canada Pension Plan Applicants. Information about this Board is available on their website at: <http://www.pab-cap.gc.ca>

The Pension Appeals Board is responsible for hearing appeals from decisions of the OCRT. Both the Minister of Human Resources and Skills Development and claimants can appeal a Review Tribunal decision to the Pension Appeals Board. Members of the Pension

Appeals Board are provincial superior court judges or former judges and are appointed by Order in Council. Usually 3 Members hear each case.

Unlike the first 2 levels in the appeals process, hearings at the Pension Appeals Board are not automatic. Claimants must request permission to appeal by writing to the Pension Appeals Board within 90 days after receiving the Review Tribunal decision letter. Claimants are responsible for providing all information required to support the appeal. It is helpful for you to include any new medical information and to explain why you believe the OCRT decision is wrong. Every request should include the following:

- the claimant's name, address and social insurance number;
- the date of the Review Tribunal decision and the location of the hearing;
- the date the Review Tribunal decision was received;
- a detailed explanation of why the claimant is requesting leave to appeal;
- the facts which support the appeal;
- any new medical or other information that could affect the appeal; and
- the name and address of the claimant's representative, if there is one.

Using the documents which are received, and without the presence of any parties, 1 Member of the Pension Appeals Board will decide whether the appeal should be heard. The Pension Appeals Board will write to claimants and the Department of Human Resources and Skills Development Canada to tell them whether or not leave to appeal is granted. Leave to Appeal decisions are discretionary and the basis on which Leave to Appeal is granted is not readily available from the Pension Appeals Board website.

If the Board decides not to hear an appeal, the Review Tribunal decision is final and binding. If the Board decides to hear an appeal, it will schedule a hearing.

Pension Appeals Board hearings are hearings *de novo* or a new hearing. They are held in major cities across Canada and are open to the public. At the hearing, claimants and the Department of Human Resources and Skills Development Canada will have an opportunity to present their cases.

Legal counsel and appropriate expert witnesses always represent the Minister of Human Resources and Skills Development at these hearings. The claimant may also have legal counsel or a representative

of their choice. However, a claimant does not need to be represented. Most claimants present their own cases.

The Members of the Board and the Registrars will make sure that claimants understand each step of the hearing, and have every opportunity to present their cases. Questions and answers about the hearing process can be found on the Pension Appeals Board's website at: <http://www.pab-cap.gc.ca/que-ans-eng.cfm>

Minimal legal costs may be covered if the claimant is granted benefits. Minimal legal costs are also covered for the claimant when the Minister appeals a decision. All reasonable traveling and living costs are covered for all claimants.

The length of time it takes to go through this level of appeal varies by province. Claimants can expect to wait approximately 2 months before a decision is made about whether the appeal can proceed and up to 1 year before the case is heard.

Claimants should provide new information as soon as it becomes available. Claimants should send any new information to the Pension Appeals Board at least 2 weeks before their hearing. Claimants who submit new information at their hearing should bring 5 copies with them.

The Pension Appeals Board is required to prepare written reasons for its decisions. These are sent by the Registrar of the Pension Appeals Board to the parties to the appeal by registered mail or priority courier.

Pension Appeals Board decisions are posted on the internet at: <http://www.pab-cap.gc.ca>. In order to protect the privacy of claimants, decisions posted on the internet use initials rather than full names of claimants.

Decisions made by the Pension Appeals Board may be further judicially reviewed by the Federal Court.

The CPP Disability Vocational Rehabilitation Program

The Canada Pension Plan Disability Vocational Rehabilitation Program offers vocational counselling, financial support for training, and job search services to people who receive CPP Disability Benefits to help them return to work. Information about this program can be found at: http://www.servicecanada.gc.ca/eng/sc/cpp/disability/vocational_rehabilitation.shtml

Depending on your situation, you might be entitled to other benefits such as Employment Insurance sickness benefits (see page 39 below), Veterans Affairs disability benefits, or pension benefits from another country where you once lived.

Disability Tax Credit

You may qualify for a Disability Tax Credit. To apply for the credit, you or your representative must complete a T2201 Disability Tax Credit Form which can be found on the Canada Revenue Agency's website at: <http://www.cra-arc.gc.ca/E/pbg/tf/t2201/t2201-fill-10e.pdf>

The tax credit is non-refundable but can be 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 its effects.

Registered Disability Savings Plan (RDSP)

A Canadian resident under age 60, who is eligible for the Disability Tax Credit, is also eligible for an RDSP. Parents or guardians may open an RDSP for a minor. With written permission from the holder, anyone can contribute to the RDSP. Earnings accumulate tax-free, until you take money out of your RDSP. Information about RDSPs is available through this link to the Human Resources and Skills Development website: http://www.rhdcc-hrsdc.gc.ca/eng/disability_issues/disability_savings/index.shtml

You may also be eligible for a Canada Disability Savings Grant which is a matching grant that the Canadian Government will deposit into your RDSP. The maximum grant is \$3,500 each year, with a limit of \$70,000 over your lifetime. The amount of the grant depends on the amount you contribute and the Beneficiary's Family Income. Grants are paid into the RDSP until the year you turn 49.

The grant is explained at the following Human Resources and Skills Development website: http://www.rhdcc-hrsdc.gc.ca/eng/disability_issues/disability_savings/cdsg.shtml

Canada Disability Saving Bond

You may also be eligible for a Canada Disability Savings Bond which is money that the Canadian Government will deposit into the RDSP of low and modest-income Canadians. Those who qualify for the bond will receive up to \$1,000 a year depending on family income. The limit is \$20,000 over your lifetime. You do not need to make any contribution to an RDSP to receive the bond. The bond is explained at the following Human Resources and Skills Development website: http://www.rhdcc-hrsdc.gc.ca/eng/disability_issues/disability_savings/cdsb.shtml



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?

DB filed a human rights complaint alleging that when Yaki's Pizza discovered that she had epilepsy, it declined to continue to employ her. DB applied to work at Yaki's because it offered benefits which were important to her because of her condition.

DB was interviewed by phone and understood that she had been offered a job. When she arrived at work without a car, the manager asked her why she did not drive and she explained that, due to her epilepsy, she was not permitted to drive. She was asked whether her epilepsy was under control and told her employer that she still had tonic-clonic seizures.

Yaki's declined to continue her employment because it said that, from time to time, she would be working alone and the store manager was concerned about her safety.

The Tribunal found that DB had been discriminated against. The restaurant assumed that DB's epilepsy would prevent her from running the restaurant alone without a factual basis on which to reach that conclusion and without considering whether she could be accommodated. The Tribunal awarded damages for loss of income and for the injury to DB's dignity, feelings and self-respect.

Cited as: *Briltz v. Yaki's Pizza & Subs* [2006] CHRR Doc. 06-305, 2006 BCHRT 245

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 2 years until he experienced a seizure. He was diagnosed as having epilepsy and removed from his position. Mr. R was a recovering alcoholic with experience in rehabilitation and began working for the Forces as a part-time alcoholism counsellor. 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 Canadian 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 counsellor. Therefore, he shouldn't have been refused the position. The Tribunal also found that the mandatory classification of persons with epilepsy as unfit for duty was discriminatory because it did 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

The purposes of the *British Columbia Human Rights Code* are set out in section 3 and are as follows:

- a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;
- b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights;
- c) to prevent discrimination prohibited by this *Code*;
- d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this *Code*;
- e) to provide a means of redress for those persons who are discriminated against contrary to this *Code*;

The *Code* states in section 13 that every person has a right to be free from discrimination in employment because of a physical or mental disability. It is permissible to discriminate where there is a *bona fide* occupational requirement. Many human rights cases turn on whether the requirements set by the employer are *bona fide* (good faith).

While the terms physical or mental disability are not defined in the *Code*, the Tribunal has said that a disability must be on-going and must prevent a person from performing significant functions

that most people can perform: *Nielson v. Sandman Four Ltd.* [1986] 7 C.H.R.R. D/3329 (B.C.C.H.R.). Further, the disability must have some degree of permanence: *Ouimette v. Lily Cups Ltd.* [1990], 12 C.H.R.R. D/19 (Ont. Bd. Inq.). The Tribunal has stated that, in order to be a disability within the meaning of the *Code*, it is sufficient if the disability prevents the complainant from carrying out the essential duties of his position: *Beznouchuk v. Spruceland Terminals Ltd.* [1999], 37 C.H.R.R. D/259 (B.C.H.R.T.).

Employment decisions, including recruitment, hiring, training and promotion, are based on merit and not on criteria that are unrelated to job performance. In British Columbia, questions about physical health or medical problems should not be asked on an employment application form. Questions about any medical problems that might interfere with an ability to perform some aspects of the job must be restricted to inquiries that will determine if reasonable accommodation will be necessary. So, for example, “Do you have epilepsy?” is not a permissible question. However, if a prospective employee reveals that they have epilepsy during an interview, prospective employer may explain the nature of the job requirements and ask whether the applicant believes they will be able to meet those requirements, and ask about what accommodations might be required. Inquiries about the type of seizures the person experiences and how frequently may be appropriate.

The Duty to Accommodate

The duty to accommodate is the obligation to meaningfully incorporate diversity into the workplace. It involves eliminating or changing rules, policies, practices and behaviours that discriminate against persons based on their group characteristic, such as their race, national or ethnic origin, colour, religion, age, sex (including pregnancy), sexual orientation, marital status, family status and physical or mental disability.

Sometimes, workplaces have rules, policies, practices and behaviours that apply equally to everyone, but which can create barriers to some employees. For example, requiring employees to wear a certain uniform, may create a barrier to someone whose religious practice requires a certain manner of dress.

The duty to accommodate requires employers to identify and eliminate rules that have a discriminatory impact. Accommodation means changing the rule or practice to incorporate alternative arrangements that eliminate the discriminatory barriers.

The duty to accommodate is most often applied in situations involving persons with disabilities. In these situations, accommodation often means removing physical barriers, perhaps by building a wheelchair ramp. It often also means accommodating individual needs, such as by providing a computer screen reader for a visually impaired employee or perhaps adjusting hours of work to allow someone to function at their optimum performance level.

The duty to accommodate also applies to grounds other than physical disability.

Key Court Decisions on the Duty to Accommodate

The duty to accommodate is a legal obligation which has been affirmed by Canadian human rights tribunals and courts, up to and including the Supreme Court of Canada. Two of the key decisions originated in British Columbia.

The 1999 Supreme Court decision in the case of *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union* [1999] 3 S.C.R. 3, (also known as the *Meiorin* case) is particularly useful in explaining the duty to accommodate. This case resulted in a unified test for determining whether or not the defence of bona fide occupational requirement applies.

Shortly thereafter, in the case of *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)* [1999] 3 S.C.R. 868 (also known as the *Grismer* case) the Supreme Court extended the application of the *Meiorin* test to the provision of services and claims of *bona fide* justification.

The Supreme Court also clarified the responsibility of employers and service providers to ensure that all barriers to participation, for people protected under human rights law, are eliminated from their policies, rules, standards, practices, and services at the design stage.

In effect, the Court proposed that employers should no longer simply rely on an individualized accommodation response to requests from employees who face workplace barriers. Employers and service providers must, as far as possible, ensure that they build accommodation into their policies and practices, up to the point of undue hardship:

Employers designing workplace standards owe an obligation to be aware of both the differences between individuals, and differences that characterize groups of individuals. They must build conceptions

of equality into workplace standards. By enacting human rights statutes and providing that they are applicable to the workplace, the legislatures have determined that the standards governing the performance of work should be designed to reflect all members of society, insofar as this is reasonably possible. Courts and Tribunals must bear this in mind when confronted with a claim of employment related discrimination. To the extent that a standard unnecessarily fails to reflect the differences among individuals, it runs afoul of the prohibitions contained in various human rights statutes and must be replaced. The standard itself is required to provide for individual accommodation, if reasonably possible. A standard that allows for such accommodation may be only slightly different from an existing standard but is a different standard nonetheless. Paragraph 68, *Meiorin*

Employers and others governed by human rights legislation are now required in all cases to accommodate the characteristics of affected groups with their standards, rather than maintaining discriminatory standards supplemented by accommodation for those who cannot meet them. Incorporating accommodation into the standard itself ensures that each person is assessed according to her or his own personal abilities, instead of being judged against presumed group characteristics. Such characteristics are frequently based on bias and historical prejudice and cannot form the basis of reasonably necessary standards. Paragraph 19, *Grismer*

The effect of these 2 decisions is that employers and service providers should ensure that all their corporate programs and activities, including policy-making, development of rules, standards or programs, purchases of new technology or equipment, real property decisions, and information provision are barrier free. Workplace standards must be designed to reflect all members of society, as opposed to being designed on the basis of a current (unrepresentative) workforce.

Even when every effort has been made to ensure corporate activities are free from discrimination, there will be circumstances where the needs of a specific employee will require an individualized adjustment in the workplace. In these circumstances, an employee should have access to an individual accommodation.

Another important case is *Central Okanagan School District No. 23 v. Renaud* [1992] 2 S.C.R. 970 which clarified that a union shares joint responsibility with an employer to seek to accommodate an employee, and both are equally liable if nothing is done. In particular, a union may be found liable if it has participated in the formulation

of a work rule that has a discriminatory effect on an employee or if it impedes the reasonable efforts of an employer to accommodate.

On the issue of disability, the Supreme Court of Canada has also decided that employees who are perceived to have disabilities are protected by prohibitions against discrimination on the basis of handicap or disability. The Court said that:

a “handicap” may exist even without proof of physical limitations or the presence of an ailment. The “handicap” may be actual or perceived and, because the emphasis is on the effects of the distinction, exclusion or preference rather than the precise nature of the handicap, the cause and origin of the handicap are immaterial. Further, the Charter also prohibits discrimination based on the actual or perceived possibility that an individual may develop a handicap in the future. Paragraph 81, *Québec (Comm. des droits de la personne et des droits de la jeunesse) et Mercier c. Montréal*

When approached with a request for accommodation, an employer or service provider is expected to do the following:

- determine what barriers might affect the person requesting accommodation,
- explore options for removing those barriers, and
- accommodate to the point of undue hardship.

If the employer finds that removing the barrier or changing the workplace rule creates an undue hardship on the business, then that rule or practice is a bona fide occupational requirement (BFOR), in which case the employer does not have to accommodate.

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 their condition, 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 co-operation between the employer and the employee (and his or her union where one represents 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 require some 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* further protects differently abled people from discrimination with respect to recruitment, hiring, retention, treatment and promotion.

Constructive Dismissal

It is an implied term of any employment contract that an employer cannot 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 may exist. Consequently, the employee is entitled to treat the employment contract as being at an end and seek damages for wrongful dismissal. Constructive dismissal has 2 essential elements: 1) the changes imposed by the employer must be unilateral, and 2) the changes must fundamentally alter a term of the contract.

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.

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)

Under section 66 of the Employment Standards Act, the Director may determine that an employee has been terminated where a condition of employment has been substantially altered. There are competing decisions about whether the Director's assessment is similar to a constructive dismissal assessment. However, there must be a finding that: there is a change in the conditions of employment; the change is substantial; and the change constitutes termination (*Bogie and Bacall Hair Design Inc.*, BC EST #D062/08, para 41). The Employment Standards tribunal has said that to be a substantial change in the conditions of employment, the change must be a fundamental change in the employment relationship.

The Tribunal has indicated that the test of what constitutes a substantial change is an objective one that includes a consideration of the following factors:

- a) the nature of the employment relationship;
- b) the conditions of employment;
- c) the alterations that have been made;
- d) the legitimate expectations of the parties; and
- e) whether there are any implied or express agreements or understandings.

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

A driver's licence contains personal information about an individual including whether an applicant has a disability, which could lead to the classification of a job applicant according to a prohibited ground of discrimination, contrary to section 13 of the *Human Rights 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.

BC Human Rights Tribunal

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

The *Human Rights Code* prevents discrimination in a number of areas. These include: employment, employment advertisements, wages and membership in a union or employer's association, publicly

available services, facilities and accommodation; tenancy and purchase of land; and discrimination with respect to publications. In each area, discrimination on the grounds (or basis) of physical disability and mental disability is prohibited.

If you believe that you have been discriminated against with respect to your employment, housing or publicly available services, you may file a complaint directly with the BC Human Rights Tribunal.

The Tribunal has a number of guides and information sheets which explain its processes including “the BC *Human Rights Code* and the Tribunal” and “Making a Complaint and guide to completing the Complaint Form”. The Guides and information sheets and the Complaint Form are available from the Tribunal directly, on its website at <http://www.bchrt.bc.ca> or from any Service BC office in the province. A list of Service BC offices is available at:

<http://www.servicebc.gov.bc.ca/locations/>

It is very important when completing your human rights complaint to give as much detail as possible about what happened to you and when. The Tribunal will use that information to decide whether to accept your complaint and the more you tell it the less likely it is that they will need to seek additional information from you.

The Human Rights Clinic, a legal clinic funded by the Provincial government, may provide assistance to individuals across British Columbia who believe that they have experienced discrimination under the *Human Rights Code*. Assistance may be available in completing a complaint and processing it. Information about the Human Rights Clinic’s programs is available at: http://www.bchrcoalition.org/files/services_a.html

If you want the Tribunal to address your concerns, there is a time limit in section 22 of the *Code* which requires that complaints be submitted within 6 months from the last incident of discrimination. In some cases, the Tribunal can extend the 6 month time limit but you cannot be certain that it will do so and it will be up to you to persuade it that it should accept your late complaint. It must consider whether any person will suffer substantial prejudice as a result of accepting a late-filed complaint and whether it is in the public interest for the Tribunal to exercise its discretion to accept the complaint. The reason for your delay will be very important. If you are approaching the end of the 6 month time limit, you should file a complaint with the information you have and provide the Tribunal with more details later. The fact that you may be pursuing other remedies does not change the 6 month time limit.

After you have filed a complaint, and the Tribunal has accepted

it, you will be assigned a case manager who will offer to provide you and the person you complained about with the assistance of a mediator to try and resolve your complaint. Your case manager will be able to answer questions about the Tribunal's processes but will not be able to provide you with legal advice or assistance.

The person you complained about may file an application under section 27 of the *Code* to dismiss your complaint on the basis that:

- a) It is not in the Tribunal's jurisdiction. For example, the entity you complained about may not be subject to provincial jurisdiction. If you work for a bank or an airline for example, your complaint will fall under the *Canadian Human Rights Act* not the *BC Human Rights Code*. Deciding which human rights system might have jurisdiction over your complaint can be complicated. You may seek information from the BC Human Rights Tribunal by calling their toll free information line 1-888-440-8844. An explanation about how to file a Canadian Human Rights complaint is at pages 33–36 of the booklet.
- b) The matters that you have complained about are not a contravention of the *Code*. In considering applications to dismiss on this basis, the Tribunal will review your complaint and decide whether, if everything you say is true, you have alleged something that amounts to discrimination under the *Code*.
- c) There is no reasonable prospect that your complaint will succeed. If an application is brought under this section, the Tribunal will make an assessment of the likelihood of the success of your complaint based on the written information that you provide to it. It is useful for you to review the Tribunal's Annual Reports which are available on its website. Each report will summarize some of the cases the Tribunal has decided that year under this subsection. The summary will then lead you to the full decision which is available on the Tribunal's website on its decision pages at: <http://www.bchrt.bc.ca/decisions/index.htm>. The decisions are searchable and there is an explanation of how to search at: <http://www.bchrt.bc.ca/search/tips.htm>. The Tribunal also has an information sheet which explains how to research human rights decisions. It can be found at: http://www.bchrt.bc.ca/guides_and_information_sheets/infosheets/how_to_find_human_rights_decisions.pdf
- d) Proceeding with the complaint would not benefit you or further the purposes of the *Code*.
- e) You have filed your complaint for improper motives or in bad faith.

- f) The issues raised in your complaint have been appropriately dealt with in another proceeding (a labour grievance arbitration for example).
- g) The matters that you have complained about occurred more than 6 months before you filed your complaint.

An explanation of how to respond to an application to dismiss your complaint is available on the Tribunal's website at:

http://www.bchrt.bc.ca/guides_and_information_sheets/infosheets/respond-dismiss-complaint.pdf

Complaints which are not settled and are not dismissed on a preliminary basis, will proceed to a hearing before a member of the Tribunal. Occasionally, the Tribunal will appoint a panel of 3 members to hear a case.

The Tribunal has a guide to its hearing process which can be found at: **http://www.bchrt.bc.ca/guides_and_information_sheets/guides/English_Guide5.pdf**

General information and videos about appearing before an administrative tribunal like the Human Rights Tribunal can be found on the Justice Education Society website at: **<http://www.adminlawbc.ca/>**

Decisions of the Human Rights Tribunal are not appealable but are subject to judicial review by the British Columbia Supreme Court. The Tribunal explains how to apply for judicial review on its website at: **http://www.bchrt.bc.ca/guides_and_information_sheets/infosheets/how_to_seek_judicial_review.pdf**

A general explanation of the judicial review process is available on the British Columbia Supreme Court Self-help website at: **<http://www.supremecourtselfhelp.bc.ca/self-help.htm>**. The Justice Education Society has a lot of helpful information on its website and explains judicial review at: **<http://supremecourtbc.ca/sites/default/files/web/Judicial-Review.pdf>**

The Canadian Human Rights Act

If you are employed in a federally regulated industry, the British Columbia Human Rights Tribunal will not have jurisdiction over your complaint. Federally regulated industries include the following:

- Departments of the Government of Canada
- Armed forces
- Banks (not credit unions)
- Trucking and bus companies who, as a regular part of their business, leave British Columbia to travel elsewhere in Canada

or to the United States

- Federal Crown corporations
- Airlines and railways
- Television, telephone, radio, and cablevision companies
- Industries associated with shipping
- Grain elevators

A helpful list of federally regulated employers can be found on the Human Resources and Skills Development website at: http://www.hrsdc.gc.ca/eng/labour/equality/employment_equity/private_crown/list/index.shtml

If you are unsure whether your employer is federally regulated you should contact the British Columbia Human Rights Tribunal and the Canadian Human Rights Commission.

Human Rights complaints about federally regulated businesses must be filed with the Canadian Human Rights Commission. Information about the complaints process can be found on their website at: <http://www.chrc-ccdp.ca/default-eng.aspx>

The *Canadian Human Rights Act* deals with discriminatory behaviour in its various forms. Federally regulated employers, unions and service providers must not, on any of the prohibited grounds of discrimination, do the following:

- deny anyone goods, services, facilities or accommodation available to the general public;
- harass or treat a person differently in a way that is harmful;
- refuse to employ or continue to employ a person;
- discriminate in regard to employment opportunities, such as the application process, promotions, employment benefits or working conditions;
- pursue discriminatory policies;
- communicate hate messages on the Internet or through pre-recorded telephone messages;
- pay men and women differently for work of the same value; or
- retaliate against an individual who files a complaint or who has assisted in any way in the investigation of a complaint.

If you believe that you have been discriminated against by a federally regulated organization you should contact the Commission. When the Commission receives an inquiry, an officer determines whether the matter is one the Commission can deal with. The officer considers the following questions:

- Does the person have the right to file the complaint?

- Has the complaint been filed within 1 year of the alleged events?
- Does the employer, union or service provider fall under federal jurisdiction?
- Is the situation described considered a discriminatory practice under the *Canadian Human Rights Act*?
- Is the discrimination based on one of the 11 prohibited grounds listed in the *Canadian Human Rights Act*?

If the answer to any of these questions is “no,” staff will try to suggest an organization that can help. If the answers are all “yes,” the officer sends a kit to the complainant so that a complaint form can be filed.

Completing the Complaint Form

The complaint form sets out the allegation or allegations of discrimination. It sets out your version of events in sufficient detail for the respondent to understand what discrimination is being alleged. The Commission requires that you provide the following information:

- your name;
- the name and address of the respondent;
- the name of the victim or victims, if the complaint is filed by a third person;
- a description of the events that you say amount to discrimination, including dates and locations;
- the basis on which you say you were discriminated against. In the case of a complaint based on epilepsy, the grounds are physical and or mental disability;
- the alleged discriminatory practice, and
- your signature.

After the Complaint is filed

As soon as possible, the Commission will send your complaint to the respondent (the person or organization against whom the complaint has been filed). The next stage of the process depends on the circumstances of the case. If the complaint is filed more than 1 year after the incident or if the complaint appears to be beyond the Commission’s jurisdiction, it may be referred to the Commission with a recommendation not to deal with the complaint. Similarly, if a complaint appears to be trivial or made in bad faith, it may also be recommended that it not be dealt with.

In these cases, parties will have the opportunity to send in submissions about what they think should happen.

If there is another way of dealing with the issues you raise in your complaint, the Commission will ask you to try that process first. For example, you may be able to file a grievance under a collective agreement or may be able to appeal a decision by a government department or agency, under another Act of Parliament.

Following that process, you may be able to return to the Commission if they are not satisfied with the outcome.

The remaining cases will usually be referred to the Alternative Dispute Resolution Branch. Many complaints are settled through mediation or other procedures that do not require investigation. If a case cannot be resolved through mediation or other procedures, the Commission will then investigate the case further.

Investigators are impartial fact finders who gather and analyse the evidence needed to assess the allegation in the complaint. The investigators will write a report. On the basis of the evidence gathered and as part of their report, they will make a recommendation to the Commissioners about whether your complaint should proceed to a hearing before the Canadian Human Rights Tribunal.

Before an investigation report is sent to the Commissioners for review and decision, both parties are invited to review the investigators' report and make a last submission to the Commissioners to support their case. If parties decide to send in a submission, it is disclosed to the other party.

Only Commissioners (the Chief Commissioner and up to 7 members) can decide what should happen to a complaint. If they conclude that the evidence supports the allegation, they can send the case to the Canadian Human Rights Tribunal, which will hear all the evidence.

If you disagree with the Commissioners' decision, you or the respondent can ask the Federal Court of Canada to review the Commissioners' decision.

If your complaint is referred to a hearing at the Canadian Human Rights Tribunal, the Commission may appear to represent the public interest. They will not provide you with a lawyer. The Canadian Human Rights Tribunal will attempt to resolve the issues between you and the respondent without the necessity of a hearing. Decisions of the Canadian Human Rights Tribunal are reviewable by the Federal Court of Canada and it may be possible to appeal the Federal Court's decision all the way to the Supreme Court of Canada.

The Canadian Human Rights Tribunal has a website on which you will find an explanation of its processes. It can be found at: <http://www.chrt-tcdp.gc.ca/>

Ministry of Labour

The Employment Standards Branch of the Ministry of Labour administers the *Employment Standards Act and Regulation*, which set minimum standards of wages and working conditions in most workplaces in British Columbia.

Employees are entitled to the protection of the *Act* whether they are employed on a part-time, full-time, temporary or permanent basis, and whether they are paid by the hour, by salary or commission, or by piece rate.

If you work for a provincially regulated business and have a complaint about your pay, hours of work, overtime, vacation or holiday entitlements, termination or severance pay, and you are not represented by a trade union, you should call the Ministry of Labour Employment Standards Branch Inquiry line at their toll free number 1-800-663-3316.

Ministry staff can help you understand your rights, answer your questions and, after you have filed a complaint, 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.

You have 6 months from the time the problem took place or your employment ended to file a complaint. If you are within 30 days of the end of the 6 month period, you should file your complaint with the Employment Standards Branch and THEN use the Self-Help Kit to try and resolve your problem.

Steps to filing a Complaint

1. Contact the Ministry of Labour. If you believe your rights have been violated, you must try to resolve the matter first with your employer. The Employment Standards Branch has an on-line Self-Help Kit which will guide you through the process of dealing with your employer including providing you with forms and letters that you may wish to use. It can be found at: **<http://www.labour.gov.bc.ca/esb/self-help/>**. The Self-Help Kit is also available at your local office of the Employment Standards Branch. A list of local offices can be found at: **<http://www.labour.gov.bc.ca/esb/contact/branch.htm>**. The Employment Standards Branch may refuse to accept your complaint if you have not used the Self-Help process first.
2. If you are unable to resolve the matter with your employer, fill out a complaint form. Complaint forms are available at your local

office of the Employment Standards Branch and online at:
http://www.labour.gov.bc.ca/esb/forms/complaint_index.htm

3. Complaints can be completed and filed online or may be dropped off or faxed to any Employment Standards Branch Office. To assist the Employment Standards Branch to process your complaint, enclose photocopies of any work-related records you have, including hours of work, pay stubs, a copy of the federal Record of Employment form, and letters from your employer.

Once your claim is filed, the Ministry will try to help you solve the problem directly with your employer. Employment Standards Branch staff will review the complaint and the evidence that has been provided. It is your and your employer's responsibility to provide any evidence or information that the Branch requires. This could include payroll information, records of hours worked and wages paid, and documentation of disciplinary actions.

If it appears that your dispute with your employer can be resolved through mediation, a mediation session will be arranged, to be held in person or by teleconference.

If the parties agree on a solution, the officer conducting the mediation will help the parties to draft a "Settlement Agreement" that both you and your employer will sign. The agreement is then binding on the parties and can be registered in Supreme Court and enforced as a judgment of the Court.

Even if the meeting does not resolve the dispute, it will help the parties narrow down the issues and establish which facts are agreed upon and which are in dispute.

If the complaint is not resolved through mediation, the Branch will either investigate further or schedule an adjudication hearing. If a hearing is scheduled, both parties will be required to attend along with any necessary witnesses.

After the hearing, the Branch will issue a decision called a Determination. If the Determination finds that money is payable or that your employer has contravened the *Act*, it will include one or more mandatory penalties.

If your employer does not pay the amount ordered, the Determination can be filed in Court and enforced as a judgment of the Court. This may include turning the matter over to a Court Bailiff for collection.

A Determination can be appealed to the Employment Standards Tribunal on one or more of the following grounds:

- the director erred in law;
- the director failed to observe the principles of natural justice in

making the determination;

- evidence has become available that was not available at the time the determination was being made.

The appellant must show that the determination should be cancelled or varied in some way, or referred back to the director.

An appeal must be filed within the “appeal period” which is 30 days after the date of service of the Determination if you received the Determination by registered mail, or 21 days if you received the Determination personally. The appeal period may be extended if the Employment Standards Tribunal accepts your reason for not filing it on time.

The Employment Standards Tribunal explains its processes with respect to appeals on its website at: <http://www.bcest.bc.ca>

Employment Insurance and Sickness Benefits

Employment Insurance (EI) sickness benefits may be paid for 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 for obtaining a medical certificate are at your own expense.

A person who makes a claim for sickness benefits is not only required to prove that they are unable to work because of sickness, but also that they would otherwise have been available for work.

Particular Situations

You may qualify for EI 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 employment insurance 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: http://www.servicecanada.gc.ca/eng/ei/application/employment_insurance.shtml or in person at your closest Service Canada Centre. You can find your closest Service Canada Centre at this link: <http://www.servicecanada.gc.ca/cgi-bin/hr-search.cgi?app=hme&ln=eng>

You should apply as soon as you stop working, even if you receive or will receive money when you become unemployed. The current processing time for applications is just under a month.

You must request your Record of Employment (ROE) from your last employer. It should reflect that you are not working because of sickness. If you already 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 1 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 you are receiving sickness benefits, any earnings will be deducted 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 \$44,200. This means you can receive a maximum payment of \$468 per week. Your EI payment is taxable income, meaning federal and provincial taxes will be deducted from your cheque. You will have to serve a 2-week waiting period before collecting any benefits.

Factors that determine payment amounts include: the region in which you reside, your total earnings, and the number of weeks that you have worked in the last 52 weeks.

You could receive a Family Supplement which will result in 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.

Appealing a decision

If you disagree with an EI-related decision, you have the right to appeal. Very helpful Information about how to file and prepare for an appeal can be found at **<http://www.ei.gc.ca/eng/home.shtml>**



Driving Restrictions

Common Problem: I am a firefighter and require a Class “4” licence to drive and operate a fire truck. I had my first and only seizure 7 years ago. My Class “5” licence was returned after 1 year, but my Class “4” has still not been returned. Since I’ve been seizure-free and taking medication, why does the Superintendent of Motor Vehicles continue to withhold my licence?

Under the *Motor Vehicle Act*, RSBC 1996, Chapter 318, the Ministry of Public Safety, Office of the Superintendent of Motor Vehicles (Superintendent) is responsible for determining an individual’s fitness to drive whether you already hold or are applying for a driver’s licence.

Because of the British Columbia human rights case called *Grismer* (discussed in this booklet under the heading Duty to Accommodate at pages 25–26 above), the Superintendent’s decisions are not based on the fact that you have a diagnosis of epilepsy but on your individual circumstances. As a result each person is entitled to be individually assessed for fitness. This may include reviewing medical information, your driving record, and conducting a road test.

The Superintendent may require drivers with a medical condition like epilepsy, which may affect their fitness to drive, to have their doctor complete a Driver’s Medical Examination Report which is 1 of the pieces of information the Superintendent will consider when conducting an individual assessment and deciding whether someone is fit.

In the case of epilepsy, each person may be affected differently. In some cases, medication can control seizures, and a driver who has had seizures in the past may now be able to drive safely. If a driver’s condition has been diagnosed by a doctor, medication has been prescribed, and the medication is diligently taken by the driver, driving privileges may be granted or restored after a required seizure-free time period. In some circumstances, drivers who had seizures, but who have been seizure-free without medication for a

required period of time, may also be granted driving privileges.

The type and frequency of assessment and follow up by the Superintendent varies depending on the class of driver's licence held or applied for, as well as the driver's ability to control seizures and their underlying condition. The Superintendent has issued general guidelines for the frequency of testing and monitoring which will apply to persons with epilepsy who wish to obtain or reinstate their driver's licence. The guidelines vary depending on the class of licence. More stringent standards apply to individuals who drive as part of their profession.

Most private drivers will be permitted to drive if they have been seizure-free on medication for more than 6 months, and will conscientiously and reliably take their medication, so long as the medication does not affect muscular coordination or alertness. A driver who required surgical treatment to prevent seizures generally will not be licensed for 12 seizure-free months after surgery. Persons with epilepsy who have had seizures only while asleep or just after awakening, for a period of 5 years (or less on the recommendation of a neurologist) may be eligible for a private driver's licence. Persons whose seizures are fully controlled and whose physicians are withdrawing their medication must not drive for a period of 3 seizure-free months from when their medication is discontinued. If they have a seizure during that time, they may be allowed to drive again after they resume medication provided they have previously been seizure-free for 6 months, and their physician is satisfied that the medication is adequate.

Persons with types of simple partial seizures which do not impair their overall ability to control a motor vehicle or impact their level of consciousness may be eligible to hold a private driver's licence on the recommendation of a neurologist.

If a person has stopped taking their anti-seizure medication against their physician's advice, they must not be re-licensed until they have resumed medication, and their physician is satisfied they will continue to take their medication. Persons taking anti-seizure medication and who drink alcohol excessively are at increased risk of having unexpected seizures, or failing to take medication and should not hold a driver's licence of any kind.

In July 2010, after extensive consultation, the Superintendent published its "Guide in Determining Fitness to Drive." A companion guide for medical practitioners is due to be issued in the spring of 2011. The Guide, which can be found online at: <http://www.pssg.gov.bc.ca/osmv/publications/docs/2010-guide-in-determining-fitness-to-drive.pdf> deals with epilepsy in Chapter 23 pages 308–325.

Decisions regarding fitness to drive are made by case managers and adjudicators who consider the information collected through assessment, as well as any other relevant information on file, and determine whether an individual is fit to drive the types of motor vehicles permitted under the licence class held or applied for. The determination may also include a decision to impose restrictions or conditions. If an individual is fit to drive, the case manager or adjudicator will also decide whether reassessment at a future date is required.

The factors that are relevant to a driver fitness determination for a particular individual vary depending upon whether the individual has a persistent or episodic impairment, the function that is impaired, whether conditions and/or restrictions may be appropriate and the types of vehicles the individual wishes to drive.

If a case manager or adjudicator decides that you are not fit to drive or that a condition must be imposed on you, or restrictions on your licence, they will send you a letter that describes the driver fitness determination, the reasons for the determination and the reconsideration process. If the case manager or adjudicator has decided that you are not fit to drive and you have a driver's licence, the case manager or adjudicator will instruct the Insurance Corporation of British Columbia to cancel it.

If you request a reconsideration, the adjudicator or case manager reconsiders the decision and may request additional assessments. At the conclusion of the reconsideration, the adjudicator or case manager sends you a letter either confirming the decision or revising it.

What if I am unhappy with the reconsideration decision?

You may be able to apply for judicial review of the decision of the adjudicator or case manager on reconsideration. A general explanation of the judicial review process is available on the British Columbia Supreme Court Self-help website at: <http://www.supremecourtselfhelp.bc.ca/self-help.htm>. The Justice Education Society has a lot of helpful information on its website and explains judicial review at: <http://supremecourtbc.ca/sites/default/files/web/Judicial-Review.pdf>

If you believe that the Superintendent has not appropriately individually assessed your circumstances, because the Superintendent is performing a public service, his activities are governed by the *BC Human Rights Code* and you may choose to file a human rights

complaint. See the discussion about the human rights process on pages 30–33 of this booklet.

If you believe that you were treated unfairly in the processing of your file, you may file a complaint with the Ombudsperson. See the discussion about the Ombudsperson process at page 12 of this booklet.

What can I do to get my licence back?

If your medical situation has changed, you may submit new medical information to the Superintendent and ask that your situation be considered again.

For additional information contact:

Call: 250-387-7747

Fax: 250-387-4891

Write: PO Box 9254 STN PROV GOVT
Victoria BC V8W 9J2

Email: OSMV.Mailbox@gov.bc.ca

Note: Refer to your driver's licence number and any file number on any call you make or email or letter that you send.





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?

Under the British Columbia *Human Rights Code*, it is discriminatory to refuse to rent to an individual, or treat them differently with respect to a tenancy, because they have a physical or a mental disability.

While there are no specific cases in British Columbia involving tenants and epilepsy, an Ontario Board of Inquiry 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, once a landlord became aware of a tenant's epilepsy, he imposed specific rules on the tenant that were not required of other tenants. 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.

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?

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. An explanation of the duty to accommodate is set out at pages 25–26 of this booklet.

If you believe that you have been discriminated against with respect to your housing, you may choose to file a human rights complaint with the BC Human Rights Tribunal. An explanation of that process is included at pages 30–33 of this booklet.

The Community Legal Assistance Society operates a community law program which deals with both disability and housing issues. You may be able to receive assistance from them with respect to your housing issue. A description of their housing program can be found at: <http://www.clasbc.net/housing.php>. A description of their disability program can be found at: <http://www.clasbc.net/files/CLP%20Brochure.pdf>



CANADA



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 2 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 dependent 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*

Under Canada's former immigration legislation, 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 new *Immigration and Refugee Protection Act* received Royal Assent on November 1, 2001 and came into force on June 28, 2002.

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 3 categories of immigrants are now permitted to become landed immigrants in Canada regardless of any impact their disability may have on the health care system or social services.

The “excessive demands on health and social services” test is still considered where the person you are applying to sponsor is not your spouse, common-law partner or child.

“Excessive demand” is defined in the *Immigration and Refugee Protection Regulations* (the “Regulations”) as:

- a) a demand on health services or social services for which the anticipated costs would likely exceed average Canadian per capita health services and social services costs over a period of 5 consecutive years immediately following the most recent medical examination required by these *Regulations*, unless there is evidence that significant costs are likely to be incurred beyond that period, in which case the period is no more than 10 consecutive years; or
- b) a demand on health services or social services that would add to existing waiting lists and would increase the rate of mortality and morbidity in Canada as a result of the denial or delay in the provision of those services to Canadian citizens or permanent residents.

In *Vashishat v. Canada*, the Supreme Court instructed immigration authorities to consider the family circumstances of disabled children of immigrants, including financial resources and community supports. Immigrants who would normally be excluded because of their disabled children or the disabilities of 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.”

Bill C-11, an Act to amend the *Immigration and Refugee Protection Act* and the *Federal Courts Act*, known as the *Balanced Refugee*

Reform Act, received Royal Assent in June 2010. Certain changes to the *Act* will not come into effect for some months but changes to the humanitarian and compassionate and temporary resident permit provisions are currently in effect.

The *Immigration and Refugee Protection Act* is a complicated piece of legislation but information about it, and, in particular a “Claimant’s Guide” to the process can be found on the Immigration and Refugee Board’s website at: <http://www.irb-cisr.gc.ca/Eng/tribunal/rpdSpr/ClaDem/Pages/ClaimGuideDem.aspx>

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. The Board is independent from Citizenship and Immigration Canada.

Any decision made under the *Immigration and Refugee Protection Act* is subject to judicial review by the Federal Court, providing that all rights of appeal under the *Act* are exhausted. Applications for judicial review can be filed by the person affected by the decision or by the Minister of Citizenship and Immigration. The Court must grant permission before a judicial review hearing can be held. If the Federal Court grants permission, it will then judicially review the IAD decision and either dismiss it or set it aside and order a new appeal hearing.

For more information on the IRB, see its website at: <http://www.irb-cisr.gc.ca/eng/pages/index.aspx> or write to the following address:

Immigration and Refugee Board of Canada

Minto Place, Canada Building

344 Slater Street, 12th Floor

Ottawa, Ontario

Canada K1A 0K1

Tel.: 613-995-6486

Fax: 613-943-1550

WESTERN REGION

Suite 1600

Library Square

300 West Georgia Street

Vancouver, BC V6B 6C9

Tel.: 604-666-5946 or 1-866-787-7472

Fax: 604-666-3043



Divorce Decree

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 5 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

The *Divorce Act*, 1985

The *Divorce Act* is a federal law which only applies to people who are married to each other. It deals with custody and access to children of marriage.

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 often 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. Section 16(8) of the *Divorce Act* 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 their type, frequency, duration, and after effects, as well as the medication they take and any potential side effects. In addition, section 16(10) of the *Divorce Act* 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 *Family Relations Act*, R.S.B.C. 1996, c. 128

The *Family Relations Act* is the provincial counterpart to the *Divorce Act*. It applies to parents regardless of whether they are married to each other. It also focuses on the best interests of the child, when determining custody of, or access to, a child.

Under section 16 of the *Divorce Act*, the law requires that the best interests of the child be determined by considering the “condition, means, needs and other circumstances of the child.” Custody under the *Divorce Act* means which parent the child will live with and all rights and responsibilities for the child. Under the *Family Relations Act*, custody and rights and responsibilities are separated. The rights and responsibilities are described as guardianship.

Under section 24 of the *Family Relations Act*, the court, in making a custody order, must give “paramount consideration to the best interests of the child” and consider the following:

- the health and emotional well-being of the child, including any special needs for care and treatment;
- if appropriate, the views of the child;
- the love, affection, and similar ties that exist between the child and other people;
- the education and training of the child; and
- the capacity of each person to whom guardianship, custody, or access rights and duties may be granted to exercise these rights and duties adequately.

The fact that a parent has epilepsy should have little or no effect on a court’s custody, access or guardianship decisions.

At the end of this booklet, there is a list of resources and services that may be of help to you if you need assistance with a family law matter.



Difficulties in Obtaining Insurance

Common Issue: I had 2 sets of temporal lobe seizures 8 months ago. These were the only 2 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

In 1992, the Supreme Court of Canada in *Bates v. Zurich Insurance* encouraged the insurance 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.

With respect to life and health insurance plans, insurance companies can rely on section 8(2) of the *Human Rights Code* which

provides that it is not discriminatory for an insurance company to take into account a person's physical or mental disability or age when determining premiums or benefits under contracts of life or health insurance. Section 13(2) of the *Code* protects insurers, employers and unions from claims of discrimination on a number of bases including physical and mental disability, with respect to premiums and coverage under insurance plans that are provided to employees through their employment.

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 1 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 MIB Group, Inc. (MIB), also known as the Medical Information Bureau, is a non-profit organization of member life insurance companies maintaining medical information recorded on insurance applications throughout North America. The MIB 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.

Information about the MIB is available at: http://www.mib.com/html/consumer_guide.html or by contacting them at:

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) educates the public by developing a wide range of information and educational resources for the consumer. Information about the CLHIA is available at: <http://www.clhia.ca/> or by contacting them at:

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

Common Issue: My 8 year old child has epilepsy and requires costly medication to control her seizures. Will my health plan cover these expenses, since the Medical Services Plan (MSP) 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 British Columbia, 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 BC Employment Assistance funding. This means he/she will be eligible for 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 6 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 BCEA, refer to the “Epilepsy and British Columbia Employment and Assistance Support Program” section of this booklet at pages 3–21.





Marijuana Use to Reduce Seizure Occurrences

There is considerable debate within the medical community about the effectiveness of marijuana in reducing the occurrence of epileptic seizures. However, if, in consultation with your medical practitioners, you decide to use medical marijuana, this section of the booklet explains the process for applying for a licence.

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 2 head injuries as a child and, when he was 4, was diagnosed with epilepsy. For Mr. 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 violated 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 under which seriously ill persons could apply for permits to possess marijuana. Permit holders were also able to grow their own marijuana (or have a designated person grow it for them) if approved for a production licence.

These events led to considerable disagreement as to the state of the law. The disagreement was resolved in October 2003 when the Ontario Court of Appeal rendered its reasons in the *Hitzig* case. The Court reviewed the MMAR and found that there were 2 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 2 medical specialists, whereas others only required the support of 1. 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 licenced, 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 3 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?

Marijuana is categorized as a controlled substance. It is not legal to grow or possess marijuana except with legal permission from Health Canada. The MMAR allow access to marijuana to people who are suffering from grave and debilitating illnesses. It is important to note that the MMAR deal exclusively with the medical use of marijuana. This is an important distinction as Health and Welfare Canada sets a lower efficacy standard for medical marijuana than it does for those mainstream pharmaceuticals which must pass through the normal Food and Drug Regulations for marketed drugs.

There are 2 categories of applicants who can apply to possess marijuana for medical purposes.

Category 1: This category is for applicants who are treated within the context of providing compassionate end-of-life care, or who have 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, and those who have been diagnosed with terminal illnesses will be processed first.

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.

In either category, those patients who receive Health Canada approval will be allowed a 30-day supply of marijuana, as identified by an approved medical professional. Those designated as approved growers must be of legal age, and will get a production license and an identification card.

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 at: <http://www.hc-sc.gc.ca/dhp-mps/marihuana/how-comment/index-eng.php> 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 annually.

Currently, there are only 2 legally approved means for accessing medical marijuana. The first is to purchase it directly from Health Canada through their Prairie Plant facility in Saskatchewan, which holds an exclusive "growers" contract through October, 2011. The other is through the acquisition of seeds by which patients or those who are designated by them, may grow it themselves.

According to the Office of Cannabis Medical Access, a total of 773 Canadians are currently authorized to possess marijuana for medical purposes, a total of 552 have cultivation licenses of which 445 are restricted to personal usage only and 107 have permission to access seeds for forwarding to those to whom they have designated as "personal growers".

Health Canada suggests that the average approved patient requires 1 gram to 3 grams daily, whether inhaled, other ingested, or both. Patients who maintain that a larger dose is required are considered on an exceptional request basis. Health Canada maintains that the impact on pulmonary, cardiovascular, and immune system performance, as well as the potential for potential drug dependency make the likelihood of a successful request over 3 grams to be slim.

The Role of “Compassionate Societies”

Born out of the belief that the role of Health Canada in distributing medical marijuana is overly restrictive, numerous “compassionate clubs” or societies have opened across Canada. These not-for-profit, members-only, societies have been strongly denounced by Health Canada as being nothing more than defacto dealers of illicit drugs. Although most clubs require proper medical documentation before they will consider the sale of medical marijuana, they also acknowledge that they secure marijuana on the “black market”, insisting that this source of supply is far superior to that of Health Canada’s Prairie plant facility. Further, they maintain that the “mail order” nature of Health Canada’s marijuana distribution is far less convenient than the store front enterprise that their clubs offer. Despite many grim Health Canada press releases to the contrary, the courts have largely supported the position of the Compassionate Clubs, determining that Health Canada’s largely restrictive trade practices were constitutionally deficient. Further, in 2003, the courts considered the practise of restricting designated growers to serving only 1 person to be unconstitutional and allowed growers to serve up to 2 persons with the belief that this could be expanded further.

There is a downside however, as black market marijuana means black market prices. Whereas Health Canada caps its medical marijuana prices at \$5.00 per gram, compassionate clubs can charge its “members” over 50% more. Further, no fewer than 5 such societies were charged and subsequently closed over illegal distribution of other controlled substances.

Regardless, the growth of compassionate societies, and the reluctance of the courts to grant exclusivity to Health Canada, has forced Health Canada to reinvestigate its once-mothballed plan to execute a trial of marijuana distribution through a select network of retail pharmacies, with a preliminary timetable scheduled for public consultation by the spring of 2012. (Medical Marijuana Learning Centre, June 2010; “The Personal Dope on Medical Marijuana” *The Toronto Star*, May 7, 2007; “Medical Marijuana Compassionate Clubs”, Health Canada statement, June 7, 2010)

POLICE

A black and white photograph showing the front-left corner of a white police car. The word "POLICE" is printed in large, bold, black, sans-serif capital letters on the white hood. Below the text is a black horizontal stripe. To the left of the stripe is a multi-lens headlight assembly. To the right is a rectangular fog light with a grid pattern. The car is parked on a light-colored surface with a white line visible in the background.

Epilepsy and Police Misunderstanding of Seizures

Uncommon Issue: I was diagnosed with epilepsy 9 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 kneeed 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.

In 1992, the Supreme Court of Canada upheld the acquittal of a man who murdered a family member, and assaulted another, while sleep walking. The defence was automatism. The court distinguished between automatism that was caused by a “disease of the mind”

which would result in a special verdict of not guilty by reason of insanity (and incarceration under a governor general's warrant for so long as the person was a danger to society), and "non-insane" automatism which results in an acquittal. Sleepwalking was held to be non-insane automatism and the individual was acquitted.

Cited as: *R. v. Parks* [1992] 2 S.C.R. 871

In 2004, in Manitoba, the defence of non-insane automatism was used by a man with epilepsy who was charged with assault causing bodily harm. The evidence established that he had no memory of the assault, it was not voluntary or wilful, and he was suffering an epileptic seizure at the time. He was acquitted on the defence of automatism.

Cited as: *R. v. Bohak* (2004) M.J. No. 172

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 concluded 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 the seizure may be involuntary and unconscious, minimising the mental element of a crime.

The courts have distinguished between sane and non-insane automatism, as 2 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, epileptic seizures may be precipitated in a particular case by external factors such as physical exhaustion, stress, excitement, failure to take medication, failure to eat properly, or other external trigger. 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 her employer's first aid room. She 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 for 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 on-going.

Identified risk factors related to SUDEP

Identified risk factors related to SUDEP include:

- 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 through BC's epilepsy organizations:

The BC Epilepsy Society:

<http://www.bcepilepsy.com/>

The Center for Epilepsy and Seizure Education:

<http://www.epilepsy.cc/>

The Victoria Epilepsy and Parkinson's Centre:

<http://www.vepc.bc.ca/>

Of particular note is the fact that an ambulance should be called if a seizure lasts for more than 5 minutes, for repeated seizures, a first time seizure – no known history, or if a person is injured, pregnant, or has diabetes.

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. A judge or other decision-maker must 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, 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 the patient's right not to be advised or alarmed about a condition for which there may not be a definable remedy. Discussing such a

condition, which may evoke fear and impair quality of life for both the patient and his/her family, may raise questions 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.

While some patients wish to know very little information about risk, they should be offered the information, and, if they decline the information, that fact should be recorded. An opportunity must be provided to revisit the issue if the patient's wishes change.

For more information about SUDEP, contact the SUDEP Awareness and Support Association (SASA). SASA is a network of people affected by SUDEP. They may be contacted at: **<http://www.sudepaware.org/>**. 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. Information about SUDEP is also available through the Canadian Epilepsy Alliance at **<http://www.epilepsymatters.com>** and through BC's epilepsy organizations:

The BC Epilepsy Society:

<http://www.bcepilepsy.com/>

The Center for Epilepsy and Seizure Education:

<http://www.epilepsy.cc/>

The Victoria Epilepsy and Parkinson's Centre:

<http://www.vipc.bc.ca/>

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" at: **[http://www.epilepsyaustralia.net/Sudden_Unexpected_Death_in_Epilepsy_\(SUDEP\)/SUDEP_A_Global_Conversation/Facing_the_facts/The_facts.aspx](http://www.epilepsyaustralia.net/Sudden_Unexpected_Death_in_Epilepsy_(SUDEP)/SUDEP_A_Global_Conversation/Facing_the_facts/The_facts.aspx)**



Other Resources

If you need assistance with a family law matter, these resources might be available to you:

Legal Services Society

The Legal Services Society provides support to low income British Columbian's in dealing with many legal matters including family law. You must apply for assistance by phone or in person. Information about the application process can be found at:
http://legalaids.bc.ca/legal_aid/howToApply.asp

Vancouver Justice Access Centre Self-Help and Information Services

The Vancouver Justice Access Centre's Self-Help and Information Services can help you to prepare your Supreme Court family case.

Visit the centre to do the following:

- learn about the court system and court procedures
- get legal information
- locate and fill out the relevant court forms
- find out about free legal advice
- find alternatives to going to court

Self-Help and Information Services is drop-in only service, located at 290 – 800 Hornby Street, Vancouver, BC.

A description of the self-help services can be found at:

<http://www.supremecourtselfhelp.bc.ca/>

Family advice lawyers

If you are a parent with a low income experiencing separation or divorce, you may be eligible for up to 3 hours of free legal advice from a family advice lawyer (family duty counsel who provide advice).

You may be able to get help even if you do not qualify for a legal aid lawyer. Family advice lawyers can provide advice about custody, access, guardianship, and child support; property (limited); tentative settlement agreements; and court procedures.

These lawyers are available at the Vancouver Justice Access Centre (by appointment), the Nanaimo Justice Access Centre (by appointment), the Family Justice Centre in Kelowna (by referral from a family justice counsellor), and at the Port Alberni courthouse (drop-in).

For more information about this service, call Enquiry BC and ask to be connected to the appropriate office. In Port Alberni, contact the local court registry at 250-720-2424.

Enquiry BC:

604-660-2421 (from Vancouver)

250-387-6121 (from Victoria)

1-800-663-7867 (from outside Vancouver and Victoria)

Family duty counsel (family lawyers)

Family duty counsel are lawyers paid by the Legal Services Society to help people with low incomes deal with their family law problems. If you have a family law issue, you may qualify for help from family duty counsel in Provincial or Supreme Court even if you don't qualify for a legal aid lawyer.

In Provincial Court

Family duty counsel can help you with family law matters, including child protection issues (if the Ministry of Children and Family Development becomes involved with your family).

Duty counsel can give you advice and speak on your behalf in court on simple matters. However, they won't take on your whole case and won't represent you at a trial. They can also attend family case conferences at some courts.

Call your local legal aid office to find out when the service is available. A list of the offices can be found at: http://legalaid.bc.ca/legal_aid/legalAidOffices.asp

Duty counsel are available by appointment or on a walk-in basis in various locations. For more information, and a list of locations and hours, click the following link on the LSS website: http://legalaid.bc.ca/legal_aid/whereProvincialCourtDutyCounsel.asp

In Supreme Court

If you're a person with a low income experiencing separation or divorce, you may be eligible for up to 3 hours of free legal advice from Supreme Court family duty counsel.

Duty counsel are lawyers who can provide advice about custody, access, guardianship, and child support; property (limited); tentative settlement agreements; and court procedures. Duty counsel can also assist you in Chambers if the matter is simple, unopposed, or by consent. They can also attend judicial case conferences at some courts.

Duty counsel are available by appointment or on a drop-in basis in various locations. For more information, and a list of locations and hours go to this link: http://legalaids.bc.ca/legal_aid/whereProvincialCourtDutyCounsel.asp

Resources that may assist you with other legal problems

Dial-A-Law

Dial-A-Law is a library of scripts prepared by lawyers which you can listen to free of charge over the phone or on the Internet, or read them on the Dial-A-Law website. Dial-A-Law offers general information, but not legal advice, on a variety of legal topics applicable to British Columbia.

Use Dial-A-Law if you have a legal problem and want practical information on the law involved, want to find out about your legal rights and responsibilities, or want to learn more about the law and the legal system in BC.

To listen to Dial-A-Law scripts at any time, call 604-687-4680 in the Lower Mainland or 1-800-565-5297 elsewhere in BC.

To read or listen to the scripts on the Internet, go to the website at: http://www.cba.org/BC/Public_Media/dal/default.aspx

Free legal clinics

There are several free legal clinics in BC that provide lawyer services to people who are not eligible for legal aid but cannot afford to pay for a lawyer. Access Pro Bono Society of BC promotes access to justice in BC by providing free (pro bono) legal services to people and non-profit organizations of limited means. Access Pro Bono provides summary legal advice clinics in community centres, social

agencies, churches, and courthouses located throughout the province; a province-wide roster program providing representation services to individuals and non-profit organizations of limited means; a superior courts civil duty counsel project in Vancouver; and a children's lawyer project in Nanaimo. Information about Access Pro Bono can be found at: <http://www.accessprobono.ca/>

To apply for free advice and help to prepare for court (though they can't prepare typed legal documentation or go into court on your behalf), call 604-878-7400 (Lower Mainland) or 1-877-762-6664 (no charge, elsewhere in BC).

Lawyer Referral Service

You can get in touch with a lawyer through the Lawyer Referral Service. Available in many communities, the Lawyer Referral Service is a program supported by the Canadian Bar Association that lets you meet with a lawyer to discuss your legal problem. The cost is \$25 plus taxes for the first half hour. Information about the Lawyer Referral Service can be found at: http://www.cba.org/bc/initiatives/main/lawyer_referral.aspx or by calling the following numbers:

Lower Mainland: 604-687-3221

Outside the Lower Mainland: 1-800-663-1919 (toll free)

What should I do when I phone?

When you phone the Lawyer Referral Service:

- explain briefly the type of problem you have,
- get the name of a lawyer and a phone number to call, and
- phone the lawyer to set up an appointment (say that the Lawyer Referral Service referred you).

What will happen at my appointment?

When you go to your Lawyer Referral Service appointment, here is what will happen:

- The lawyer will give you one interview of up to 30 minutes for \$25 plus taxes. You can use this time to explain your situation.
- The lawyer will tell you what your choices are, what is involved, and how much he or she would charge to help you with the case.
- If you get along with the lawyer and can afford legal help, you may want to hire this person to assist you with some or all of your case
- If the first appointment does not work out, you can call the Lawyer Referral Service and get another name.

Free (pro bono) legal clinics

There are several pro bono (free) legal clinics in BC that provide lawyer services to people who are not eligible for legal aid but cannot afford to pay for a lawyer.

Access Pro Bono Society of BC promotes access to justice in BC by providing free (pro bono) legal services to people and non-profit organizations of limited means. Access Pro Bono provides summary legal advice clinics in community centres, social agencies, churches, and courthouses located throughout the province; a province-wide roster program providing representation services to individuals and non-profit organizations of limited means; a superior courts civil duty counsel project in Vancouver; and a children's lawyer project in Nanaimo. Although they do not prepare typed legal documentation or go into court on your behalf, to apply for free advice and help to prepare for court, you can find out about their services by calling 604-878-7400 (Lower Mainland) or 1-877-762-6664 (no charge, elsewhere in BC).

Information about Access Pro Bono services can be found on their website at: <http://www.accessprobono.ca/>

The Salvation Army British Columbia Pro Bono Lawyer Consultant Program provides free legal advice to people who meet the program's guidelines. Legal advice includes helping you prepare court documents, fill out wills, notarize documents, and prepare to appear in front of a judge. Information about this service can be found at: <http://www.probono.ca/>

For more information, you can call 604-296-3816.

Legal advice

For some legal problems, you will need legal advice from a lawyer. A lawyer can listen to your story, explain the law, and tell you what your options are.

If you are working on your own case, you may want to contact a lawyer for specific advice only (not for your whole case). For example, you might ask a lawyer to advise you about how successful you might be at arguing hardship in response to an application to increase support payments. To determine this, the lawyer would need to know about your financial situation, obligations to other family members, work history, and any unusual expenses you have taken on to support your previous family. Or you might ask a lawyer to look over court forms you have completed and let you know if there is anything you might change or add to make your application more effective.

Legal Aid

Legal aid is free legal help for people with low incomes. Legal aid services include legal information, legal advice, and legal representation (a lawyer to handle your case).

Legal Aid will provide legal advice to those who financially qualify on family, criminal and immigration matters. A description of Legal Aid's legal advice services can be found at: http://legalaid.bc.ca/legal_aid/legalAdvice.asp

There is a financial eligibility test for **legal advice** services. It is explained at this page on the LSS website: http://legalaid.bc.ca/legal_aid/dolQualifyAdvice.asp

Legal Aid will also provide legal representation to those who financially qualify on criminal matters, mental health and prison issues, serious family problems, child protection matter and immigration matters. Legal representation is when LSS pays a lawyer to represent a person with low income. A description of Legal Aid's legal representation services can be found at: http://legalaid.bc.ca/legal_aid/legalRepresentation.asp

To get a lawyer to **represent you**, you must qualify under Legal Aid's financial eligibility guidelines which are explained at this page on the LSS website: http://legalaid.bc.ca/legal_aid/dolQualifyRepresentation.asp

Clicklaw

Clicklaw is a legal information and education website which provides legal information, education and help for British Columbians. Information on the site will assist you in understanding your rights and solving legal problems. Topics include information about: debt, pensions, benefits and welfare; family law; health; wills and estates; accidents and injuries; employment; housing; abuse and family violence; disabilities; immigration; and the legal system.

Clicklaw can be accessed at: <http://www.clicklaw.bc.ca/>

Community Legal Assistance Society (CLAS)

CLAS provides legal assistance to disadvantaged people throughout BC specializing in the areas of poverty, disability, workers' compensation, employment insurance, mental health, human rights and equality law.

Activities include test case and Charter litigation; service case work and law reform; liaison and consultation with community groups; legal supervision of advocacy groups and law students;

publication of legal materials designed to assist self-represented litigants; and legal training and support to lay advocates, community groups, law students, and lawyers doing pro-bono work.

You can find out more information about the services offered by CLAS at their website: http://www.clasbc.net/how_can_we_help.php

Povnet

Povnet is an online tool that facilitates communication, community and access to information around poverty-related issues in British Columbia and Canada. It collects relevant news and resources of use to advocates, community workers, marginalized communities and the general public. For example, it compiles information about various government services in one place. It will also allow you to find an advocate in your community. You can access Povnet at: <http://www.povnet.org/>

The Justice Education Society

The Justice Education Society is a non-profit organization which creates innovative programs and resources to improve access to British Columbia's justice system. It has produced over 50 legal publications, 28 websites, and more than 50 instructional videos to provide information about various aspects of the justice system, including the courts and administrative tribunals, and how to resolve various legal matters.

Most programs and resources are available free of charge and can be accessed at <http://www.JusticeEducation.ca>



APPENDIX

All About Epilepsy

This section contains information from Epilepsy Ontario's brochure, *All About Epilepsy*, and The Edmonton Epilepsy Association's brochure, *Epilepsy: An Overview*.

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

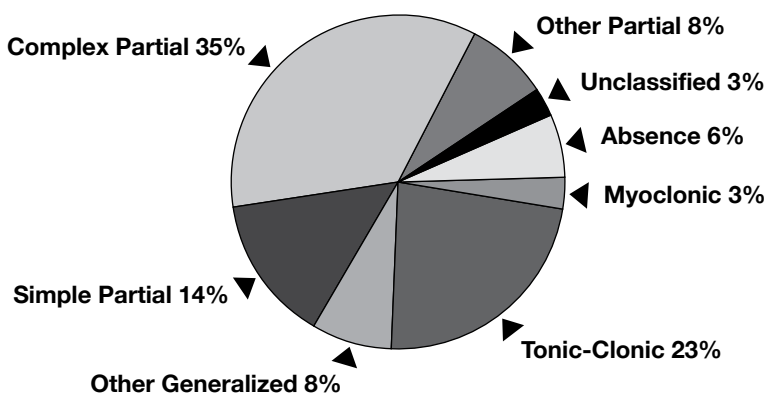
Is There a Cure?

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 excessive neural activity in the brain is limited to one area. Symptoms of a partial seizure will depend on the area of the brain in which the seizure is located. For example, a seizure in the temporal lobe could result in an inability to speak clearly, an unusual smell, a feeling of fear or euphoria, or of déjà vu.

There are 2 types of partial seizures:

- simple partial seizures and
- complex partial seizures.

In a simple partial seizure, the person remains aware but cannot completely control behaviour and 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.

Post-ictal States

The “ictal” state is the time during which a seizure occurs. Post-ictal 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.

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.

For more information, please contact your local epilepsy association through the Canadian Epilepsy Alliance (CEA) by phone at 1-866-EPILEPSY or online at <http://www.epilepsymatters.com> or through BC’s epilepsy organizations:

The BC Epilepsy Society:

<http://www.bcepilepsy.com/>

The Center for Epilepsy and Seizure Education:

<http://www.epilepsy.cc/>

The Victoria Epilepsy and Parkinson’s Centre:

<http://www.vepc.bc.ca/>

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, 3-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 2 or 3 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, MRSI 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 believed that 1% of the general population is currently living with a seizure disorder, a percentage that is slightly higher among children and seniors. Based on this prevalence rate, at least 40,000, people in British Columbia 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 overprotectiveness 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 school district specialist who deals with special needs student 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 for Medications and/or Travel for Medical Reasons

Fair PharmaCare

BC PharmaCare helps British Columbians with the cost of eligible prescription drugs and designated medical supplies. One of the most comprehensive drug programs in Canada, it provides reasonable access to drug therapy through 7 drug plans. The largest is the income-based Fair PharmaCare plan.

For most PharmaCare plans, you must be actively enrolled in the Medical Services Plan of BC (MSP). Once you are eligible for PharmaCare coverage, any portion of your prescription cost payable by PharmaCare is calculated automatically at the time of purchase. You pay only the costs not covered by PharmaCare.

Most BC residents are eligible for coverage under Fair PharmaCare, a plan that provides assistance based on income and requires a one-time registration. Assistance is available to single people or to families.

How Fair PharmaCare works

Fair PharmaCare coverage is income-based. Families with lower incomes receive more assistance than families with higher incomes.

PharmaCare uses the **net income** from your and your spouse's

income tax returns to calculate your family's level of coverage.

Your family pays your full prescription costs until you reach a level known as your **deductible**. Once you reach your deductible, PharmaCare begins assisting you with your eligible costs for the rest of the year. British Columbians with the lowest incomes do not need to meet a deductible and receive immediate assistance (this includes those who have Persons with a Disability status).

PharmaCare will pay 70% of your family's eligible costs for the rest of the year after you reach your deductible and until you reach your family maximum (described below). If you or your spouse was born in 1939 or earlier, PharmaCare will pay 75% of your eligible costs for the rest of the year, after you reach your deductible.

To ensure your annual drug costs do not exceed your ability to pay, your family will also be assigned a **family maximum**. If you reach your family maximum, PharmaCare covers 100% of your eligible drug costs for the rest of the year. PharmaCare sets a maximum cost that it will recognize for eligible prescription drugs and medical supplies and for a dispensing fee. If there is a difference between this amount and the amount charged by a pharmacy, you will be responsible for the difference. If an item is not a benefit of PharmaCare, you will be responsible for the full cost. Only eligible costs count towards your deductible and family maximum.

The Travel Assistance Program (TAP)

The Travel Assistance Program (TAP) helps alleviate some of the transportation costs for eligible BC residents who must travel within the province for non-emergency medical specialist services not available in their own community. You are eligible for TAP if you are a BC resident and are enrolled in the Medical Services Plan; have a physician's referral for medical services which are not available locally; your travel expenses are not covered by third party insurance, such as an employer plan, extended medical plan, Insurance Corporation of BC, WorkSafeBC or federal government program (e.g. Veterans' Affairs).

TAP is a corporate partnership between the Ministry of Health and private transportation carriers. The program is coordinated by the Ministry of Health and the transportation partners who agree to waive or discount their regular fees.

Private transportation carriers who participate in TAP include:

- Central Mountain Air Ltd.
- Harbour Air
- HawkAir

- Helijet
- Northern Pacific Seaplanes
- Pacific Coastal Airlines
- West Coast Air
- Malaspina Coach Lines
- Pacific Coach Lines
- Via Rail
- BC Ferries

Support Services

A broad range of support services are available through epilepsy organizations in BC, as well as through the Canadian Epilepsy Alliance and its network of affiliated local epilepsy associations across the country.

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
- 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
- chapter/contact development

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

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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<http://www.vepc.bc.ca>

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