

Discussion Document

Considerations for an Ontario MCCSS Policy Excluding Clients with Dysregulated or Unacceptable Behaviours

Overview

This discussion document outlines key considerations for the Ministry of Children, Community, and Social Services to consider as it drafts an Exclusion Policy that targets individuals with “dysregulated” or “unacceptable” behaviours.

The signatories to this document submit that any policy developed must be in direct adherence to constitutional and quasi-constitutional human rights obligations, and balance the following considerations of safety, respect, and legal obligations in the context of Ontario Works and Ontario Disability Support Program offices. These obligations and considerations emphasize the need for policies to respect the dignity of vulnerable individuals while ensuring the safety and effectiveness of the Ministry’s operations.

The Ministry serves some of Ontario’s most vulnerable residents, many of whom live with disabilities or face other challenges exacerbated by social and economic factors, such as trauma or mental health issues. These clients often depend on social assistance as their primary means of survival. As such, every aspect of the service delivery model must anticipate and account for this reality, rather than rely on mechanisms such as an exclusion policy to primarily address specific areas of concern within service delivery.

The Exclusion Policy must reflect the Ministry’s dual responsibility to ensure a safe environment for staff while protecting the right to access services for those in need, particularly those with disabilities.

Any policy that targets the exclusion of persons with disabilities, or disability-related behaviours, is on its face discriminatory. By targeting clients who appear “dysregulated” or act “unacceptable”, this policy directly targets clients with disabilities. We therefore urge the Ministry not to codify discrimination. Rather, any trespass policy must be developed for the sole purpose of clearly delineating the circumstances within which trespass orders are issued through transparent, accountable, and constrained processes that do not target persons with disabilities.

Key considerations include:

1. **De-escalation First:** Prioritize non-punitive strategies and trauma-informed approaches to address difficult interactions without resorting to exclusion. Caseworkers should not use the threat of exclusion because of a strained relationship or disagreements. The Ministry is encouraged to support ongoing staff training in these areas, review its process to remove barriers and ensure universal and inclusive design, and seek third-party assistance when necessary.

2. **Fair and Transparent Processes:** The Policy should be clear and equitable, outlining when and how exclusions are applied, and ensuring individuals have a fair opportunity to appeal decisions. Exclusions should be specific in duration and should not carry over automatically between different programs (i.e., when an individual moves from OW to ODSP). The conditions and the specific behaviour that would justify an exclusion must be clearly outlined, delineated, and defined within the policy. The policy must not be overbroad, arbitrary and must not allow for unfettered discretion.
3. **Accessibility and Duty to Accommodate:** The Policy must adhere to Ontario's *Human Rights Code*, requiring the Ministry to discharge its duty to accommodate disability-related needs to the point of undue hardship, and explore alternatives to exclusion when possible. Moreover, any design of service delivery and policy development must adhere to human rights and accessibility obligations to ensure barrier-free and inclusive design as per the *Human Rights Code* and the *Accessibility for Ontarians with Disabilities Act*.
4. **Staff Roles and Accountability:** Clear accountability mechanisms must be in place, particularly in offices with high staff turnover, to ensure consistent administration of exclusion decisions. There should be specific staff members responsible for overseeing the process and for ensuring compliance with procedural fairness.
5. **Written Notice and Documentation:** The Ministry must document and share details of incidents that lead to exclusions with affected individuals – providing transparency and clarity about the reasons, duration, and conditions of the exclusion, including any alternatives considered. Individuals should also have an opportunity to review and respond to the documentation provided.
6. **Right to Appeal:** Exclusion decisions lasting more than 14 days must be appealable in a manner that is fair, transparent, uniform, and accessible. The appeal process should consider new information, mitigating factors, and accommodation obligations under the law. Appeal decisions should be based on a “more likely than not” or “balance of probabilities” standard of review, ensuring that exclusion decisions are reasonable and proportionate.

Discussion of Key Considerations

There must be clear processes for investigating and managing conduct breaches, the conditions under which exclusion decisions may be applied, and rights of appeal. Because the Ministry holds significant power over the lives of those receiving social assistance, it has a heightened responsibility to ensure exclusions carefully consider the impact on the affected individual. In other words, the Ministry's decisions and their consequences must be reasonable, justified, and proportionate in law and based on the incident and context. Previous negative encounters do not automatically justify a blanket on-going exclusion.

Accordingly, in developing the Exclusion Policy, we ask you to consider the following:

1. De-escalation First

Prioritize de-escalation strategies to address challenging situations safely and effectively. Caseworkers should not use the threat of exclusion because of a strained relationship or disagreements. Where appropriate, staff may seek help from third parties, with consent, to resolve issues effectively. Staff should receive ongoing training in trauma-informed service provision and de-escalation.

2. Fair and Transparent Processes

Establish concise criteria to be met for exclusions to fall within the purview of the policy, and create a clear, proportionate processes for managing conduct breaches, apply exclusions only as necessary on a sliding scale, and provide fair and accessible appeal mechanisms. Restrictions should be no more restrictive than necessary to maintain the safety of others. All exclusions must end when the original exclusion period ends. There should be no automatic exclusion renewals because this puts the onus on the individual to object.

Furthermore, past trespass decisions should not automatically transfer from one program to another. For example, if someone receiving Ontario Works is subject to a trespass order and later qualifies for Ontario Disability Support Program assistance, the trespass order should not carry over. There should be a timely review process for trespass orders, and ODSP should not uphold any legacy trespass orders from Ontario Works. Instead, ODSP should evaluate the situation independently and issue a new decision, taking into account information about new disability-related needs that may have emerged since the original trespass order. In doing so, ODSP should provide new recipients with clear written information about whether ODSP upholds the Ontario Works trespass order and any associated appeal process.

3. Accessibility and Duty to Accommodate

Accessibility for persons with disabilities: Ensure that processes and decisions comply with the equal access requirements of the *Accessibility for Ontarians with Disabilities Act*. This means that the Ministry must use reasonable efforts to ensure that its policies, practices, and procedures are consistent with the core principles of independence, dignity, integration, and equality of opportunity.

The *Act* also requires the Ministry to identify and break down barriers that prevent people with disabilities from accessing the services they need, and to recognize that barriers can arise from a range of sources, including: physical obstacles, technology, communication and information practices, organizational policies and procedures, and attitudes held by staff, decision-makers, and other stakeholders.

Duty to accommodate: When a conduct breach arises as defined within the policy, disability-related needs and barriers must be considered, as required by Ontario's *Human Rights Code*. While this duty applies at every stage of service delivery, it is

imperative that the duty to accommodate is re-assessed prior to any exclusion decision. This includes the Ministry's duty to inquire and its procedural and substantive duty to accommodate, which involves exploring alternatives to exclusions, minimizing restrictions, and reviewing them regularly to ensure equitable access to services. Exclusions must be proportionate, considering the severity of misconduct, surrounding circumstances, and mitigating factors. This means the Ministry must:

- Assess whether the infraction is disability-related and explore accommodations to the point of undue hardship.
- Consider alternatives to exclusions that would better meet disability-related needs.
- Ensure that any restrictions are as minimal as necessary to maintain safety and order, confirming access to benefits is not impaired.
- Protect the individual's dignity throughout the decision-making process.
- Confirm there is a transparent documented process for reviewing the restrictions at reasonable intervals and providing written decisions to the individual.
- Ensure that the same anti-racist, anti-oppressive considerations that apply to staff also apply to individuals.

4. Staff Roles and Accountability

Confirm that there is a staff person accountable for the exclusion decision. There is considerable staff turnover in many local offices. The local office should clearly lay out who is accountable for the overall administration of exclusion decisions and appeal process.

For exclusions lasting more than 14 days, staff must follow a process that is transparent, procedurally fair, and appealable:

- Individuals must receive written notice as set out below in consideration #5.
- Provide clear pathways for returning to the office and reducing or removing restrictions, if appropriate.
- Staff should review the individual's needs and offer to discuss any necessary accommodations.
- Restrictions must be reasonable, proportional, and limited to what is necessary to ensure safety.
- Exclusions will automatically end after their specified term.
- Exclusions lasting less than 14 days cannot be applied more than twice within a four-month period.
- No exclusion can exceed 12 months.

5. Written Notice and Documentation

For all incidents and risks, the Ministry must fully document and share details with affected individuals. The plain language notice must clearly explain:

- Investigation details leading to the exclusion decision, including previous warnings and de-escalation attempts.
- Clear and detailed reasons for exclusion that justify why the exclusion is necessary and proportionate.¹ The reasons should include specific actions or words that led to the exclusion, dates, and context. Current exclusion notices often give a vague reason for the exclusion, such as “inappropriate behaviour”, making it difficult for individuals to understand and respond appropriately.
- Acknowledge any disability or crisis affecting the individual and the accommodations offered or provided, aligning with Ministry policy and Ontario’s *Human Rights Code* (if applicable).
- The specific conditions of the restrictions, including locations and length of exclusion.
- Possible penalties for breaching the notice and powers of the police, security, and staff under the *Trespass to Property Act*.
- Steps and timeline to appeal the exclusion decision and contact information for Legal Aid Ontario’s community legal clinics.²
- Steps or conditions needed to ease the restrictions, if appropriate.
- Confirm the individual’s opportunity to review and provide comments on the relied upon exclusion documentation.

6. Right to Appeal

For exclusions lasting more than 7 days, individuals must have the right to appeal. Appeal rights must be accessible, procedurally fair, uniform, and transparent.

Individuals must be able to appeal exclusion decisions by submitting a written request to a new impartial decision-maker. Given the ongoing implications of the exclusion, an individual must be able to appeal the exclusion decision in writing at any time during the exclusion period. Before deciding the appeal, the decision-maker must give the individual an opportunity to review the documentation related to their exclusion and respond to the allegations against them. The decision-maker should evaluate the evidence and arguments from both the individual appealing and the OW or ODSP office to determine whether to uphold the exclusion or consider alternative solutions.

The standard of review for appeal decisions should be “more likely than not” or “balance of probabilities” because the decision must:

- Balance the individual’s need for access to essential income support with the safety of visitors and staff.
- Consider the individual’s behavior, any new information, and mitigating circumstances and accommodation obligations under the *Human Rights Code*.

¹ See Client’s Rights agreement, [Part A-4](#)

² See Client’s Rights agreement, [Part A-5](#).

- Ensure the Ministry applied the exclusion decision fairly, proportionately, and in line with accommodation obligations.
- Confirm that exclusion procedures followed policy and a fair procedure, and respected the affected individual's dignity.

Conclusion

The above recommendations, if adopted, would ensure that exclusions are applied only when necessary and in a manner that respects both the safety of staff and the rights of vulnerable individuals. By focusing on fairness, transparency, and accommodation, the Ministry can balance its duty to protect its workers with its commitment to providing equitable access to essential income support for all Ontarians, including those with disabilities.

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