

# SHARE PERSPECTIVES

a newsletter for  
clients and friends of  
David Share Associates,  
Lawyers

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next issue's theme:  
Brain Injuries  
Related to Injury  
and Disability



DAVID SHARE  
ASSOCIATES • LAWYERS


We make a personal injury  
and disability claim as  
painless as possible.

## Welcome to *Share Perspectives* Issue Four

David Share Associates (DSA) is a leading Toronto personal injury and disability claim law firm. DSA concentrates on serious injuries, death claims, insurance disputes, and disability coverage disputes in Ontario. Following an accident or illness, DSA helps people to get the support they need and deserve.

More than 225,000 insurance claims are filed each year in Canada. Odds are that you or someone you know will go through the stress of filing for disability benefits or the pain of injuries. At David Share Associates, we care enough to stand by you through your claim and after your settlement. *Share Perspectives* is one way we keep in touch.



We respect your confidentiality. So, the *Share Perspectives* mailing list is confidential. If you want us to add or remove your name and address from the *Share Perspectives* mailing list, you can e-mail us at [newsletter@sharelawyers.com](mailto:newsletter@sharelawyers.com). Thank you for your referrals. Your word-of-mouth recommendation is our best advertising. 


## Q&A Corner

**Q:** I am not surprised that I have been refused my disability claim. My employer has always been difficult.

**A:** Unless your employer is self-insured, they have nothing to do with the insurance company's decision to refuse the disability benefits. The insurance company alone makes the decisions regarding acceptance, non-acceptance, or termination of benefits.

**Q:** How am I going to pay for my expensive medications?

**A:** If you had medical and health benefits

from your employer, chances are you remain covered. To lose the benefits, your status as an employee has to change. When your employment is terminated, such benefits end. You can also be inactively employed long enough to be removed from the benefits under the contract terms. Never assume that just because you are not actively at work or have been refused disability benefits, that other employment "perks" automatically end. 



Karen Lawrence

## TEAM PROFILE: Karen Lawrence, Legal Assistant

### what she does

Karen's responsibilities include electronically attaching all incoming mail to their respective files, putting together document briefs, and making sure all invoices are paid upon settlement of a case.

### how she feels about it

Karen says, "Working at DSA has allowed me to experience the true meaning of teamwork. We all work together so efficiently to provide the best client service. That is satisfying and rewarding and makes it all worthwhile. I am truly blessed to be a part of such an amazing group of people."

### mother and citizen, too

As a mother of two teenage boys, she must have her hands full. Even so, Karen is actively involved in her community church, where she helps in the planning and organization of events centred around pre-teens to help with that transitional stage in their lives.

### her background

Karen obtained her diploma in Office Administration from Centennial College. She has been working in the legal field for the past five years. Karen joined the DSA team three years ago. We're happy to have her as one of us.

"Complaining is good for you as long as you're not complaining to the person you're complaining about."

– Lynn Johnson

(For Better or For Worse)

## Survey Says...

A recent study released by WarrenShepell (a law firm specializing in employee-assistance programs) says that there is a 50% "seasonal spike" that occurs in the number of calls to employee-assistance programs about depression, stress, substance abuse, and violence in January versus December.

### note to good managers

Post-holiday mental-health problems are a concern for conscientious managers. Allowing some flexibility in the workplace through more flexible work schedules, job sharing, remote work, and sincere understanding

can alleviate the rise in seasonal mental-health problems.

### problems after the holidays

The top concerns presented at this time of year are:

- substance abuse (46% increase)
- domestic violence (29% increase)
- thoughts of suicide (27% increase)
- anxiety (23% increase)
- depression (19% increase).

(source: National Post, Wednesday January 4, 2005, Derek Sankey, p F8)

"A positive attitude may not solve all your problems, but it will annoy enough people to make it worth the effort."

– Herm Albright

## Breakthrough!

### senate open to women

In 1929, Emily Murphy and four companions challenged the meaning of the word "persons" in Section 24 of the *British North America Act*. It stated that only "qualified persons" could be summoned to the Senate. Murphy and her companions argued that the word "persons" should be interpreted to include females. In October 1929, the highest appeal court in Canada decided that the word "persons" should be interpreted to include both the male and the female sexes. The decision was a landmark for women.

### rights more unconditional

Since 1929, employment law has mirrored social change and the movement against discrimination in the workforce. Anti-discrimination legislation, such as the *Charter of Rights and Freedoms*, the *Ontario Human Rights Code*, and the *Employment Equity Act*, has helped to improve the rights of individuals traditionally discriminated against in the workforce. This has had a great impact for people suffering from physical and psychological disabilities, in terms of principles of accommodation and standards for wrongful dismissal.

### treatment of employees

This type of human rights legislation has heralded changes in the way the courts view the conduct of employers in relation to disabled employees. In March 2005, the Ontario Superior Court of Justice in *Keays v. Honda Canada Inc.*, awarded an unprecedented amount in punitive damages against an employer.

### chronic fatigue, for example

The case involved an employee with chronic fatigue syndrome who was dismissed from his employment for absenteeism. The court stated, "Just because Mr. Keays did not carry a white cane, use a hearing aid, or get around in a wheelchair, did not make him any less deserving of workplace recognition of his debilitating condition". The court found that the employer's misconduct was "planned and deliberate and formed a protracted corporate conspiracy against Mr. Keays".

### tide turning

It remains to be seen whether the effect of the Keays decision for disabled workers will be as monumental as the "persons" case was for women. Certainly, the tide is turning in how employers are permitted to treat disabled workers in the workforce.

## In Person

At age 45, Ellen Ng loved her job with a large high-tech company. Her company was a leader in new wireless technology.

### **began noticing curious symptoms**

Ellen began to get concerned when she found her vision was blurred from time to time. Also, she felt far more fatigued by day's end. Her family doctor advised her to try relaxation, and to avoid stressful situations. Although Ellen tried, her symptoms still worsened.

### **unsettling diagnosis**

Her doctor referred her to a neurologist. A few months later, the testing came back with a working diagnosis of mild Multiple Sclerosis. The uncertainty of the diagnosis caused Ellen to worry about her health and livelihood. Still, she considered herself lucky that she was able to work. She knew that her employer had a great benefits package to protect her.

### **time to take it easy**

By the time Ellen turned 48, she just couldn't continue with the volume of her day-to-day responsibilities. Her doctor suggested taking some time off work.

### **short-term claim accepted**

Ellen's initial claim for Short-Term Disability Benefits was accepted. She received benefits for 119 days. She then made a claim for Long Term Disability benefits. That led to a different result.

### **long-term claim denied**

The insurance company did not accept that her symptoms had worsened so that she could not carry on with her work. They argued that Ellen had worked with her MS, and that the 119 days off were enough for her to return to her full-time job.

### **situation worsened**

Her own doctors were not clear about whether she could work. Yet, they did feel

that her symptoms were real. Ellen tried to return to work, but after two weeks part-time, she found that she just couldn't handle the environment and requirements of her job.

### **employer's ultimatum**

When Ellen stopped working again, and the insurance company refused to pay her LTD benefits, her employer gave her an ultimatum: Either return to work or be terminated. Then she called David Share Associates.

### **help at last**

When she learned that DSA would take the case on a contingency – no charge unless successful – she was happy to find someone who could help without putting her further into debt.

### **early mediation**

On Ellen's behalf, we sued the insurance company for all benefits owing and for future benefits. We also sued her employer for wrongful dismissal. To establish entitlement to benefits, extensive medical records and further assessments had to be carried out. After this review, and following Examinations for Discovery it was agreed to see if a settlement could be worked out.

### **payment and validation**

When Ellen attended at mediation, a lump-sum settlement was negotiated in her favour. The amount allowed her to retain peace of mind so that she could consider some alternative careers that would allow her to work at a pace her symptoms would permit. She felt that both her employer and the insurance company had agreed that they were wrong and that she was right. ☺

*All names have been changed to protect the privacy of the individuals mentioned.*



## Did You Know...

- Standard publications do not publish houses as "wheelchair accessible" because it could be construed as limiting usage of the residence to people in wheelchairs only, thus violating Fair Housing guidelines.
- David Share Associates has helped over 5,000 people with their injury and disability claims since opening in 1987.

## Laugh

**SICKNESS AND RELATED LEAVE:** We will no longer accept a doctor's statement as proof of sickness. If you are able to go to the doctor, you are able to come to work.

**SURGERY:** Operations are now banned. As long as you are an employee here, you need all your organs. You should not consider removing anything. We hired you intact. To have something removed constitutes a breach of employment.

**YOUR OWN DEATH:** This will be accepted as an excuse. However, we require at least two weeks notice, as it is your duty to train your own replacement.



# Interaction



## photo caption contest:

### What was he thinking?


If you have a winning sense of humour, here's a chance to show it off and win. Send in a clever quotation or witty caption for this photo. If it is chosen as the best, then you win the prize: a \$150.00 gift certificate for a spa treatment from the luxurious Sanctuary International Day Spas.



## how to enter

Send your entry with your name and contact information by e-mail to: [contest@sharelawyers.com](mailto:contest@sharelawyers.com)  
Deadline: April 15, 2005.

## Interaction

A note from the winner of last issue's give away: a night at the Elora Mill: "As much as I'd love to pamper myself with the "night at the Elora Mill" I'm going to give it to my daughter in April as a graduation present after completing her four years at Lakehead University. What a great gift! She will just be thrilled." – *Patricia Stratulak* 



*Patricia Stratulak & her daughter*

# You Said it!

“From the very first meeting to the conclusion of the case, everyone was very professional, courteous, and considerate. I could not even begin to imagine tackling the claim on my own. Knowing it was being looked after allowed me to focus on recovering my health. I was extremely happy with the results. It was a very important morale booster needed to fight my illness. I would definitely recommend your firm to anyone experiencing the trauma of fighting for their rights when faced with a personal injury or disability”

– *Y.W., long-term disability claimant*

“Very efficient and pleasant service. All the staff responded to my requests in a very timely fashion. This impressed me the most.”

– *R.C., long-term disability claimant*

This newsletter is intended to supply general information only. We take care to ensure the accuracy of this information. However, as laws change, the reader should always check to ensure the accuracy and applicability of any information with regard to their own situation. The information in this newsletter cannot replace a thorough, complete review of your situation by competent legal counsel.



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