

SUPREME COURT OF ONTARIO

B E T W E E N :

BRENDA M. HORVATH

Appellant

- and -

THE DIRECTOR OF THE INCOME MAINTENANCE BRANCH OF
THE MINISTRY OF COMMUNITY AND SOCIAL SERVICES

Respondent

APPELLANT'S FACTUM

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Appellant

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PART I - NATURE OF PROCEEDINGS

1. This is an appeal pursuant to the Family Benefits Act, R.S.O. 1980, c. 151, s.15(1), from a decision of the Social Assistance Review Board (the "Board") dated January 14, 1985 affirming the decision of the Respondent Director to terminate the Appellant's family benefits.

Notice of Appeal, Appeal Book, pp. 1 - 3

PART II - FACTS

2. The Appellant is a single mother with two children, Heidi born September, 1979 and Nathan born January, 1982, and was in receipt of family benefits beginning in September, 1980.

3. In February, 1984, as a result of an anonymous complaint, an investigation was commenced in order to determine whether the Appellant was living as a single person. In May, 1984, the Director advised the Appellant by letter that her benefits would be terminated as of June, 1984 on the ground that she was not living as a single person.

Record of Proceedings, p. 16

4. The Appellant appealed the Director's decision to terminate her benefits to the Board which, on September 5, 1984, affirmed the Director's decision, and then reaffirmed that decision on January 14, 1985, after hearing the Appellant's application for reconsideration and variation on October 5, 1984.

Notice of Decision, Sept. 5, 1984, Record of Proceedings, pp. 6-9

Notice of Decision, Jan. 14, 1985, Record of Proceedings, pp. 52-60

5. The Director contends that the Appellant is not living as a single person within the meaning of the Family Benefits Act and

Regulation by reason of her association and relationship with Henry Desmond.

6. The evidence before the Board as to the Appellant's association with Henry Desmond relevant to the issue of whether the Appellant was living as a single person was as follows:

(a) They admit to having had a sexual relationship, and that Desmond is the father of the Appellant's child Nathan;

(b) Desmond pays the Appellant \$120 per month child support for Nathan. He exercises his right to visit the child and is fond of the Appellant's other child Heidi who, like her brother, refers to Desmond as "Daddy";

(c) Desmond is frequently seen at the Appellant's apartment because he has assumed responsibility for taking Nathan to a babysitter and returning him to the Appellant's apartment in the afternoon;

(d) Desmond on occasion takes both the Appellant's children to MacDonalds for dinner while she does the shopping;

(e) In December, 1983, the Appellant was confined to her apartment with an eye infection and unable to pay her rent. Desmond paid the rent on her behalf which the Appellant repaid shortly thereafter;

(f) Desmond once purchased some second hand beds from his mother for the Appellant for \$100, an amount which was then deducted from the Appellant's support payment later that month;

(g) Desmond permitted the Appellant to use his name to obtain a telephone as she did not have the requisite deposit. As a

result, the telephone is listed in his name in consequence of which he is listed at the Appellant's address in Vernon's City Directory.

(h) When he was looking for a job and did not have a telephone of his own, Desmond gave the Appellant's telephone number for messages. He does not, however, pay her telephone or any other bills;

(i) Desmond told his employer that he had a girl friend, which the employer interpreted to mean he was living common law. Desmond also described Heidi, as well as his son Nathan, to his employer as being his dependant;

(j) According to hearsay evidence, the superintendent at Desmond's apartment building says that he did not see Desmond at the building for a certain period, although Desmond's own evidence, supported by rent receipts and other documents, was that he lived there, and that the superintendent might not have seen him owing to the location of the superintendent's apartment and to the fact that Desmond worked shifts.

Notice of Decision, Jan. 14, 1985, Record of Proceedings, pp. 52 - 60

Affidavit of Brenda Horvath, Nov. 1, 1984, Record of Proceedings, pp. 34 - 36

Affidavit of Henry Desmond, Nov. 1, 1984, Record of Proceedings, pp. 24 - 26

7. Both the Appellant and Henry Desmond denied on oath before the Board that they had ever lived together or that Desmond lives at the Appellant's apartment.

Affidavit of Brenda Horvath, supra

Affidavit of Henry Desmond, supra

8. In its reasons, the Board gave no reason, explanation or justification for its refusal to accept the direct evidence of the Appellant and Desmond denying that they were living together.

Notice of Decision, supra

PART III - THE LAW

A FAMILY BENEFITS ACT

9. The Family Benefits Act provides for long-term financial assistance to certain categories of individuals in financial need, as defined by the Act and Regulations.

Family Benefits Act, ss.7, 20(m).
Regulation 318, s.2.

10. All applicants for benefits are required to undergo a means test to determine whether they are a "person in need". A "person in need" is one whose budgetary requirements exceed his or her net income, determined in accordance with the regulation.

Family Benefit Act, s.7
Regulation 318, s. 1(1)(d).

11. The regulations provide that in calculating income for these purposes, the recipient's income is deemed to include "all payments of any nature or kind whatsoever" including all "casual gifts" and "casual payments" and also including any such payments received by the beneficiary's "spouse" where the two are living together. A recipient must, as a condition of continued eligibility, take advantage of all available sources of income, including the right to claim maintenance or support. "Spouse" is defined to include "a person who although not legally married to another person lives with that person as if they were husband and wife."

Regulation 318, ss. 1(d); 8; 13 1(b); 13(2)

12. Certain recipients of benefits who have met all the criteria for benefits, including financial need, are made ineligible for benefits solely because they are "not living as a single person", a single person being defined as "an adult person who is a widow, widower, unmarried, deserted, separated or divorced and who is not living with another person as husband or wife".

Regulation 318, ss. 1(c), 5(b)

13. The categories of individuals disqualified solely because they are not living as a single person are the following:

- a woman between the ages of sixty and sixty-four years who is a widow, unmarried, divorced, or whose

husband has deserted, is institutionalised or imprisoned (Act, s.7(1)(b));

- a mother with a dependent child who is unmarried, a widow, divorced, deserted or whose husband is institutionalized or imprisoned. (Act, s.7(1)(d));

- a wife of a recipient of Old Age Security Benefits, who is sixty years old and over and whose husband is institutionalised or imprisoned. (Reg. s.2(1)(iii)(iv));

- the wife of a recipient or former recipient of Family benefits who is in need, is sixty years old or has dependent children (Reg. s.2(2);

- a mother with a dependent child who is in need, has separated from her husband for 3 months or more. (s. 2(7), Reg);

- a father with a dependent child, who is in need, separated, a widower, divorced, unmarried, wife institutionalized or imprisoned. (Reg. 5.2(8).

14. The question of whether the Appellant is living as a single person within the meaning of the Act and Regulation is a question of law reviewable by this Court.

Re Marwick and Minister of Community and Social Services (1978) 21 O.R. (2d) 528 (C.A.)

15. It is submitted that the facts relied upon by the Director and found by the Board are not capable in law of supporting a finding that the Appellant was not living as a single person. This Court has consistently and repeatedly held in circumstances such as those present in the case at bar that the Board has erred in law in finding that a recipient of benefits is not living as a single person.

Willis v. Ministry of Community and Social Services
(1983) 40 O.R. (2d) 287

Re Pitts and Director of Family Benefits Branch of the
Ministry of Community and Social Services (1985) 51
O.R. (2d) 303

Re Burton and Minister of Community and Social
Services (1985) 52 O.R. (2d) 211.

16. To establish that the Appellant was not living as a single person, two elements must be shown:

(a) that she was living with another person, and

(b) that she was living with that person as husband and wife. In the absence of proof that she was in fact living with another person, the inquiry ends and evidence of her relationship with the other person is irrelevant.

Re Burton, supra

Re Pitts, supra

Dowlut v. Com'r of Social Services (March 29, 1985,
unreported, summarized 30 A.C.W.S. (2d) 299

17. In reaffirming the Director's decision to terminate the Appellant's benefits, the Board committed yet again what this Court has described as the Board's "persistent misinterpretation" of the law by seizing upon the sexual, familial and social relationship and to conclude that these alternative criteria permitting the Board "to

de-emphasize or ignore the essential final question, that is, whether [Desmond] was living with the appellant."

Re Burton, supra, at 222

18. Moreover it is submitted that the Board erred in law in asserting without supporting evidence that there was an economic interdependence between the Appellant and Desmond sufficient to constitute anything approaching a conjugal relationship.

19. Evidence that a recipient of benefits is friendly with a man or even that she has a sexual relationship with him is not sufficient in law to support a finding that she is not living as a single person.

Re Burton, supra

Re Pitts, supra

20. The Board erred in law in placing any reliance on hearsay evidence that Desmond had not been seen at his own apartment. There is no onus or obligation upon the Appellant to prove where Desmond was in fact living. She did demonstrate by evidence all she had to show, namely, that he was not living with her. The Board is not entitled in law to deprive the Appellant of her benefits on mere suspicion, or because it disapproves of her way of life.

Re Burton, supra at 219

Re Pitts, supra at 308

21. It is submitted that the Board erred in law in preferring the indirect hearsay evidence tendered by the Director to the direct sworn evidence presented by the Appellant, and that the Board erred in making a finding of credibility adverse to the Appellant unsupported by any reason or justification.

"The task of determining credibility may be a difficult one but it must be faced. If the board sees fit to reject a claim on the ground of credibility, it owes a duty to the claimant to state clearly its grounds for disbelief. The Board cannot simply say, as the member did here, 'I feel that I have not received credible evidence to rescind the decision of the Respondent.' Some reason for thinking the evidence not credible must be given if an appearance of arbitrariness is to be avoided."

Re Pitts, supra at 310

PART B - CHARTER OF RIGHTS AND FREEDOMS

22. It is submitted that by excluding the applicant from benefits on the basis that she is "not living as a single person", the Act and Regulations violate the applicant's right pursuant to s.7 of the Charter not to be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice and her right to equality pursuant to s.15 of the Charter.

I FUNDAMENTAL JUSTICE

(a) "Life, Liberty and Security of the Person"

23. The rights involved in "life, liberty and security of the person" can have their basis in common law, statute law or in deeply rooted traditions that have become fundamental to our way of life.

R. v. Morgentaler, Smoling and Scott
(1985) 52 O.R. (2d) 353 at 377.

24. The provision of state benefits for the needy has become a fundamental tenet of modern Canadian Society. The particularly onerous economic burdens faced by single mothers and the necessity of providing for the children of single mothers has been recognized by the legislature of Ontario since 1920.

Mothers' Allowances Act, S.O. 1920, c. 89

Constitution Act, 1982, s. 36.

25. It is submitted that the Canadian authorities have already established that the right to life, liberty and security of the person is broader than the freedom from arbitrary arrest and detention, or other purely physical intrusions.

R. v. Morgentaler, Smoling and Scott, supra,
(Ont. C.A.).

R. v. Robson, (1985) 45 C.R. (3d) 68 (B.C.C.A.)

R. v. Videoflicks (1984) 48 O.R. (2d) 395
per Tarnopolsky J.A. at p. 483.

"The concept of life, liberty and security of the person would appear to relate to one's physical or mental integrity and one's control over these..."

26. It is submitted that "security of the person" includes the basic necessities of life such as a minimum requirement of food, clothing and shelter. This interpretation is in accordance mandated by the Canada's international obligations as a signatory to the Universal Declaration of Human Rights.

Universal Declaration of Human Rights (1948)
Art. 25, para (1), N.N. DOC. A/811.

The Declaration of the Rights of the Child
G.A. Res. 1386 14 U.N. GAOR, Supp. (No. 16) 19,
UN. DOC. A/4354 (1954)

27. It is submitted that welfare benefits designed to provide the necessities of life for single mothers are an inextricable part of security of the person. Whether or not the Charter protects economic rights or rights of private property per se, it is submitted that subsistence benefits provided by law, essential to human existence, are a matter of security of the person within the meaning of s.7.

28. For the purpose of the present case, it is unnecessary to decide whether s.7 confers an affirmative right to welfare benefits. Whether or not it does, it is submitted that the grounds and procedures implemented to revoke benefits designed to meet basic needs must satisfy the requirements of fundamental justice.

29. In applying the principles of fundamental justice found in section 7, the court is not limited to procedural review but may examine the substantive content of legislation.

Reference Re S. 94(2) of the Motor Vehicles Act (unreported) (S.C.C.).

R. v. Morgentaler, Smoling and Scott, supra.

R. v. Young (1984) 46 O.R. (2d) 520 (Ontario Court of Appeal)

30. The "not living as a single person" standard further adversely affects rights protected by s.7 in that a recipient may be prosecuted if found to be in receipt of benefits he or she is not entitled to receive under the Act or Regulations.

Family Benefits Act, s.19.

(b) Not Living as a Single Person" Arbitrary and Unrelated to Legitimate Legislative Purpose

31. It is submitted that revoking the applicant's benefits because she is "not living as a single person" violated her right not to be deprived of security of the person except in accordance with the principles of fundamental justice because the revocation of benefits was based upon an arbitrary standard, unrelated to any legitimate legislative purpose.

32. The applicant had to satisfy the test of need to qualify for benefits initially. There is a legitimate concern to ensure that only those truly in need receive benefits and therefore to assess the economic position of each applicant. However, the "not living as a single person" exclusion is a criteria that is entirely unrelated to the applicant's financial resources or needs. To revoke her benefits solely because she chooses to have a sexual relationship or even cohabit with a man where the man makes no financial contribution to her or to her children is to invoke a standard unrelated to any legitimate legislative purpose, and one that is therefore arbitrary and contrary to fundamental justice.

(c) "Not Living as a Single Person" Invasion of Privacy

33. It is submitted that the right to life, liberty and security of the person should be given a broad construction to encompass a right to privacy for the individual to act free from state interference within a sphere of action that is purely personal and does not infringe on the rights of others. Among the personal decisions so protected are the right to choose ones' family arrangements and ones' marital or sexual partners and control basic decisions about ones' lifestyle.

R v. Morgentaler, Smoling and Scott

**Board of Regents of State Colleges v. Roth 408 U.S.
564 at 572 (1972)**

Loving v. Virginia 388 U.S. 1 at 12 (1967)

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Skinner v. Oklahoma ex rel Williamson
316 U.S. 479 (1967)

34. Regulation 318, ss. 1(1)(c) and 5(b) interferes with an individual's freedom to choose to begin a relationship with a member of the opposite sex, or to choose what form that relationship will take, as it cuts off all benefits to those deemed to be "not living as a single person". In its result, it imposes an unjustifiable financial burden upon legitimate social and familial relationships. It is therefore an interference with the right to privacy, and constitutes a deprivation of the rights granted by s.7.

35. It is further submitted that the eligibility criterion of "not living as a single person" necessitates a scope of inquiry and investigative techniques which violate the personal privacy of the applicant for no legitimate purpose.

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(d) **"Not Living as a Eligible Person" Vague and Uncertain**

36. It is an essential attribute of fundamental justice that legal rules be framed and applied consistently and even-handedly. It is respectfully submitted that "not living as a single person" is a standard so vague and uncertain that it apparently cannot be applied in a consistent, even handed way.

37. The principles of fundamental justice require that a person of reasonable intelligence be given fair warning of prohibited or proscribed conduct in order that he or she may avoid acting accordingly; that is, legislation can be void for vagueness if no sensible meaning can be given to the words of the section.

R. v. Morgentaler, Smoling and Scott, supra.
Re City of Montreal and Arcade Amusements Inc.
et al. (1985), 18 D.L.R. (4th) 161 (S.C.C.)

Re Hamilton Independent Variety & Confectionary
Stores Inc. and City of Hamilton (1983) 143 D.L.R.
(3d) 498 (Ont. C.A.)

Saumur v. Quebec [1953] 4 D.L.R. 641

38. The Social Assistance Review Board decisions demonstrate no predictable interpretation of "living with another person as husband and wife" in section 1(1)(c) of the regulation.

39. The interpretations offered by the Courts of the phrase "not living as a single person" have in practice not established guidelines to which the Director or the Board have been able to adhere. The Board is inconsistent and often contradictory in weighing the importance of each of the various criteria.

40. The Board has consistently refused to be bound by an interpretation of the regulations which would place preeminent

importance on the matter of actual economic support in determining when a relationship would be found to be one of "husband and wife".

Warwick v. Min. of Consumer and Social Services
(1978) 5 R.F.L. (2d) 326 (Ontario Court of Appeal)

Re Willis (1983) 40 O.R. (2d) 285 (Ontario Divisional Court).

Re Burton and Minister of Community and Social Services (1985) 52 O.R. (2d) 212

Re Pitts and Director of Family Benefits Branch et al. (1985) 51 O.R. (2d) 302.

41. Even if substantive review is limited to exceptional cases where there has been a marked departure from the basic tenets of our legal system, it is submitted that the deprivation of benefits to single mothers and their children on the basis of criteria other than need constitutes such a departure, and that the Charter provides a remedy.

(e) Procedural Deprivation

42. It is submitted that the term "principles of fundamental justice" have been established to constitutionally enshrine principles of natural justice and procedural fairness.

Reference Re s. 94(2) of the Motor Vehicles Act R.C. (1985) 63 N.R. 266 (S.C.C.)

R. v. Morgentaler, supra

R. v. Langevin (1984) 45 O.R. (2d) 705

43. Natural justice demands that when there is a statutory right to a hearing which affects the rights of the citizen, there is a prima facie right to cross-examine the opposing evidence in order to correct or controvert any relevant statement brought forward to his or her prejudice.

Township of Innisfil v. Township of Vespra (1981), 2 S.C.R. 145.

Re Toronto Newspaper Guild and Globe Printing [1951] 3 D.L.R. 162 (Ont. H.C.); aff'd [1952] 2 D.L.R. 302 (Ont. C.A.); aff'd [1953] 2 S.C.R. 18.

Law Reform Commission of Canada, Independent Administrative Agencies, Working Paper 25, 1980.

44. Natural justice in a welfare hearing requires that the applicant facing revocation of her family benefits be afforded the opportunity to cross-examine adverse witnesses whose testimony is relied on in the Director's submission.

Goldberg v. Kelly (1970) 397 U.S. 254.

45. The Act implicitly denies the applicant the ability to cross-examine in allowing the Director to make his submission in writing only to the Board in section 14(5) of the Act. The applicant was in fact unable to cross-examine much of the evidence upon which the Board made its decision as a result of this provision.

Family Benefits Act R.S.O. 1980 c. 151
s. 14(5)

46. The consequences of an inability to cross-examine the Director's submissions are made more severe by reverse onus of proof which falls upon the applicant to disprove the Director's prima facie against her.

Re Ellis (1980), 28 O.R. (2d) 385.

47. Similarly, the ability of the Board to consider hearsay evidence, allows it to receive information that is second or third hand, and is therefore inherently less trustworthy than witness testimony. This evidence then becomes more difficult to challenge without the safeguard of cross-examination.

T.A. Miller v. Minister of Housing and Local Government, [1968] 1 W.L.R. 992 (C.A.)

III EQUALITY

(a) Discrimination and Denial of Equal Benefit to Single Mothers

48. It is submitted that Regulation 318, section 1(1)(c) and 5(b) as amended, of the Family Benefits Act, discriminate on the basis of sex and are contrary to section 15 and section 28 of the Canadian Charter of Rights & Freedoms.

49. Although the Regulation was recently amended to include single fathers with dependent children, and is thus on its face gender neutral, it is submitted that the requirement that a single parent with dependent children be 'living as a single person', in its operation, discriminates against women.

Regulation 318, s.2(8) R.R.O. 1980, as amended to O.Reg 784/83

50. The 'spouse-in-the-house' test as a condition of eligibility for social assistance is rooted in stereotypes of the 'deserving' sole support mother. Regulatory precursors required sole support mothers to be widowed or deserted and 'suitable' which was undefined, in order to be eligible for benefits.

Mothers' Allowances Act S.O. 1920 c. 89.

Submission to Ontario Human Rights Commission, Women for Justice, April, 1984.

51. Despite the non-gender specific eligibility requirements, women constitute the overwhelming majority of the recipients in the category of single parents with dependent children. In 1984, sole support mothers constituted 99% of this category.

Submission to the Ontario Human Rights Commission, Women for Justice, April, 1984.

52. It is submitted that discrimination includes practices and attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to opportunities generally available because of attributed rather than actual characteristics.

Report of the Royal Commission on Equality
in Employment, Rosalie Silberman Abella,
Commissioner Ottawa, The Commission, 1984.

53. It is submitted that the Charter reaches legislation which has the effect of interfering with protected rights as well as legislation which offends Charter guarantees in purpose.

54. The requirement of "living as a single person" has a disparate impact on women seeking Family Benefits, and is therefore discrimination on the basis of sex, and deprives women of equal benefit of the law.

Ontario Human Rights Commission and Theresa
O'Malley v. Simpson Sears, Dec. 17, 1985,
Supreme Court of Canada (unreported)

K.S. Bhinder & The Canadian Human Rights Commission
v. The Canadian National Railway Co. Dec. 17, 1985,
Supreme Court of Canada, (unreported)

R. v. Videoflicks, supra.

Griggs v. Duke Power 401 U.S. 424.

55. The stereotype of women's economic dependence on men has historically played a fundamental role in women's equality, and that

equality between men and women requires individual economic independence. Women's economic dependence has been created and reinforced by such factors as women's traditional role as homemaker, the lack of employment opportunities for women, and the substantial wage differentials between men and women in the labour force.

**Report of the Royal Commission on Equality
in Employment, Rosalie Silberman Abella,
Commissioner Ottawa, The Commission, 1984.**

56. It is these various factors which have historically forced single mothers onto social assistance and which account for the fact that one half of single parent families headed by women in Canada in 1983 were below the poverty line.

**National Council on Welfare, Poverty Profile,
1985, at p. 21.**

**Dennis Guest, The Emergence of Social Security
in Canada (1981), pp. 15-16.**

57. It is the same sexual stereotype of women's economic dependence on men that is being invoked to deprive sole support mothers systematically of their Family Benefits when they are found not to be "living as a single person". In circumstances where the alleged spouse provides no actual support, and is under no legal obligation to do so, the Regulation assumes that by virtue of entering into a relationship with a man, a woman is no longer eligible to receive an income in her own right.

58. A simplistic discrimination analysis examining only comparable classes is inappropriate in dealing with the inequalities perpetuated by sexual stereotypes. It is precisely the fundamentally unequal position of women that gives them a unique social position of being in need of social assistance as sole support parents, and explains why the class of sole support fathers who are subject to the same regulation is nominal in size.

59. It is submitted that Regulation 318, ss. 1(1)(c) and 5(b) exists and operates on the basis of this sexually discriminatory stereotype which denies sole support mothers the equal protection and benefit of the law.

**(b) Discrimination and Denial of Equal Benefit
to Children of Single Mothers**

60. It is further submitted that the requirement that sole support parents be 'living as a single person' discriminates against the intended beneficiaries of these family benefits, that is, the children, and thus violates their rights to equal protection of the law, and equal benefit of the law guaranteed by section 15 of the Charter.

King v. Smith 277 F. Sup. 31 (1967)

61. Once deemed to be living other than as a single person, a parent is denied family benefits without regard to whether the 'spouse'

provides the financial support required by the children or has a legal obligation to do so. It is submitted that the result of this regulation is that some children for whom the legislation was passed are denied the benefits of the legislation because of the lifestyle of their parents.

62. Other relevant legislation governing the welfare of children focuses on what is in the best interests of a child, rather than the rights or conduct of the parent. The children of parents receiving family benefits thus do not receive equal treatment regarding their source of income when compared to children of other single parents.

Child and Family Services Act R.S.O. 1984,
c.55.

Children's Law Reform Act, R.S.O. 1980,
c.68 as amended.

Family Law Reform Act, R.S.O. 1980 c.152.

IV NO JUSTIFICATION AS A REASONABLE LIMIT PURSUANT TO S.1

63. Once a prima facie violation of a Charter right has been established, the onus shifts to the government to justify the limitation of the protected right.

64. Any infringement of a Charter right gives rise to a heavy onus that the limitation imposed be necessary to the achievement of some significant government interest, and that the means chosen to

achieve this objective be proportional, and impair as little as possible the protected right.

Regina v. Big M Drug Mart Ltd. (1985)
18 CCC (3d) 385 at pp. 429-31 per
Dickson J. (S.C.C.)

Re Southam Inc. and the Queen (No. 1) (1983)
41 O.R. (2d) 113 at pp. 124-5 (Ont. C.A.)

R. v. Oakes

65. It is submitted that the "not living as a single person" test of eligibility for Family Benefits is not rationally nor proportionately related to the legitimate government objective of distributing allowances and benefits on the basis of need.

Family Benefits Act, R.S.O. 1980, c.151,
ss. 1(a)(d)

66. The "spouse in the house test" cuts off benefits absolutely, where there is no or only a limited economic contribution by the spouse and no legal obligation on him to provide an adequate level of support, despite a continued economic need. The regulation catches more individuals than its purpose requires, and is thus overly broad.

67. Additionally, if the benefits are primarily aimed at providing children with an adequate level of support, the parental criteria of "not living as a single person" is in the same way neither rationally nor proportionally related to their actual economic needs.

Lewis v. Martin 90 S. Ct. 1282 (1970)

68. It is submitted that a rational criterion of eligibility would be to consider the actual economic benefit, existing or available, flowing from the cohabitation when calculating the economic need of the individual applicant. As this is the procedure that the Regulation employs in determining the level of benefits for those classes of recipients not required to be single, it is submitted that this is a more appropriate and equally workable method of calculating benefit levels that does not unduly infringe on Charter rights.

**Regulation 318, RRO 1980, as amended
O. Reg 784/83 ss.8; 13(2), 23, 24.**

69. It is submitted that administrative expediency is insufficient justification for the infringement of a right protected in the Charter.

**Singh et al. v. Minister of Employment
and Immigration (1985) 17 D.L.R. (4th)
422 at P. 469 per Wilson J. (S.C.C.)**

70. A law cannot be vague, undefined or totally discretionary, but must be ascertainable and understandable. A limitation simply left to administrative discretion cannot therefore be one considered to be prescribed by law.

Ontario Film and Video Appreciation Society
(1983), 147 D.L.R. (3d) 58 (Ont. H.C.); aff'd
(1984), 5 D.L.R. (4th) 766 (Ont. C.A.)

71. It is submitted that the lack of clear criteria for establishing whether a woman is living as a single person and the resulting arbitrary manner in which the regulation is administered, results in the deprivation of benefits according to administrative discretion. The "spouse in the house" regulation therefore is not prescribed by law and cannot fall within the saving provision of section 1.

PART IV - ORDER REQUESTED

72. The Appellant therefore asks that this Honourable Court allow the appeal and order

(a) that the decision of the Social Assistance Review Board dated January 14, 1985 be set aside;

(b) that the appellant be restored to benefits under the Family Benefits Act from the date of termination of her benefits;

(c) that Regulation 318, section 1(1)(c) and 5(b) as amended, enacted pursuant to the Family benefits Act, be declared to be of no force or effect pursuant to the Charter of Rights and Freedoms, ss. 7, 15, 28 and 52;

(d) that the Appellant be awarded her costs of this appeal.

ALL OF WHICH is respectfully submitted.

Robert J. Sharpe
Counsel for the Appellant

SCHEDULE A
LIST OF AUTHORITIES

1. Re Warwick and Minister of Community and Social Services
(1978) 21 O.R. (2d) 528 (C.A.)
2. Willis v. Ministry of Community and Social Services (1983)
40 O.R. (2d) 287
3. Re Pitts and Director of Family Benefits Branch of the
Ministry of Community and Social Services (1985) 51
O.R. (2d) 303
4. Re Burton and Minister of Community and Social Services
(1985) 52 O.R. (2d) 211
5. Dowlut v. Com'r of Social Services (March 29, 1985),
Unreported Decision, at 3 (summarized 30 A.C.W.S. (2d)
299)
6. R. v. Morgentaler, Smoling and Scott (1985) 52 O.R. (2d)
353
7. R. v. Robson, (1985) 45 C.R. (3d) 68 (B.C.C.A.)
8. R. v. Videoflicks (1984) 48 O.R. (2d) 395 (C.A.)
9. Reference Re S. 94 (2) of the Motor Vehicles Act (1985)
63 N.R. 266 (S.C.C.)
10. R. v. Young (1984) 46 O.R. (2d) 529 (C.A.)
11. Board of Regents of State Colleges v. Roth 408 U.S.
564 (1972)
12. Loving v. Virginia 388 U.S. 1 (1967)
13. Skinner v. Oklahoma ex rel Williamson 316 U.S. 479 (1967)
14. Re City of Montreal and Arcade Amusements Inc. et al (1985),
18 D.L.R. (4th) 161 (S.C.C.)
15. Re Hamilton Independent Variety & Confectionary Stores Inc.
and City of Hamilton (1983) 143 D.L.R. (3d) 498 (Ont. C.A.)
16. Saumur v. Quebec [1953] 4 D.L.R. 641
17. R. v. Langevin (1984) 45 O.R. (2d) 705

18. Township of Innisfil v. Township of Vespra [1981], S.C.R. 145
19. Re: Toronto Newspaper Guild and Globe Printing [1951] 3 D.L.R. 162 (Ont. H.C.); aff'd 1952 D.L.R. 302 (Ont. C.A.); aff'd 1953 2 S.C.R. 18
20. Goldberg v. Kelly (1970) 397 U.S. 254
21. Re Ellis (1980), 28 O.R. (2d) 385
22. T.A. Miller v. Minister of Housing and Local Government, [1968] 1 W.L.R. 992 (C.A.)
23. Ontario Human Rights Commission and Theresa O'Malley v. Simpson Sears, Dec. 17, 1985, Supreme Court of Canada (unreported)
24. K.S. Bhinder & The Canadian Human Rights Commission v. The Canadian National Railway Co., Dec. 17, 1985, Supreme Court of Canada, (unreported)
25. Griggs v. Duke Power 401 U.S. 424
26. King v. Smith 277 F. Sup. 31 (1967)
27. Regina vs. Big M. Drug Mart Ltd. (1985) 18 CCC (3d) 385 (S.C.C.)
28. Re Southam Inc. and the Queen (No.1) (1983) 41 O.R. (2d) 113 at pp. 124-5 (Ont. C.A.)
29. R. v. Oakes February 28, 1986, Supreme Court of Canada (unreported).
30. Lewis v. Martin 90 S. Ct. 1282 (1970)
31. Singh et al. v. Ministry of Employment and Immigration (1985) 17 D.L.R. (4th) 422 (S.C.C.)
32. Ontario Film and Video Appreciation Society (1983), 147 D.L.R. (3d) 58 (Ont. H.C.); aff'd (1984), 5 D.L.R. (4th) 766 (Ont. C.A.)

SCHEDULE B

STATUTES AND REGULATIONS

1. Family Benefits Act, R.S.O. 1980, c. 151, as amended.
Sections 7, 14, 19 and 29.

2. Regulation 318, R.R.O. 1980, as amended.
Sections 1, 2, 5, 8, 13.

3. Canada Act, Schedule B, Constitution Act, Part I,
Canadian Charter of Rights and Freedoms, 1982,
Section 1, 76, 15, 28 and 36.

Family Benefits Act
R.S.O. 1980, ch. 151

7.—(1) An allowance shall and other benefits may be provided in accordance with the regulations to any person in need who is resident in Ontario and, ^{who is entitled to an allowance and other benefits}

- (a) who has attained the age of sixty-five years and who is not eligible for a pension under the *Old Age Security Act* (Canada), or
- (b) who has attained the age of sixty years but has not attained the age of sixty-five years and is a widow, an unmarried woman, or a woman,
 - (i) whose husband is a patient in an institution under the *Mental Hospitals Act*, a sanatorium under the *Sanatoria for Consumptives Act*, a hospital for the chronically ill or a nursing home, or a resident in a home for the aged under the *Homes for the Aged and Rest Homes Act* or the *Charitable Institutions Act*, and has been a patient or resident therein, as the case may be, for a continuous period of six months or more,
 - (ii) whose husband has deserted her for three months or more and his whereabouts is unknown,
 - (iii) whose husband is imprisoned in a penal institution and at the date of application has a term of imprisonment remaining to be served of six months or more,
 - (iv) who is divorced and has not remarried, or
 - (v) who is living separate and apart from her husband and has been living separate and apart from him for a continuous period of five years or more; or
- (c) who has attained the age of eighteen years and is blind or otherwise disabled as defined by the regulations and is not eligible for a pension under the *Old Age Security Act* (Canada); or
- (d) who is a mother with a dependent child and,
 - (i) who is a widow, or
 - (ii) whose husband has deserted her for three months or more, or
 - (iii) whose husband has deserted her and was a dependent father at the time of the desertion, or
 - (iv) whose husband is a patient in a sanatorium, hospital or similar institution, or
 - (v) whose husband is imprisoned in a penal institution and at the date of the application has a term of imprisonment remaining to be served of six months or more, or

- (vi) who is divorced from the father of her dependent child and has not remarried, or
 - (vii) whose dependent child was born out of wedlock, where the mother is sixteen years or more of age and her dependent child is three months or more of age; or
- (e) who is a dependent father with a dependent child; or
- (f) who is a foster parent with a foster child. R.S.O. 1970, c. 157, s. 7 (1); 1971, c. 50, s. 38 (4); 1971, c. 92, s. 4 (1-4).

(2) Any benefit may be suspended or cancelled if the recipient fails to comply with any requirement of this Act or the regulations. R.S.O. 1970, c. 157, s. 7 (3).

14.—(1) Where an applicant or recipient files a request for a hearing in accordance with section 13, the board of review shall fix a time for and hold a hearing to review the decision of the Director and the provisions of section 12 of the *Ministry of Community and Social Services Act* apply with necessary modifications to a hearing and review under this Act by the board of review. 1971, c. 50, s. 38 (7), *part*; 1974, c. 98, s. 3 (1).

(2) Where a request for a hearing in accordance with section 13 has been made and the board of review is satisfied that there may be financial hardship to the applicant or recipient during the period of time needed for the board to complete its review and make a decision, the board may, before holding the hearing, direct the Director to provide from time to time such amount as the board considers necessary for the maintenance of the applicant or recipient and any of his dependants until the board has completed its review and has given notice of its decision to the applicant or recipient, provided that such amount shall not exceed the maximum amount of an allowance prescribed in the regulations.

(3) The *Statutory Powers Procedure Act* does not apply to proceedings of the board of review under subsection (2). 1972, c. 151, s. 1.

(4) The Director, the applicant or recipient who requested the hearing and such other persons as the board may specify are parties to the proceedings before the board of review. 1971, c. 50, s. 38 (7), *part*.

(5) The Director may make his submissions at a hearing of the board of review in writing, but the applicant or recipient who is a party to the hearing shall be afforded an opportunity to examine before the hearing any such submission or any written or documentary evidence that the Director proposes will be produced or any report the contents of which the Director proposes will be given in evidence at the hearing. 1971, c. 50, s. 38 (7), *part*.

(6) Where, after a hearing, the board of review has reviewed the decision of the Director, the board may,

- (a) affirm the decision;

- (b) rescind the decision and direct the Director to make any other decision that the Director is authorized to make under this Act and the regulations and as the board considers proper, and for such purpose the board may substitute its opinion for the opinion of the Director; or
- (c) refer the matter back to the Director for reconsideration in accordance with such directions as the board considers proper under this Act and the regulations,

and the Director shall give effect to any directions given by the board under this section.

(7) The board of review may, on application of any party, reconsider and vary any decision made by it after hearing the parties to the proceedings in which the original decision was made, and the provisions of this section apply with necessary modifications to the proceedings on such reconsideration. 1971, c. 50, s. 38 (7), *part.*

15.—(1) Any party to the proceedings before the board of review under section 14 may appeal from the decision of the board to the Divisional Court on a question that is not a question of fact alone in accordance with the rules of court.

(2) Where any party appeals from a decision of the board of review, the board shall forthwith file with the Registrar of the Supreme Court the record of the proceedings before it in which the decision was made which, together with the transcript of the evidence, if any, before the board if it is not part of the board's record, shall constitute the record in the appeal.

(3) The Minister is entitled to be heard by counsel or otherwise upon the argument of an appeal under this section.

(4) On an appeal under this section, the court may affirm the decision of the board of review or may rescind it and refer the matter back to the board or to the Director to be disposed of in accordance with such directions as the court considers proper under this Act and the regulations, and the board or the Director shall give effect to any direction given by the court under this section. 1971, c. 50, s. 38 (7), *part.*

19.—(1) No person shall knowingly obtain or receive a benefit that he is not entitled to obtain or receive under this Act and the regulations.

(2) No person shall knowingly aid or abet another person to obtain or receive a benefit that such other person is not entitled to obtain or receive under this Act and the regulations.

(3) Every person who contravenes subsection (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$500 or to imprisonment for a term of not more than six months, or to both fine and imprisonment. R.S.O. 1970, c. 157, s. 14.

20. The Lieutenant Governor in Council may make regulations,

- (m) prescribing standards of eligibility for benefits in addition to those mentioned in this Act;

REGULATION 318

under the Family Benefits Act

GENERAL

1.—(1) In this Regulation,

- (a) "liquid assets" means cash, bonds, stocks, debentures, an interest in real property, a beneficial interest in assets held in trust and available to be used for maintenance, and any other assets that can be readily converted into cash, but does not include:
- (i) the amount remaining to be paid to an applicant, recipient or beneficiary, as the case may be, under a mortgage or agreement for sale;
 - (ii) the cash surrender value of a life insurance policy;
 - (iii) that portion of the sale price of an applicant's or recipient's real property that is applied or, where the Director approves, that will be applied to the purchase price of a principal residence of the applicant or recipient;
 - (iv) in the calendar year in which it is received, any payment received by a recipient as a child tax credit by reason of the application of section 122.2 of the *Income Tax Act* (Canada);
 - (v) in the academic year for which it is intended,
 - (A) any loan received by a student under section 3 of the *Canada Student Loans Act* (Canada);
 - (B) any loan received by a student under section 8 of the *Ministry of Colleges and Universities Act*;
 - (C) any grant received by a student under Regulation 646 of Revised Regulations of Ontario, 1980 made under the *Ministry of Colleges and Universities Act*, or
 - (D) any bursary received by a student under Regulation 643 of Revised Regulations of

Ontario, 1980 made under the *Ministry of Colleges and Universities Act*, or

(vi) an interest in real property that is:

- (A) the subject of an arrangement approved by the Director in accordance with section 6, or
 - (B) used by the applicant or recipient as his principal residence;
- (b) "married person" means an adult person other than a single person
- (ba) "self-contained quarters" means a residential dwelling place where the kitchen and bathroom are not shared by anyone other than a beneficiary included for the purposes of calculating the amount of the allowance to which the applicant or recipient is entitled;
- (c) "single person" means an adult person who is a widow, widower, unmarried, deserted, separated or divorced and who is not living with another person as husband or wife;
- (d) "spouse" includes a person who although not legally married to another person lives with that person as if they were husband and wife. R.R.O. 1980, Reg. 318, s. 1 (1); O. Reg. 654/82, s. 1; O. Reg. 847/82, s. 1.
- (2) For the purpose of clause 1 (f) of the Act, the following are classes of educational institutions:
- (a) elementary schools, secondary schools and schools for trainable retarded children under the *Education Act*;
 - (b) private schools operated in accordance with section 15 of the *Education Act*;
 - (c) schools for the blind and schools for the deaf under the *Education Act*; and
 - (d) any school or institution that is:
 - (i) designated by the Lieutenant Governor in Council as a specified educational institution for the purposes of the *Canada Student Loans Act* (Canada), or

(iii) an eligible institution under Regulation 644 of Revised Regulations of Ontario, 1980,

but is not an approved institution under Regulation 646 of Revised Regulations of Ontario, 1980. O. Reg. 360/83, s. 1.

(3) For the purposes of the Act and this Regulation,

(a) "blind person" means a person with visual acuity in both eyes that with proper refractive lenses is 20/200 (6/60) or less with Snellen chart or equivalent, or a person having the greatest diameter of the field of vision in both eyes of less than twenty degrees, where the diameter of the field of vision is determined by the use of

(i) a tangent screen at a distance of one metre using a ten millimetre white test object, or

(ii) a perimeter at a distance of one-third of a metre using a three millimetre white test object;

(b) "disabled person" means a person who has a major physical or mental impairment that is likely to continue for a prolonged period of time and who, as a result thereof, is severely limited in activities pertaining to normal living, as verified by objective medical findings accepted by the medical advisory board;

(c) "permanently unemployable person" means a person who is unable to engage in remunerative employment for a prolonged period of time as verified by objective medical findings accepted by the medical advisory board, and

(d) "person in need" means a person,

(i) whose budgetary requirements determined under section 12 exceed his income determined under section 13, and

(ii) who is not otherwise made ineligible for a benefit under the Act or this Regulation. R.R.O. 1980, Reg. 318, s. 1 (3); O. Reg. 459/82, s. 1.

2.—(1) The wife of a recipient of a pension under the *Old Age Security Act* (Canada),

(a) who is a person in need;

(b) who is not eligible for an allowance under subsection 7 (1) of the Act or under subsec-

tions (3), (4) or (5) of this section or for a pension under the *Old Age Security Act* (Canada);

(c) who has attained the age of sixty years;

(d) who is living,

(i) with her husband,

(ii) apart from her husband where he is a patient in an institution under the *Mental Hospitals Act*, a sanatorium under the *Sanatoria for Consumptives Act*, a hospital for the chronically ill or a nursing home or a resident in a home for the aged under the *Homes for the Aged and Rest Home Act*, or the *Charitable Institutions Act*, and has been a patient or resident therein, as the case may be, for a continuous period of six months or more, or

(iii) apart from her husband where he is imprisoned in a penal institution and at the date of application has a term of imprisonment remaining to be served of six months or more, and

(e) subject to section 5, who has liquid assets that together with those of her husband do not exceed \$5,000 in value,

is, subject to subsection (2), and to sections 3, 6, 7 and 8, eligible for an allowance calculated in accordance with section 10.

(2) Subsection (1) does not apply,

(a) to a person who was not eligible for an allowance under that subsection before the month of October, 1975 and who became eligible for a spouse's allowance under the *Old Age Security Act* (Canada) on or after that month; or

(b) after the month of October, 1975 to a person who was eligible for an allowance under that subsection prior to that month and who became eligible for a spouse's allowance under the *Old Age Security Act* (Canada) after that month.

(3) The wife of a recipient or of a former recipient of an allowance under the Act or a predecessor Act,

(a) who is a person in need;

(b) who is not eligible for an allowance under subsection 7 (1) of the Act or under any other subsection of this section;

- (c) who has,
- (i) attained the age of sixty years, or
 - (ii) one or more dependent children;
- (d) who is a single person; and
- (e) subject to section 5, who has liquid assets that do not exceed \$2,500 in value and where she has one or more dependent children, that amount shall include the value of their liquid assets and shall be increased by \$2,500 for the first dependent child and \$500 for each additional dependent child.

is, subject to sections 5, 6 and 7, eligible for an allowance calculated in accordance with section 11. R.R.O. 1980, Reg. 318, s. 2 (1-3).

(4) A person,

- (a) received and lodged as a resident within the meaning of the *Homes for Special Care Act* in a home for special care established, licensed or approved under that Act; or
- (b) who has attained the age of eighteen years and resides in a facility designated under the *Developmental Services Act*;

and who,

- (c) is a person in need;
- (d) is not eligible for an allowance under subsection 7 (1) of the Act or under subsection (1), (3) or (5) of this section; and
- (e) has liquid assets not in excess of the amounts set out in section 3.

is, subject to sections 5, 6 and 7, eligible for an allowance calculated in accordance with section 11. R.R.O. 1980, Reg. 318, s. 2 (4); O. Reg. 459/82, s. 2 (1).

(5) A permanently unemployable person,

- (a) who is a person in need;
- (b) who has attained the age of eighteen years;
- (c) who is not eligible for an allowance under subsection 7 (1) of the Act or under subsection (1), (3), (4) or (6) of this section;
- (d) has liquid assets not in excess of the amounts set out in section 3; and
- (e) who is not eligible for a pension under the *Old Age Security Act* (Canada),

is, subject to sections 5, 6 and 7, eligible for an allowance calculated in accordance with section 11. R.R.O. 1980, Reg. 318, s. 2 (5); O. Reg. 459/82, s. 2 (2).

(6) A person who,

- (a) is a person in need;
- (b) is resident in Ontario;
- (c) with the approval of the Director of the Vocational Rehabilitation Services Branch of the Ministry of Community and Social Services, is enrolled in an assessment or training program established under section 5 of the *Vocational Rehabilitation Services Act*;
- (d) is not receiving an allowance under the *Old Age Security Act* (Canada);
- (e) is not eligible for a pension under the *Old Age Security Act* (Canada); and
- (f) has liquid assets not in excess of the amounts under section 3.

is, subject to sections 5 and 7, eligible for an allowance calculated in accordance with section 11. R.R.O. 1980, Reg. 318, s. 2 (6); O. Reg. 459/82, s. 2 (3).

(7) A person who,

- (a) is a person in need;
 - (b) is resident in Ontario;
 - (c) is a mother with a dependent child;
 - (d) has been living separate and apart from her husband for three months or more;
 - (e) is not eligible for an allowance under subsection 7 (1) of the Act or under subsection (1), (3), (4), (5) or (6) of this section; and
 - (f) who has liquid assets not in excess of the amounts under section 3.
- (g) REVOKED. O. Reg. 690/83, s. 1, *part*.

is, subject to sections 5 and 7, eligible for an allowance calculated in accordance with section 11. R.R.O. 1980, Reg. 318, s. 2 (7); O. Reg. 690/83, s. 1.

(8) A person who is a father of a dependent child, who is a person in need and who is resident in Ontario and,

- (a) who has been living separate and apart from his wife for three months or more;
- (b) who is a widower;
- (c) whose wife is a patient in a sanatorium, hospital or similar institution.

- (d) whose wife is imprisoned in a penal institution and at the date of the application has a term of imprisonment remaining to be served of six months or more;
- (e) who is divorced from the mother of his dependent children and has not remarried;
- (f) whose dependent child was born out of wedlock where the father is sixteen years or more of age and his dependent child is three months or more of age; or
- (g) whose wife has deserted him and was permanently unemployable or eligible for an allowance under clause 7 (1) (c) of the Act at the time of desertion.

is eligible for an allowance and other benefits calculated in accordance with the Act and this Regulation. O. Reg. 424/82, s. 1.

5. Subject to subsection 14 (5) and notwithstanding anything else in the Act or in this Regulation, no person is eligible for an allowance.

- (a) who, subject to section 26 is a resident or patient in,
 - (i) an institution under the *Mental Hospitals Act*,
 - (ii) a children's mental health centre under the *Children's Mental Health Services Act*,
 - (iii) a sanatorium under the *Sanatoria for Consumptives Act*, or
 - (iv) a sanitarium under the *Private Sanitaria Act*,
 after the first month and prior to the last month of any continuous period of residence therein;
 - (b) who is an applicant or recipient under clause 7 (1) (b) or (d) of the Act, or under subclause 2 (1) (d) (ii) or (iii) or subsection 2 (7) or (8) of this Regulation and who is not living as a single person; or
 - (c) following the first month of eligibility for an allowance, where the person is also a recipient of general assistance under the *General Welfare Assistance Act*, other than,
 - (i) a resident of a nursing home licensed under the *Nursing Homes Act*, or
 - (ii) a recipient of general assistance as a head of a family under the *General Welfare Assistance Act* in respect of a dependant who is not included as a beneficiary for the purposes of calculating the amount of allowance to which the person is entitled.
- (d) REVOKED: O. Reg. 424/82, s. 2 (2).

R.R.O. 1980, Reg. 318, s. 5; O. Reg. 424/82, s. 2; O. Reg. 459/82, s. 4.

8. Where the Director is not satisfied that an applicant or recipient is making reasonable efforts to obtain compensation or realize any financial resource that the applicant, recipient, or a beneficiary included or to be included in the recipient's allowance, may be entitled to or eligible for including, where the applicant, recipient or beneficiary is a sponsored dependant or nominated relative within the meaning of the regulations under the *Immigration Act, 1976* (Canada), any compensation or contribution to the support and maintenance of the applicant, recipient or beneficiary that may result from any undertaking or engagement made on his behalf under the said regulations between the Government of Canada and the nominator or sponsor, the Director may determine that the applicant, recipient or beneficiary is not eligible for a benefit or he may reduce the amount of an allowance granted by the amount of the compensation, contribution or financial resource, as the case may be, that in his opinion is available to the applicant, recipient or beneficiary. R.R.O. 1980, Reg. 318, s. 8

INCOME

13.—(1) Subject to subsection (2), for the purposes of determining a person in need and computing the amounts of allowances, the income of an applicant or recipient shall include all payments of any nature or kind whatsoever, received by or on behalf of,

- (a) the applicant or recipient;
- (b) the spouse of the applicant or recipient where the spouse is living with the applicant or recipient, as the case may be;
- (c) any dependant of the applicant or recipient other than the casual earnings of the dependant; and
- (d) where the applicant or recipient is a foster parent, the foster child, other than the casual earnings of the foster child. R.R.O. 1980, Reg. 318, s. 13 (1); O. Reg. 459/82, s. 8 (1).

(2) For the purposes of subsection (1), and without restricting the generality of subsection (1), income shall include,

1. subject to subsection (6), the gross monthly income from wages, salaries and casual earnings other than the casual earnings of a dependent child, and net monthly income as determined by the Director from an interest in or operation of a business less,
 - i. an amount determined by the Director up to a maximum amount of \$40 for work-related expenses approved by the Director,
 - ii. notwithstanding the amount of \$40 referred to in subparagraph i. in the case of a person referred to in clause 7 (1) (a), (b), (c) or (e) of the Act, or subsection 2 (1), (4), (5) or (6) of this Regulation.

- A. an amount determined by the Director up to a maximum amount of \$50 for work-related expenses approved by the Director, and
 - B. an amount in addition to that referred to in sub-subparagraph A determined by the Director up to a maximum amount of \$40 for extraordinary work-related expenses approved by the Director, and
- iii. \$75 where there is one beneficiary or \$100 where there is more than one beneficiary, and
 - iv. an additional amount, not to exceed \$50, equal to 50 per cent of the amount by which the person's gross monthly income from wages, salaries, casual earnings and the net monthly income from an interest in or operation of a business exceed the total amount of the exemptions to which the person is entitled under subparagraphs i, ii and iii;
- 2. subject to subsection (7), any payment received under the *Old Age Security Act* (Canada);
 - 3. subject to subsection (7), any increment received under the *Ontario Guaranteed Annual Income Act*;
 - 4. subject to subsection (7), any pension or payment received under legislation of any other country;
 - 5. subject to subsection (5), income from a farm;
 - 6. subject to subsections (7) and (8), any regular or periodic payments received under a mortgage, agreement for sale or loan agreement where the unpaid balance of the mortgage, agreement for sale or loan, together with the value of his liquid assets exceeds the maximum value of the liquid assets permitted to him under section 2, 3 or 4;
 - 7. subject to subsection (7), any regular or periodic payments received under any annuity, pension plan, superannuation scheme or insurance benefit;
 - 8. subject to subsection (7), any payments for support or maintenance received under an order made by a court of competent jurisdic-

tion or under a domestic contract or an agreement with the putative father of a child born out of wedlock;

- 9. maintenance allowances paid under training programs, after deducting therefrom any expenses determined by the Director to be necessary for taking any such training program;
 - 10. the net income of the spouse of the applicant or recipient or of the putative father of a beneficiary available to the applicant or recipient as determined by the Director where the spouse or putative father, as the case may be, is living apart from the applicant or recipient;
 - 11. subject to subsection (7), where the applicant or recipient is a sponsored dependant or nominated relative within the meaning of the regulations under the *Immigration Act, 1976* (Canada), payments available to him, as determined by the Director, under any undertaking or engagement made on his behalf under the said regulations between the Government of Canada and any person nominating or sponsoring him;
 - 12. subject to paragraph 14, where the applicant or recipient is providing lodging to any person, a monthly amount that shall be deemed to be paid by such person to the applicant or recipient, which amount shall be,
 - i. \$40 where the person is of the age of eighteen years or more and is being provided with meals in addition to lodging, or
 - ii. \$20 where the person is under eighteen years of age or is not being provided with meals;
 - 12a. any payment received from the sale or other disposition of an asset, except that portion of the payment that is applied, or where the Director approves will be applied towards,
 - i. the purchase by the applicant or recipient or the spouse of the applicant or recipient of a principal residence used by the applicant or recipient, or
 - ii. the purchase of any other asset which in the Director's opinion is necessary for the health or welfare of a beneficiary included for the purposes of calculating the amount of allowance to which the applicant or recipient is entitled,
- but shall not include:
- 13. any payment received by or on behalf of an applicant, recipient or beneficiary under the

- Pension Act (Canada), the Unemployment Insurance Act, 1971 (Canada), the War Veterans Allowance Act (Canada), the Civilian War Pensions and Allowances Act (Canada), the Compensation for Victims of Crime Act, the Workers' Compensation Act, the Quebec Pension Plan (Quebec), the Canada Pension Plan, and any benefits received under this Act and the Regulations:*
14. any income received for lodging with or without meals provided by the applicant or recipient to any child, grandchild or foster child of the applicant or recipient where such child or grandchild is:
 - i. a beneficiary;
 - ii. a recipient or a dependant of a recipient of general assistance under the *General Welfare Assistance Act*;
 - iii. in full-time attendance at an educational institution approved by the Director, or is on vacation from such institution, or
 - iv. under eighteen years of age and without financial resources as determined by the Director;
 15. 40 per cent of the gross income as determined by the Director received from rented self-contained quarters;
 16. 40 per cent of the gross income as determined by the Director received from the rental of land or a garage;
 17. family allowances received under the *Family Allowances Act (Canada)* or allowances under the *Youth Allowances Act (Canada)*;
 18. any payment received as a child tax credit by reason of the application of section 122.2 of the *Income Tax Act (Canada)*;
 19. any payment received under the *Vocational Rehabilitation Services Act* or the regulations thereunder;
 20. assistance received under the *General Welfare Assistance Act*, except general assistance paid under subsections 11 (1) and (5) of Regulation 441 of Revised Regulations of Ontario, 1980, received after the first month of eligibility for an allowance;
 21. payments approved by the Director received from any agency or governmental source approved by the Director on behalf of a child who is not a beneficiary;
 22. donations received from a religious, charitable or benevolent organization;
 23. casual gifts of small value;
 24. casual payments of small value;
 25. any payment or refund received under section 7 of the *Income Tax Act*;
 26. any grant received under section 2 or 7 of the *Ontario Pensioners Property Tax Assistance Act*;
 27. any payment received under Orders-in-Council numbered OC-3410/70 and OC-2403/71, or either of them, made pursuant to section 5 of the *Ministry of Agriculture and Food Act*;
 28. interest and dividends earned on liquid assets;
 29. any payment received pursuant to the *Indian Act (Canada)* under a treaty between Her Majesty and an Indian band;
 30. any payment received under Order-in-Council numbered P.C. 1977-2496, made under section 40 of the *Indian Act (Canada)*;
 31. REVOKED: O. Reg. 654/82, s. 4 (2).
 32. any grant received by a student under Regulation 646 of Revised Regulations of Ontario, 1980, made under the *Ministry of Colleges and Universities Act*;
 33. any bursary received by a student under Regulation 643 of Revised Regulations of Ontario, 1980 made under the *Ministry of Colleges and Universities Act*;
 34. any grant received by a part-time student enrolled in a post-secondary institution, under clause 7 (a) of the *Ministry of Colleges and Universities Act*;
 35. any bursary received by a full-time student enrolled in a secondary school, under clause 8 (1) (h) of the *Education Act*;
 36. effective the 1st day of September, 1982, where an applicant or recipient or a beneficiary is in receipt of a grant under section 34.5 of the *National Housing Act (Canada)*, an amount that is the lesser of:
 - i. the average monthly amount of the grant, or
 - ii. the amount by which the cost of shelter as determined by the Director of the applicant or recipient exceeds the amount set out in Column A of the following Table:

TABLE

Number of Beneficiaries	Column A
1	\$200
2	283
3	307
4	330
5	353
6 or more	377

37. any payment received under subsection 2 (2) of the *Developmental Services Act* on or after the 1st day of February, 1983,

38. any payment received under section 88 of the *Child Welfare Act*.

R.R.O. 1980, Reg. 318, s. 13 (2); O. Reg. 459/82, s. 8 (2); O. Reg. 654/82, s. 4; O. Reg. 847/82, s. 4; O. Reg. 360/83, s. 3; O. Reg. 690/83, s. 5; O. Reg. 784/83, s. 4

(3) Where,

(a) a person was eligible for an allowance during the month of November, 1979;

(b) during the month of November, 1979, the person referred to in clause (a) received income from wages, salaries, casual earnings or a business;

(c) the exemptions contained in paragraph 1 of subsection (2) as of the 30th day of November, 1979, were applied in calculating the amount of the allowance for the month of November, 1979; and

(d) as a result of the application referred to in clause (c) the amount of the allowance for which the person referred to in clause (a) is eligible under subsection 11 (1) on and after the 1st day of December, 1979, is less than the amount of the allowance for which the person was eligible for the month of November, 1979,

the amount of the allowance for each month after November, 1979, for which the person is eligible shall, as long as clause (d) continues to apply, and does not at any time cease to apply, be calculated by applying the exemptions contained in paragraph 1 of subsection (2) as it existed on the 30th day of November, 1979. R.R.O. 1980, Reg. 318, s. 13 (3).

(4) Notwithstanding subsection (1), for the purposes of determining the amount of an allowance of an applicant or recipient who is a foster parent, income shall include only those payments to or on behalf of the foster child, other than the casual earnings of the foster child. O. Reg. 459/82, s. 8 (3).

(5) For the purpose of paragraph 5 of subsection (2), the annual income from a farm shall be deemed to be,

(a) 20 per cent of the first \$1,000 gross income or any part thereof;

(b) 30 per cent of the second \$1,000 gross income or any part thereof; and

(c) 40 per cent of the gross income in excess of \$2,000. R.R.O. 1980, Reg. 318, s. 13 (5).

(6) Notwithstanding subsection (1), in determining the amount of income under this section, the Director may average the gross income for wages, salaries and casual earnings over a period,

(a) not exceeding six months where the applicant or recipient is a blind person, a disabled person, a person referred to in clause 7 (1) (b) of the Act or subsection 2 (5) or (6) of this Regulation; and

(b) not exceeding four months in all cases other than those cases referred to in clause (a). R.R.O. 1980, Reg. 318, s. 13 (6); O. Reg. 727/82, s. 4.

(7) Where, in the opinion of the Director, any payment of the income referred to in paragraph 2, 3, 4, 5, 6, 7, 8 or 11 of subsection (2) applies to a number of months, he may average the income received over that number of months. O. Reg. 459/82, s. 8 (4).

(8) Where an applicant or recipient is in receipt of principal or interest under a mortgage, loan agreement or agreement for sale, the Director may approve the application of such amounts up to \$75 monthly in reduction of the actual cost to the applicant or recipient for shelter as defined in subsection 12 (1), for the purpose of determining the reduction in his or her budgetary requirements for basic needs under paragraph 4 of subsection 12 (3), but in no case shall the amounts so applied be included as income for the purpose of subsection (1). R.R.O. 1980, Reg. 318, s. 13 (8).

(9) Subsection (8) ceases to apply on the 1st day of November, 1981 except with respect to those persons who have received the reduction referred to in that subsection during the month of October, 1981. O. Reg. 721/81, s. 3.

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Legal Rights

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Equality Rights

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

SUPREME COURT OF ONTARIO

(DIVISIONAL COURT)

B E T W E E N:

BRENDA M. HORVATH

Appellant

- and -

**THE DIRECTOR OF THE INCOME MAINTENANCE
BRANCH OF THE MINISTRY OF COMMUNITY
AND SOCIAL SERVICES**

Respondent

MINUTES OF SETTLEMENT

The parties hereto by their respective solicitors agree to the settlement of the within appeal as follows:


1. The Appellant agrees to abandon without costs the appeal to the Divisional Court, from the decision of the Social Assistance Review Board, dated January 14, 1985 and to serve and file a Notice of Abandonment of the appeal.

2. The Respondent agrees to pay to the Appellant the sum of \$788.20, which sum represents the difference between the amount which has been received by the Appellant under the General Welfare Assistance Act and the amount to which she was entitled under the Family Benefits Act, for the period from June 1, 1984 to June 30, 1985.

DATED at
Ontario
this day of September
1986

Solicitor for the Appellant

DATED at
Ontario,
this 16 day of September
1986



Solicitor for the Respondent