

PLAIN TALK

The Newsletter of the Income Security Legal Clinic

Spring 2002

SPOUSE-IN-THE-HOUSE RULE VICTORY!!!

Thanks to the courage and integrity of four remarkable women who took on the Ontario government, the Ontario Court of Appeal has said that the definition of spouse in the *Family Benefits Act* is against the law. Prior to 1995, people were considered spouses if they lived together for at least three years. In 1995, the Harris Tories changed the law such that people living together were presumed to be spouses unless they could prove otherwise.

All of the women (Sandra Falkiner, Deborah Sears, Cynthia Johnston-Pepping and Claude Marie Cadieux) part of this challenge were sole support mothers and were in a relationship with a man they were living with for less than a year. Before 1995, each of them received FBA. The 1995 change in the law meant that each woman lost their benefits. They won their appeals at the Social Assistance Review Board. The government went to court to appeal the decision. The court found that the definition of spouse violated the women's equality rights under the *Charter*. The government appealed again and again they lost. Not able to admit defeat, the government is asking the Supreme Court of Canada to decide the case. The court can decide not to hear the appeal. We'll have to wait and see.

The Court of Appeal found that the definition of spouse is discriminatory both on the basis of sex, marital status and receipt of social assistance. Recognition that people face discrimination because they receive social assistance, that is, that they are poor, is an enormous step forward in the ongoing fight for low income people's rights.

In the meantime, the government is changing the definition of spouse in the Ontario Works and ODSP laws such that there won't be an assessment of whether a relationship is spousal until two people have lived together for three months. Assessments will include a determination of whether there is a « meaningful » economic relationship.

We have been told by the City of Toronto that the Ontario government has issued a bulletin asking municipalities to flag potential spousal cases but not to make any new determinations over the next month.

In the next month, we need to come together to pressure the government to go much farther than this to change the law. However, we need to be clear on what we would like to see instead. Please contact us. We need your views and your energy to carry on this fight.

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Here is the story of Sandy Falkiner, one of the heroic women who took on the government.

Fighting Back and Winning: Sandy's Story

How do I begin to tell my story which encompasses years of pain, struggle and yes, sometimes public humiliation? How can I help society, in general, understand that to be a single woman on public assistance at a time when the ruling government was identifying us as "potato chip eating, beer drinking coach potatoes" was both nerve-racking and isolating? The answer is, of course, I rely on my courage, pride and determination to make a difference for women. Why is it necessary for the story to be told again? Because all of the truths were not revealed in the beginning and because there still remains much misconception, stereotyping and stigma surrounding single mothers on assistance in Ontario.

At age 32 I found myself raising my two year old, severely asthmatic son, on my own. Prior to the birth of my son, I had lived out west for a couple of years and found myself in a highly abusive situation. I thought I had escaped back to Ontario on the bus when my abuser climbed on and followed me home. It was a terrifying experience especially since I knew he had a gun. Many months of terror followed until I was finally rid of him but that didn't erase it from my mind. I remember the Justice of the Peace asking me how I could have gotten into this situation, essentially blaming me for being abused. It was very clear to me that the justice system blamed me for allowing the abuse.

At the time, I was working at a local car factory making a very good income. My son's father (not the abuser) looked after him during the evening and I looked after him during the day. The relationship fell

apart and my son's father moved out west. Suddenly, I was without a caregiver during the evening and after searching frantically for a qualified sitter I was forced to quit my job. It was apparent that no one was interested in being responsible for a young asthmatic toddler who required a great deal of attention.

Approximately three and a half years into my B.A., which I was doing entirely by correspondence courses and typewriter, I met someone who was to become my significant other years later. In the summer of 1995, I enquired into the rules around accommodation sharing with respect to social assistance. I spoke to my caseworker who assured me that the current rules stated that two people could co-exist together as long as income was claimed and everything was above board. Reid and I decided to give it a try and move in together effective September 1995. Two weeks prior to his moving in I received a call from my worker stating that the rules might change but that he had no other information other than that. By this time Reid had already applied and been accepted at a nearby college. We were told that both of us couldn't apply for student loans and attend school at the same time. Reid quit school and started working at a job for \$8.00 per hour. I found a part-time job as a telemarketer in the evening and I continued my schooling.

Around November 1995, I was approached by my worker who indicated to me that it was necessary for me to fill out new forms due to new legislation called the "Spouse in the House". I can't begin to tell you how humiliating and intrusive some of the questions were in this form. The only thing the government stopped short of asking was whether I was having sexual relations with my boyfriend.

I could have made it easy on them instead of filling out this ridiculous form. According to federal law, Reid was not considered my legal spouse until we had lived together for one year and therefore, he nor I were eligible to claim each other on taxes. The second indicator was the fact that Reid could not obtain benefits for myself or my son through his insurance company at work because we weren't considered to be married. The third indicator was the fact that Reid was, in fact, not even legally responsible to support my son or myself according to the family laws of Ontario.

Didn't matter! Two weeks before Christmas, I received a call from my worker stating that I was being cut off my benefits which included my medical and dental for my son. I'm not sure how I got through that day. All I could think about was how I was going to obtain asthma medication for my son, never mind how I was going to feed and clothe him on a part-time salary.

So...I fought back. I examined the questionnaire thoroughly and took it to a local lawyer who wasn't interested. I kept making noise until someone heard me and I was contacted by an organization in London who were considering legal action against the "Spouse in the House" legislation". I was told that it would take a very long time, years in fact, to reach any decisions once we took it to court. I was warned that public opinion was not in my favor and that many people would stereotype me and assume I was lazy and worthless, which is basically what they were hearing from the government. I was told that they had other women prepared to take on the challenge and that I was welcome to join them in the action. For the first time I felt that someone believed in me and because of this and many other reasons, I jumped on the bandwagon.

I didn't believe it was right for a government to determine whether I

was allowed to try to form a relationship or not. I didn't believe it was right for a government to penalize my child by taking away his ability to receive medication because his mother wanted to begin a relationship. I didn't believe it was right for a government to force women to fill out such a highly intrusive and intimate form. I didn't believe it was right for a government to force a women to be dependent on a man just because she was receiving a small amount of assistance. And I didn't believe it was right for a government to insist that Reid be made responsible for my son, when in fact, he was not legally responsible. Most of all I didn't believe it was right for the government to take advantage of women and children already disadvantaged by poverty and public stigma. I didn't believe it was right and, as it turns out, neither did the courts.

The Tory government has been told by the Social Assistance Review Board, the Ontario Court and now the Ontario Court of Appeal that their legislation violated Section. 15 of the Charter of Rights. Their "Spouse in the House" legislation is not worth the paper it's written on or the expense they have gone through to defend it.

I think it is past time for the government to admit they were wrong, address the situation accordingly by revoking the legislation, and put something in place to protect the dignity and rights of women on assistance in Ontario. Just because they are poor, does not make them pawns. Just because they are women does not make them less equal than the next person.

Just because they are living below the poverty line does not give them the right to further undermine their status in society which is already stigmatized by negativity and hate.

Why do I speak out again? Because I don't want the harrassment, humiliation and stigmatism to continue. I want

women in Ontario to feel free to make choices without having to defend themselves and their rights. I want the public backlash on women on assistance in Ontario to stop. It's time for compassion not hatred, it's time for help not stereotyping, it's time for that kinder, gentler government I keep hearing about to spread this same message. If they would admit their errors and make amends, perhaps the public will come to a similar understanding.

Sandy Falkiner-Budgell



Justice with Dignity: Remember Kimberly Rogers

By: Jennifer Keck
The Committee to Remember Kimberly Rogers

There was considerable outrage last August when Canadians read in their *Globe and Mail* that Kimberly Rogers died pregnant and alone while under house arrest in Sudbury, Ontario for a charge of welfare fraud. What many do not realize, however, is that the conditions are in place for a similar tragedy to happen again.

Kimberly Rogers was charged with welfare fraud after collecting both social assistance and student loans to help cover the costs of attending community college. After her conviction in April 2001, she was placed under house arrest with no means to support herself or her unborn child.

When Ms. Rogers was convicted the Ontario Works Regulations (Ontario's social assistance program) specified that any person convicted of welfare fraud would be ineligible to receive social assistance benefits for a period of three months. Now the situation would be even worse- a person convicted of welfare fraud would fall under the life-time ban.

Ms. Rogers was the first person in Ontario to challenge the constitutional validity of the Ontario Works Regulations that resulted in the cancellation of her benefits. May 14th marks the one year anniversary of her precedent-setting challenge under the Charter of Rights.

To recognize this date, the *Committee to Remember Kimberly Rogers*, a community-based organization in Sudbury, is launching a public education campaign with buttons and brochures that focus on the need to change Ontario's Draconian welfare policies. Our main goal is to ensure that Kimberly Rogers is not forgotten and that another tragedy like this does not happen again.

To promote the campaign, we are working with the Income Security Legal Clinic, the National Anti-Poverty Organization (NAPO), the Canadian Association of Elizabeth Fry Societies (CAEFS), the Ontario Social Safety Network (OSSN) and other organizations to extend the campaign to other parts of the country. We are asking individuals, groups and organizations to join us by purchasing buttons and taking part in this campaign.

The preliminary Coroner's report on Kimberly Rogers' death has not been made public. Our committee applauds the decision of the regional Coroner's office to launch an inquest. But the policies that set the context for this tragedy are still in place. Progressive voices must speak out!!!

If you or your organization would like to order campaign materials or get more information about last summer's tragedy in Sudbury, please contact: Peter Desilets 705-671-2439/ desilets48@sympatico.ca or Laurie McGauley 705-674-0282.

The Committee to Remember Kimberly Rogers has also produced a brief to our local city council with recommendations regarding the handling of cases of welfare fraud in the period leading up to the inquest. For more information contact the names above.

In the unique circumstances of this case, if Ms. Rogers is exposed to the full three months suspension of her benefits a member of our community carrying an unborn child may well be homeless and deprived of basic sustenance. Such a situation would jeopardize the health of Ms. Rogers and the fetus, thereby adversely affecting not only mother and child but also the public- its dignity, its human rights commitments and its health care resources. For many reasons there is overwhelming public interest in protecting a pregnant woman in our community from being destitute..

Judge Gloria Epstein, from the transcript for the hearing of Ms. Rogers' application for interim reinstatement of her Ontario Works.

Groups that support the work of the Committee to Remember Kimberly Rogers include: Action Centre for Youth, Elizabeth Fry Society; John Howard Society; Income Security Legal Clinic; Laurentian University Students' General Association; Myths and Mirrors Community Arts; Ontario Coalition for Social Justice; School of Social Work, Laurentian University; Social Planning Council; Sudbury Coalition for Social Justice; Sudbury District Labour Council; Sudbury; Sexual Assault Crisis Centre; Sudbury Women's Centre; USWA, Local 6500 Women's Committee, USWA Northeastern Ontario Area Council Women's Committee; YWCA and more are joining every day.

We would like to thank the Sudbury District Labour Council, CAW Mine-Mill Local 598 and the Laurentian University Faculty Association for their generous financial support.

Events were held in communities across Ontario on May 14 to commemorate the one year anniversary of Kim's Charter Challenge. We hosted a press conference in Toronto.

Members of the Committee to Remember Kimberly Rogers are available to speak to community groups, unions and others who want to know more about last summer's tragedy in Sudbury and the need for welfare reform.

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Pay the Rent AND Feed the Kids

By: Larry Weissmann, Somerset West Action Network and Sherrie Tingley, Centre for Equality Rights in Accommodation

The "Pay the Rent AND Feed the Kids" campaign, initiated in Ottawa by the Somerset West Action Network (SWAN) to challenge inadequate social assistance benefits, has spread throughout Ontario. Local initiatives are currently underway or being planned in Hamilton, North Bay, Northumberland, Thunder Bay, Sarnia, Toronto, and Windsor.

In 1995, social assistance benefits were cut by 21.6%. Inflation has eroded benefits by an additional 13% and rents, in particular, have gone through the roof. A single parent with one child receives a maximum monthly benefit of \$997, \$511 of which is meant to cover housing costs. In Ottawa, the average monthly rent for a two bedroom apartment is \$914. In Toronto it is \$1,027, while in Windsor it is \$738. In larger cities across Ontario, it is not uncommon for

families receiving social assistance to pay well over 70% of their income toward rent.

In February, SWAN's first major activity was to help persuade the City of Ottawa, through its Social Services Committee, to make a presentation at the provincial pre-budget hearings to advocate for raising the OW/ODSP shelter allowances. Media coverage of the SWAN-publicized presentations to the Committee, while not all that might have been wished for, was nevertheless good, with both major newspapers giving prominence to the meeting.

The subsequent expansion of the campaign in Ottawa has been heartening. The Ottawa office of the Centre for Equality Rights in Accommodation (CERA) has made a campaign kit available to interested groups across the province. The kit includes endorsement collection forms and a powerful poster designed by the National Union of Public and General Employees (NUPGE). An outreach effort to bring the community on board for further activities has resulted in over a dozen groups to date endorsing the campaign. The Income Security Legal Clinic has also prepared and distributed a municipal lobby kit as part of the campaign.

Future plans are still tentative, but it is anticipated that the next Ottawa-based activity will be scheduled for later in the summer or early fall.

The experience in Ottawa shows that a finely designed poster (comparable to those usually associated with major cultural events), combined with a gripping campaign slogan, resonates with diverse segments of the public in ways not frequently associated with social justice issues. Simple to appreciate in retrospect, this fact emphasizes that wide vistas are still open for the creation of new and innovative community development strategies.

To learn more about this campaign contact Candice Beale at the CERA Ottawa office: 613-728-2228

Access to Ontario Disability Support Program Provincial Campaign

By: Catherine Manson, Flemingdon Community Legal Services

In November 2000, the Social Planning Council of Ottawa hosted a forum entitled "The Experience of People with Disabilities in Ottawa and the Ontario Disability Support Program (O.D.S.P.)". The report of the forum was published in October 2001 and detailed many of the problems associated with the ODSP, including those related to the application and appeal processes, client services, employment supports, medical issues and the cost of living and housing. The report also came with detailed recommendations for improvement.

The legal clinics' Steering Committee for Social Assistance recognized the work done at the Ottawa forum in relation to the increase in the number of appeals being handled by legal clinics across the province and, most importantly, the hardship being experienced by applicants and recipients. A decision was made to launch a Provincial Campaign entitled "Access to O.D.S.P."

This multi-prong campaign is being co-ordinated with the assistance of community legal clinics, community groups, the Ontario Social Safety NetWork (OSSN), mental health organizations, health professionals, applicants and ODSP recipients. The Income Security Legal Clinic began our process with a request for statistics from the Province, which have now been provided, and is currently writing a detailed brief on the application process.

Several regional public forums are currently being organized to reach out to the communities. Forums have been held in Toronto, Cobourg, Barrie, Lindsay, and London, and further meetings are to be scheduled in Hamilton, Waterloo, Georgina, Niagara, Kenora and Thunder Bay.

Our next Provincial Campaign meeting is scheduled for Tuesday June 25, 2002 at 425 Adelaide St. West, 5th Floor (Income Security Legal Clinic) from 1:30 to 3:30 p.m. If you are interested in joining the campaign to speak about the issues, provide real stories, host forums or media events, and make positive recommendations for change, we encouraged you to contact Nancy Vander Plaats at Scarborough Community Legal Services ((416) 438-7182; vanderpn@lao.on.ca) or Catherine Manson at Flemingdon Community Legal Services((416)441-1764; mansonc@lao.on.ca). You can also contact your local legal clinic.

Fighting the War on the Poor: Cut off Welfare for Life?

The Tories have been implementing their "common sense" policies on those least able to bear them - social assistance recipients. A "kinder, gentler" government is nowhere in sight.

Where recipients do not accurately report income, assets, or expenses, they are faced with an internal investigation by social assistance authorities, a possible criminal investigation and charge of welfare fraud, and a criminal trial. The social assistance authorities can demand repayment of monies in any case, but if the recipient pleads guilty or is convicted after trial of welfare fraud, the authorities can use the conviction to ban the recipient from receiving assistance in the future. Depending on when the incident occurred, a ban may be for 3 months, 6 months, or for life.

Continuing the courageous fight begun by Kimberly Rogers, three people subject to the lifetime ban are heading to court to tell the government that the ban is unconstitutional because it violates the right to life, liberty and security of the person, equality rights, and because it amounts to cruel and unusual punishment or treatment.

All three have been ordered to pay back the money and have been barred from ever again receiving social assistance. Their spouses and/or dependents are still entitled to benefits, but it is evident that the reduced amounts received cannot meet the needs of the family unit given the inadequacy of welfare rates. In one welfare "fraud" case, a welfare administrator admitted that when people don't report other sources of income, they automatically begin an investigation because they know that no one can survive on the current rates.

The effects of the ban will also likely come up at the inquest into Kimberly Rogers' death. The Income Security Legal Clinic is representing the National Anti-Poverty Organization (NAPO), the Ontario Social Safety Network (OSSN) and the Steering Committee on Social Assistance (legal clinic advocates) in their efforts to be heard at the inquest.

Driven by corporate interests, this government is criminalizing the poor. It must stop now.

The Collection Agencies are Coming!

Over the past few months, aggressive collection of social assistance overpayments has become a major issue for current and former recipients across the province.

In late 2001, the provincial government contracted with a number of collection agencies to recover old overpayments from former recipients. In many cases, the alleged overpayments go back several years and are for thousands of dollars. Often, they were the result of administrative errors. Former social assistance recipients have been inundated with letters and harassing telephone calls from private businesses such as Collectcorp, Financial Debt Recovery Ltd. and NCO Financial Services Inc., threatening them with garnishment of wages and seizure of property if they don't pay back the alleged overpayments.

The province is also expanding its collection of overpayments from current Ontario Works and Ontario Disability Support Program recipients. With its new computer system in place, the province can now identify overpayments established under the old Family Benefits and General Welfare systems and collect them from current recipients. This is called "cross-collection". While the "official" start date for cross-collections was to be the summer of 2002, in many regions collections have already begun. Current recipients may not receive any separate notification or explanation of the overpayment recovery – the first notice may simply be a deduction from their benefit cheque.

A major concern is how to verify or challenge the alleged overpayments. The overpayment claims should not be taken at face value. Many overpayments have been wrongly calculated. Many do not even exist. A critical issue is whether the overpayment is claimed against a *current* or *former* social assistance recipient.

For current OW and ODSP recipients, the overpayments can potentially be appealed to the Social Benefits Tribunal. Recipients should monitor their benefit cheques closely and, if they have any questions about the amount they are getting, act quickly to seek legal advice and/or request an internal review and appeal.

Where the person being pursued is no longer receiving benefits, the situation is more complicated. In these cases, overpayments cannot be appealed to the SBT. Strategically, it may be best to either completely ignore the letter claiming an overpayment, or respond to it by disputing the claim. Ultimately, the only way for a collection agency, municipal OW administrator or the provincial government to recover the overpayment is to take the former recipient to court, where they will have to prove that the money is indeed owing.

The issues surrounding recovery of overpayments from former recipients are complex. Anyone who receives a letter claiming an overpayment should definitely seek legal advice. Legal clinics that do not currently represent clients in small claims court should be aware that there is a **\$25 fee** for filing a defence.

Before referring a client directly to the court, these clinics should consider the ability of the client to pay this fee. The Income Security Legal Clinic is currently investigating options for a legal challenge and/or public campaign focusing on the issue of overpayment collection.

If anyone has ideas or overpayment stories, contact Jacquie Chic or John Fraser. The collection agencies are coming and we all need to be prepared.

ISLC Litigation Update: The Sponsored Immigrant Case

Every year over 100,000 immigrants settle in Ontario. Of these, over one third are "family class" immigrants, who are sponsored by close family members. In these cases, sponsors must sign an agreement with the federal government to financially support their family members.

In 1993, the Ontario government amended the regulations to the *General Welfare Assistance Act* (the *GWAA*) and the *Family Benefits Act* (the *FBA*) in such a way that treated sponsored immigrants differently from other applicants for social assistance. The deductions were carried over into the *Ontario Works Act* (the *OWA*) and the *Ontario Disability Support Program Act* (the *ODSPA*).

Sponsored immigrants became subject to a minimum \$100 per month deduction from their benefits. The amount of the deduction is greater if the sponsored person resides with the sponsor. This deduction is made even if there is no financial support given to the sponsored immigrant from the sponsor.

Legal clinics came together to fight this injustice. A court application was filed in 1995 using the *Charter of Rights and Freedoms*. Upon opening its doors in 2001, the Income Security Legal Clinic was asked to join the

litigation, and has been retained by the four applicants to act as litigation counsel, alongside Raj Anand. We will tell the court that they discriminate on the basis of race, ethnicity, place of origin and sex.

As part of our commitment to working in partnership with the community, we have convened a number of community consultation meetings in order to fashion our arguments so as to most effectively reflect the voices of those affected by the laws. Further meetings will be held in the next short while. A case advisory committee was also formed.

The case is likely to be heard in court this fall. We'll keep you posted.

PLAIN TALK is the newsletter of the Income Security Legal Clinic. We will publish four times a year. Please send us your story ideas, stories of information. We want to hear from you.

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