

PLAIN TALK

The Newsletter of the Income Security Legal Clinic

Winter 2001/2002

WELCOME TO THE INCOME SECURITY LEGAL CLINIC!!!

What does the clinic do?

In our first issue of PLAIN TALK, the newsletter of the Income Security Legal Clinic, we want to introduce you to our work and the issues we address. But more importantly, we want to invite you to share your thoughts and ideas in this space. This newsletter belongs to our community and in these pages we hope to create a dialogue which will bring us closer to what we strive for: a decent standard of living for all Ontarians.

Legal Aid Ontario established the clinic to serve Ontario's low income community by conducting test case and Charter litigation relating to provincial and federal income security programs, including Ontario Works, ODSP, CPP and Employment Insurance. That is to say that the cases we accept will raise systemic issues and/or a novel point of law, and will almost always be heard in higher level courts. If you need assistance with a hearing before the Social Benefits Tribunal, for example, contact your local clinic.

Legal work will take place in the broader context of law reform, public legal education and community development. In the short-term, we hope to address the perpetuation of poverty resulting from the rules and administration of these programs. In the longer term, we hope to shine a light on government policies which create poverty. We believe that involves seeing and making the links between the issues affecting all low income people. Threatened and inadequate

income, for instance, leads to evictions and homelessness. Working with other clinics and community groups, the connections will become clear.

What work are we doing right now?

We have joined with the Advocacy Centre for the Elderly and private bar lawyer Raj Anand in a class action/Charter challenge aimed at the automatic reduction of social assistance paid to sponsored immigrants. The case was begun in the mid '90s.

We will tell the court that these laws discriminate on the basis of race, ethnicity, place of origin and sex. Not only are sponsored immigrants treated differently than other people receiving social assistance, but commitments Canada has made under international law to guarantee the right to decent housing, income and a

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decent standard of living are torn to shreds as a result of these provisions.

We are also examining the Ontario government's new laws allowing people on social assistance to be tested for drugs and literacy levels.

On another front, we are in discussions with a number of community groups regarding the upcoming inquest to be held into the death of Kimberly Rogers. Ms Rogers was convicted of welfare fraud and died in her Sudbury home while under house arrest. The inquest will examine the broad circumstances leading up to her death and will be a forum for a close look at Ontario's welfare policies. It is likely that we will be involved in the inquest in some capacity.

How can you contact us?

Because the clinic serves the entire province, we don't provide walk-in services or summary advice. These services are best provided by your local clinic. We might also learn of your case or community efforts through a community group.

But these are early days. The process of determining which cases we will take on is underway but not completed. We will shortly survey community legal clinics for their input with respect to priorities. We will also be going into communities across the province to hear directly from you what needs are most pressing.

In the meantime, contact us if you're not clear on whether we might be able to work with you. We want to know what you think.

We want to hear from you!

Please tell us what you think our priorities should be. Don't wait for our surveys or for us to visit your community. We welcome your input now.

PUTTING THE WORK OF THE CLINIC IN CONTEXT

By Josephine Grey
Provincial Community Outreach
Co-ordinator/Organizer

After several years of planning and bringing people together, the Income Security Legal Clinic is finally a reality. The launching of this clinic at last fills a gaping hole in the legal system by providing a resource for people in poverty to challenge the rules of income security systems such as Workfare and Employment Insurance.

The issues facing people in need in Ontario today are increasingly serious. People are suffering the worst abuses of their right to basic needs since social programs were introduced over 70 years ago. Most of the systems people must turn to in a crisis are now programmed primarily to keep people out or find ways to cut them off. The systems have become a cause of further crisis instead of a way to ensure people can survive bad times and move forward. Homelessness has risen at least 150% and families with children are now the majority of homeless people in the largest province in one of the wealthiest countries in the world.

As this trend towards denying people their right to income security has grown, the nature of work has changed as well. More and more jobs are low wage, insecure, part-time and without benefits. While the experts talk about the wonders of labour "flexibility", they ignore the obvious fact that unless income security programs adapt to the reality of an insecure labour market, people will suffer and so will the economy. When people have no money, they cannot buy goods and services; yet the prejudice against people in need is so negative. The simple fact is that every dollar spent on welfare, disability, old age

pensions, etc. goes right back into the local economy.

The clinic and the people we serve are facing long standing prejudice against the poor, a widespread resentment of income security programs fed by right wing intolerance, as well as ignorance of the social and economic benefits of income protection. The courts are no less affected, so our work is cut out for us.

“My hope is that the work of the clinic will help to protect people’s basic human rights and transform the way government delivers on its legal obligation to provide income security to all people in need.”

My job is to help organize people and communities to challenge the violations of human rights caused by discriminatory income security programs. I will be in touch with communities across the province to gather your views about these issues and the priorities for change. Working with communities, we will find and assist people who are able to challenge the system and whose case exposes the flaws in the system. We will also work with all of you to determine what the remedies should be, how the system should change and to support the struggle to make those changes happen.

These are very grim times, but it is darkest before the dawn. My hope is that the work of the clinic will help to protect people’s basic human rights and transform the way government delivers on its legal obligation to provide income security to all people in need.

EMPLOYMENT INSURANCE CASE A MAJOR VICTORY FOR UNEMPLOYED WOMEN

By John Fraser
Research and Policy Analyst

The Employment Insurance Act and Women

The introduction of more restrictive eligibility rules in the 1996 *Employment Insurance (EI) Act* has been a major step backward for unemployed people across Canada. Between 1989 and 1999, the percentage of unemployed people who were receiving benefits dropped dramatically from 74% to 37%. Over the same period, a huge surplus has accumulated from the premiums paid by workers who are increasingly unable to access any benefits.

Part-time and low-income workers have been particularly hard hit by the change from using insurable weeks to insurable hours as the basis for meeting minimum eligibility requirements. Women constitute 70% of the growing part-time labour force in part because they still perform two-thirds of unpaid work in the home and are overwhelmingly responsible for childcare. As a result, in 1999, only 32% of unemployed women in Canada qualified for benefits – 10% lower than the comparable figure for men.

The Lesiuk Case

In 1998, Kelly Lesiuk moved from Brandon to Winnipeg, Manitoba where her husband had recently found employment. For almost five years prior to the move, Ms Lesiuk had been a part-time registered nurse at the Brandon General Hospital. She was also the primary caregiver for the couple’s daughter. When Ms Lesiuk applied for EI

benefits shortly after arriving in Winnipeg, the Employment Insurance Commission determined that she had worked fewer than 700 insurable hours in the previous 52 weeks and therefore could not qualify for regular, pregnancy or sickness benefits. Under the new EI rules, she was 33 hours short. Significantly, under the old *Unemployment Insurance Act* she would have had enough insurable weeks to qualify.

Assisted by the Community Unemployed Help Centre in Winnipeg and the Public Interest Law Centre, Ms Lesiuk appealed the Commission's decision, arguing that the new EI eligibility rules discriminated against women and parents. In March 2001, she won a dramatic victory when the rules were found to violate the equality guarantee in section 15 of the *Charter*. In his decision, Justice Salhany stated:

[Kelly Lesiuk's] status as a parent and primary caregiver is one that the government has no legitimate interest in expecting her to change to receive equal treatment under the law. When a mother works part-time because of her unpaid parental responsibilities, she should not receive inferior employment insurance coverage... In my view, the eligibility requirements demean the essential human dignity of women who predominate in the part-time labour force because they must work for longer periods than full-time workers in order to demonstrate their labour force attachment.

Disappointingly, the federal government continues to defend their discriminatory rules and has appealed this decision to the Federal Court. The hearing will likely take place in the spring of 2002. We will be supporting the efforts of Ms. Lesiuk and her family as they continue this important challenge.

Kelly Lesiuk's case represents an important achievement for the equality rights of unemployed women in Canada. Finally, the federal government is being taken to task for its punitive, regressive and discriminatory unemployment insurance legislation – legislation that denies hundreds of thousands of unemployed women adequate income security.

"...in 1999, only 32% of unemployed women in Canada qualified for benefits – 10% lower than the comparable figure for men."

For more information on the case, contact the Community Unemployed Help Centre (www.cuhc.mb.ca), the Canadian Labour Congress (www.clc-ctc.ca) or the Income Security Legal Clinic.

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POVERTY AND DEMOCRACY

By Jacquie Chic
Director of Advocacy and Legal Services

Louise Gosselin, a young Québec woman, recently told the Supreme Court of Canada that Québec welfare laws establishing reduced rates of assistance to those under 30 is an affront to the dignity and integrity of young people. As with many of the changes to welfare law, what drives these "reforms" is the notion that if people aren't working, it is because they lack skills or motivation. In other words, the barriers to employment are said to be attributable to deficiencies in those who need assistance, not with government policies which fail to provide adequate child care and safe and decently

paid jobs. The fact is that reducing welfare rates and/or cutting people off assistance serves the purpose of keeping wages low by broadening the pool of cheap labour. This is no secret. The International Monetary Fund and the Organization for Economic Co-operation and Development boldly call upon governments to cut welfare and unemployment insurance programs to promote greater "labour market flexibility".

International human rights laws require governments to ensure a decent standard of living, a right to adequate food, shelter and medical care, and a decent and fair wage. What about the Canadian Charter of Rights and Freedoms?

The federal government has responded to questions from the U.N. Committee on Economic, Social and Cultural Rights by stating that the Charter ensures these rights and provides legal remedies where there has been a deprivation of basic necessities. The Supreme Court has agreed, stating that the Charter's purpose includes "a commitment to social justice and enhanced participation in society" and that the Charter must not be interpreted so as to render low income people "constitutional castaways". The U.N. Human Rights Committee has signalled its view that the Charter speaks to these rights by framing its concern regarding the pervasiveness of homelessness in Canada as violating the right to life, a right protected in both international human rights law and in the Charter. And the international body is clear that where social and economic rights have not been explicitly incorporated into state laws, equality rights must be interpreted so as to offer protection of these rights.

The denial of a decent standard of living makes a mockery of the notion of meaningful citizenship and equal participation in society. The Gosselin case is but a starting point for examining governments' obligations regarding poverty.

Larger questions include government policies which not only exacerbate and perpetuate poverty but create it. In the context of free market economies and globalization, governments are withdrawing support to already marginalized and disenfranchised people while at the same time more intensely monitoring and morally judging these communities. In an ugly contest of miseries, the poor are constructed as "deserving" or "undeserving". This is against the backdrop of an ever increasing gap between rich and poor and a corporate agenda of profits above all else.

One thing is clear: where there is poverty, there is no true democracy. We will not rest until that message is heard and responded to.

While international human rights law and the Charter offer some hope in the campaign to secure a decent standard of living for everyone, neither are a panacea. The low income community has not always been met by the warmest of receptions in the courts. Low income people take up these issues in many ways and at many levels both everyday in people's lives and collectively in the community. One thing is clear: where there is poverty, there is no true democracy. We will not rest until that message is heard and responded to.



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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 or information. We want to hear from you.