

COURT OF APPEAL FOR ONTARIO

BETWEEN:

**THE DIRECTOR, ONTARIO DISABILITY SUPPORT PROGRAM,
MINISTRY OF COMMUNITY AND SOCIAL SERVICES**

**Appellant
(Moving Party)**

-and-

JOCELYN ANSELL

**Respondent
(Responding Party)**

RESPONDENT'S FACTUM

INCOME SECURITY ADVOCACY CENTRE

Cynthia Wilkey (LSUC #27159P)

425 Adelaide Street West, 5th Floor

Toronto, Ontario M5V 3C1

Tel: (416) 597-5820, ext. 5152

Fax: (416) 597-5821

Email: wilkeyc@lao.on.ca

ALGOMA COMMUNITY LEGAL CLINIC

Joseph Corbière (LSUC #44958M)

473 Queen Street East, Suite 301

Sault Ste. Marie, Ontario P6A 1Z5

Tel: (705) 942-4900,

Fax: (705) 942-6894

Email: corbierj@lao.on.ca

Lawyers for the Respondent

TO: **Legal Services Branch**
Ministry of Community and Social Services
56 Wellesley Street West, 17th Floor
Toronto, Ontario M7A 1E9

Daniela Bertossi (LSUC #40346T)
Tel: (416) 327-4943
Fax: (416) 327-0568
Email: Daniela.Bertossi@Ontario.ca

Lawyer for the Appellant

TABLE OF CONTENTS

	Page
PART I – OVERVIEW	1
PART II – STATEMENT OF FACTS	2
<i>A. Background</i>	2
<i>B. The Child Support Order</i>	3
<i>C. The ODSP Application</i>	5
<i>D. The Social Benefits Tribunal Decision</i>	6
<i>E. The Appeal Before Divisional Court</i>	7
PART III – ISSUES AND ARGUMENT	8
<i>A. Standard of Review</i>	9
<i>B. Principles of statutory interpretation and the purpose of the ODSPA</i>	11
<i>C. The interpretation of “income” in its statutory context: The child support payments are income to Jocelyn’s mother</i>	16
<i>i. The statutory language of s. 37 of the Regulation: the definition of “income” is ambiguous and its application requires a contextual interpretation.</i>	16
<i>ii. Child support payments are a “benefit” to the custodial parent</i>	17
<i>iii. The Director’s interpretation defeats the purpose of ODSP benefits and unfairly penalizes disabled children of separated parents</i>	21
<i>iv. Jocelyn is not attempting to create a new exemption: She is arguing for an interpretation that gives statutory exemptions proper effect</i>	25
<i>v. There are no “unintended consequences”: The Director already treats child support as income to the custodial parent</i>	25
<i>D. Conclusion</i>	28
PART IV – ORDER REQUESTED	28
SCHEDULE A - LIST OF AUTHORITIES	Tab A
SCHEDULE B – LEGISLATION	Tab B

PART ONE: OVERVIEW

1. This is an appeal by the Director of the Ontario Disability Support Program concerning the treatment of child support payments in respect of adult disabled children. The respondent, Jocelyn Ansell (“Jocelyn”), is a 20 year-old developmentally disabled woman who lives in Sault Sainte Marie with her mother, Lee-Ann Turner. The Director denied her access to the Ontario Disability Support Program, on the basis that the \$800 monthly child support payment paid by her father to her mother made her financially ineligible for benefits of any kind. However, the majority of the child support funds are used by Jocelyn’s mother to pay for necessary disability-related treatments, and if Jocelyn’s parents were not separated, such parental contributions would not have disqualified her from receiving disability benefits.

2. On appeal, both the Social Benefits Tribunal and the majority of the Divisional Court concluded that the child support payments are properly characterized as income to Jocelyn’s mother, and thus should not be part of the income calculation in determining whether Jocelyn is eligible for disability benefits.

3. In arguing that the Social Benefits Tribunal and Divisional Court erred, the Director makes a fundamental error in that he is asking this Honourable Court to examine the wrong financial transaction. There are, in fact, two transactions. The first is the child support payment to Jocelyn’s mother. The second is the payment and/or financial benefit conferred by Jocelyn’s mother to Jocelyn herself. It is submitted that the first payment to Jocelyn’s mother is not relevant to Jocelyn’s benefit entitlement. However, once the monies are either paid to Jocelyn or

used for her benefit, the Director must assess whether the payments qualify for one or more of the income “exemptions” that were legislated in order to ensure that parents of disabled children could contribute to their children’s well-being without undermining their access to necessary financial government supports. For example, parents can, without limit, make financial contributions towards disability-related expenses and are also permitted to give their disabled children up to \$6,000 per year.

4. It is submitted that the interpretation urged by the Director, namely that child support paid to Jocelyn’s mother ought to be characterized in law (though not reality) as income to Jocelyn herself, is contrary to the statutory definition of “income” in the *Ontario Disability Support Program Act* (“*ODSPA*”) and undermines the purpose of the Act. The Divisional Court did not err in concluding that Jocelyn is eligible for disability benefits.

PART TWO: STATEMENT OF FACTS

A. Background

5. The respondent, Jocelyn Ansell, is a 20 year-old developmentally disabled woman. She suffers from Asperger’s Syndrome (a syndrome on the Autism spectrum), Borderline Personality Disorder, Substance Abuse Disorder and several learning disabilities. Her ability to interact socially is severely impaired. She experiences motor clumsiness, has poor organizational skills and has difficulty following instructions. She also suffers from impulsivity, depressive-like symptoms and a lack of social/emotional reciprocity.

6. A major symptom of Asperger's Syndrome is an obsessive interest in a single subject. For Jocelyn, this interest is in horses. To channel this interest in a therapeutic direction, Jocelyn's mother bought her a special needs horse and enrolled her in a type of horse therapy known as "Parelli training". The Parelli training has a beneficial effect for Jocelyn. The ongoing costs related to this therapy are approximately \$619 per month and are paid by Jocelyn's mother.

Appellant's Appeal Book and Compendium, Tab 7: Statement of Jocelyn Sheila Ansell, pp. 119-120.

Appellant's Appeal Book and Compendium, Tab 4: Tribunal Decision, pp. 23-33.

Appellant's Appeal Book and Compendium, Tab 7: Tribunal Member's Notes, *Record of Proceedings*, pp. 121-132.

7. Jocelyn's mother provides other significant disability-related supports, including taking Jocelyn to her psychiatrist every other day, to her family doctor every six months (a trip of over an hour) and to her horse therapy sessions sixteen times a month. She also bears the costs of Jocelyn's ongoing Behavioural Therapy. These supports have caused Jocelyn's mother serious hardship. She left her long-term career in 2004 in order to commit herself to ensuring Jocelyn's therapeutic and health needs were met. Jocelyn's mother relies upon child support payments from her former spouse in order to pay for Jocelyn's disability-related expenses, in particular the horse therapy.

Appellant's Appeal Book and Compendium, Tab 7: Statement of Jocelyn Sheila Ansell, pp. 119-120.

Appellant's Appeal Book and Compendium, Tab 4: Tribunal Decision, pp. 23-33.

Appellant's Appeal Book and Compendium, Tab 7: Tribunal Member's Notes, *Record of Proceedings*, pp. 121-132.

B. The Child Support Order

8. Jocelyn's parents separated in 2002. Jocelyn's father was abusive and refused to acknowledge her disabilities. Jocelyn has lived with her mother since the separation. Pursuant to

a Court Order dated July 13, 2005, Jocelyn's father is obligated to pay child support to Jocelyn's mother in the amount of \$700 per month as well as an additional \$100 per month for extra-curricular and extra-ordinary living expenses. The specific terms of the support payments are as follows:

3(a) Commencing September 1, 2005, the Respondent shall pay to the Applicant for the support of the child, the sum of \$700.00 per month based on his approximate annual income of \$88,000.00 per annum and in accordance with the Child Support Guidelines, and on the first of the month thereafter.

(b) Commencing September 1, 2005, the Respondent shall pay to the Applicant an additional \$100.00 per month for the child, Jocelyn Shelia [sic] Ansell's extra curricular and extra ordinary expenses. The Applicant shall not provide any accounting of these funds and the Applicant shall be responsible for any other extra ordinary or extra curricular expenses pertaining to the said child over and above the said \$100.00.

Appellant's Appeal Book and Compendium, Tab 5: Child Support Order, p. 31-32.

9. The Order provides that the child support obligation would terminate under a number of circumstances including the death of Jocelyn's mother or Jocelyn ceasing to have a primary residence with her mother.

Appellant's Appeal Book and Compendium, Tab 5: Child Support Order, p. 32.

10. In addition, the Court Order provides that the obligation to pay child support will end if Jocelyn's mother fails to confirm Jocelyn's enrolment and attendance at school on a yearly basis.

Appellant's Appeal Book and Compendium, Tab 5: Child Support Order, p. 32.

11. The child support payments are paid directly into Jocelyn's mother's bank account.

Appellant's Appeal Book and Compendium, Tab 7: Tribunal Member's Notes, *Record of Proceedings p124*.

C. The ODSP Application

12. In addition to the child support payments, until Jocelyn reached the age of 18, Jocelyn's mother was receiving "Assistance for Children with Severe Disabilities" in the amount of \$400 per month. Upon turning 18, this benefit was terminated and Jocelyn applied for benefits from the Ontario Disability Support Program ("ODSP"). The Director of the ODSP program determined that Jocelyn is "a person with a disability" and thus medically eligible for ODSP benefits.

Appellant's Appeal Book and Compendium, Tab 4: Tribunal Decision, p. 24.

13. However, the Director ultimately denied Jocelyn access to the ODSP program. The child support payments were classified as "income" to Jocelyn, rather than to her mother. Because the monthly child support payments of \$800 were more than her monthly entitlement to ODSP benefits (\$746 at the time of the decision)¹, the Director concluded that Jocelyn is financially ineligible. As a result, Jocelyn was also denied extended health, drug and dental coverage and cannot access financial supports for transportation to medical appointments.

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sch. B., s. 5(1)(c).

O. Reg. 222/98, ss. 29-43, 44(1) and s. 45(1).

Appellant's Appeal Book and Compendium, Tab 7: ODSP correspondence and application, pp. 53, 56-67.

14. The Director advised Jocelyn of his decision by letter dated February 21, 2007. Jocelyn submitted a request for an internal review by letter dated March 5, 2007. The original decision

¹ While the Director has referenced a benefit entitlement of \$708 in his factum, at the time of the Director's decision the Regulation provided for payments of \$746 for recipients who qualified as "boarders", consisting of an amount for board and lodging plus a "special border allowance": O.Reg 222/98 at ss. 33(1)(1, 5) (Historical version for the period November 1, 2006 to April 19, 2007). At present, Jocelyn's entitlement as a boarder would be \$805. (O. Reg 222/98, ss.33(1) & (1.5))

was upheld at the internal review on March 22, 2007.

Appellant's Appeal Book and Compendium, Tab 7: Letter from Regional Director (February 21, 2007) with handwritten notation requesting internal review (March 5, 2007), p. 48; Letter from Case Presenting Officer (March 22, 2007), p. 55.

D. The Social Benefits Tribunal Decision

15. Jocelyn appealed the decision to the Social Benefits Tribunal. Following a hearing, the Tribunal overturned the Director's decision and found that Jocelyn was eligible for ODSP benefits. The Tribunal reviewed the evidence and identified a series of factors that established that the child support payments were income to Jocelyn's mother and not to Jocelyn: 1) Jocelyn cannot access or pursue the child support payments as they are payable to her mother; 2) The payments are made into Ms. Turner's account; 3) Ms. Turner reports the child support payments on her income tax return, while Jocelyn does not;² 4) Jocelyn cannot direct how the money is spent; and, 5) If Ms. Turner dies, the support payments cease.

16. The Tribunal also noted the inconsistency as between the children of separated parents and children with parents who live together:

If this Appellant's parents had not separated/divorced and the child lived with both of them, she would still be receiving a room and board allowance from the Ontario Disability Support Program, have her benefits paid for and have access to the various therapies she needs without any penalty imposed.

Appellant's Appeal Book and Compendium, Tab 4: Tribunal Decision, p. 32.

17. Finally, the Tribunal held that the purpose and intent of the ODSP program supported a

² Note that although Ms. Turner reports the child support payments on her income tax return, these payments are not taxable to her. See *Income Tax Act*, R.S.C. 1985, c. 1(5th Supp.) at s. 56.1(4) (definition of "support amount") and s. 60(1)(b) and Canada Revenue Agency, "P102(E): Support Payments (Rev. 10)".

conclusion that the child support was not Jocelyn's income:

... [T]he intent of the *Ontario Disability Support Program Act, 1997*, is to provide income support to eligible persons with disabilities. The Appellant is clearly a person with a disability. The Act also provides that government, communities, families and individuals share responsibility for providing such supports. In this case, the government by virtue of the Ontario Disability Support Program, the education, health and social services along with the Appellant's parents are sharing that responsibility. The Tribunal also notes that this method of service delivery is the most effective. If the Tribunal were to concur with the Director's position, in all likelihood the care of this Appellant would escalate in cost. A permanent residential treatment program vs. the care of her mother in her own home is presumably much cheaper and therefore more accountable to the taxpayers.

Appellant's Appeal Book and Compendium, Tab 4: Tribunal Decision, p. 32.

18. In advance of the hearing, Jocelyn provided notice of an intention to argue that the denial of ODSP benefits based on child support payments constituted discrimination on the basis of family status contrary to the *Human Rights Code*. The Tribunal's rules of procedure provide that human rights issues are addressed separately at a second hearing if necessary. In light of the Tribunal's decision, it was not necessary for the discrimination argument to be heard.

Appellant's Appeal Book and Compendium, Tab 4: SBT Reasons for Decision at pp. 31-32; Notice of intention to raise human rights issue, p. 174.

19. The Director requested a reconsideration of the Tribunal's decision, which was denied.

Appellant's Appeal Book and Compendium, Tab 7: Request for Reconsideration, p. 148-157; Denial of Request for Reconsideration, p. 170.

E. Appeal Before the Divisional Court

20. The Director appealed the Tribunal's decision to the Divisional Court. The majority of the Divisional Court denied the appeal, holding that it would be inconsistent with the intention of

the *ODSPA* to characterize child support paid in this context as income to the child. The majority held that child support is intended to compensate the recipient/custodial parent for the cost of raising a dependent child while also allowing a child of separated parents to have a standard of living that reflects the financial resources of both parents. As a result, the compensation to the parent and the benefit to child are not severable, “nor are they susceptible to allocation to either the recipient parent or the child.” Furthermore, the majority found that Director’s interpretation of “income” was inconsistent with the intention of the *ODSPA* to allow families to provide financial and other support to adult disabled children without penalty and resulted in the children of separated parents being treated unfairly, relative to a child of an intact family.

Appellant’s Appeal Book and Compendium, Tab 3: Divisional Court Judgment, pp. 10-12, paras. 32-41.

PART THREE: ISSUES AND ARGUMENT

21. The Director argues that the Divisional Court erred in its characterization of the child support payments. The Director argues that the majority of the Divisional Court made four legal errors: 1) by holding that child support is not income within the meaning of the *ODSPA*; 2) by failing to apply the legislated definition of “income”; 3) by mischaracterizing the context, purpose and intent of the Act and thereby erring in its interpretation of the meaning of “income” in the Act; 4) by assuming that financial support from “intact” families is exempt from income.

22. It is submitted that the Divisional Court did not so err, and that all the above issues are in

essence different facets of one question: whether the child support payments in this case are “income” within the meaning of the *ODSPA*. As argued below, when the principles of statutory interpretation are applied to the facts in this case, it is apparent that the child support payments are not income within the meaning of the *ODSPA*.

A. Standard of Review

23. The *ODSPA* provides that the parties to a hearing before the Social Benefits Tribunal may appeal the Tribunal’s decision on “a question of law.” As a result, questions of fact or of mixed fact and law are immune to scrutiny unless the error is of such significance as to constitute an error of law. For example, whether there is *any* evidence to support a finding of fact is a question of law, and hence, is open to review. A question of mixed fact and law is only open to review where there has been a “palpable and overriding” error.

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched. B., s. 31(1).

Housen v. Nikolaisen, [2002] 2 S.C.R. 235 at paras. 26-37

Ontario (Disability Support Program, Director) v. Favrod, [2006] O.J. No. 653 (Div. Ct.) at paras. 12 and 17.

24. The issue to be determined in this case is whether – on these particular facts – the child support payments are “income” to Jocelyn as defined by section 37(1) of the Regulation. The Director argues that this issue is one of law alone, and that a standard of correctness should be applied. It is submitted that the Director has erred in his characterization of the issue.

25. The Divisional Court in *Favrod* was faced with the very issue that is before this Honourable Court: whether child support payments are income to the child. The Court noted in

that case that since the Tribunal heard and relied upon evidence as to the intentions of the mother and the father and with respect to their actions once their daughter became an adult, the question was one of mixed fact and law and that “the findings in the absence of a legal or palpable and overriding error are entitled to deference.”

Director of the Ontario Disability Support Program v. Favrod, 2006 CanLII 4898 (Ont. Div. Ct.) at paras. 12 and 17.

26. It is submitted that the Court in *Favrod* was correct. In order to determine whether the recipient of the child support payments is Jocelyn or her mother, it is necessary to consider the particulars of the child support order, the manner in which the payments were made, and how they were used. Thus, the legal outcome is inextricably entwined with the facts.

27. Such an approach is consistent the Supreme Court’s judgment in *Dunsmuir*, which held that deference is appropriate where legal and factual issues are intertwined and where a tribunal is interpreting its own statute, with which it will have particular familiarity. Tribunals are afforded a “margin of appreciation” within the range of acceptable and rational solutions. The legislation governing ODSP is complex, and the Tribunal has developed a unique expertise in respect of the interactions between the ODSP and Ontario Works³ (“OW”) programs. Such knowledge assists in ensuring that its approach to statutory interpretation is harmonious with the purposes of these programs and minimizes unintended consequences. Thus, in the absence of a palpable and overriding error in the Tribunal’s conclusion of mixed fact and law, this appeal ought not to be granted.

³ Ontario Works Act, 1997, S.O. 1997, c. 25, Sch.A: The temporary social assistance program for individuals without disabilities.

Dunsmuir v. New Brunswick, [2008] 1 S.C.R. 190 at paras. 47, 53-54.

Celgene Corp. v. Canada (Attorney General), 2011 SCC 1 at para. 34.

B. Principles of statutory interpretation and the purpose of the *ODSPA*

28. It is well-established that the *ODSPA* is “remedial legislation” and should be interpreted with a liberal and purposive approach in order to ensure the program attains its goal of providing support to people with disabilities. The words of the *ODSPA* are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the Legislature. Any ambiguity should be resolved in the claimant’s favour.

Legislation Act, 2006, S.O. 2006, c. 21, Sch. F at s. 64.

Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27 at para. 21.

Gray v. Director of the Ontario Disability Support Program, (2002) 59 O.R. (3d) 364 at paras. 9-12 (Ont. C.A).

29. As the Supreme Court noted in *Rizzo Shoes*, a determination of “the plain meaning” of a provision is not the end of the analysis, particularly where the “plain meaning” leads to “absurd consequences”. An interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment. Where the words of a provision can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27 at paras. 21-27

Celgene Corp. v. Canada (Attorney General), 2011 SCC 1 at para. 21.

30. It is argued below that the interpretation of “income” urged upon this Honourable Court by the Director would lead to unreasonable, inequitable and absurd consequences that are incompatible with the objectives of the *ODSPA*.

31. The purpose of the *ODSPA* is described at section 1:

1. The purpose of this Act is to establish a program that,

(a) provides income and employment supports to eligible persons with disabilities;

(b) recognizes that government, communities, families and individuals share responsibility for providing such supports;

(c) effectively serves persons with disabilities who need assistance; and

(d) is accountable to the taxpayers of Ontario [emphasis added].

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sch. B, s. 1.

32. The Supreme Court in *Tranchemontagne (1)* noted that the *ODSPA* fulfills a very different purpose than OW. The *ODSPA* is meant to “ensure support for disabled applicants, recognizing that the government shares in the responsibility of providing such support.”

Tranchemontagne v. Ontario (Director, Disability Support Program), 2006 SCC 14, [2006] 1 S.C.R. 513 at para. 3.

33. As specifically provided in the Act, families share in the responsibility for providing support to disabled children. Indeed, financial and other assistance from families was specifically considered when the *ODSPA* was enacted in 1998, with a goal of ensuring that families would be

able to provide supports to their disabled children without disentitling them to benefits. Prior to introducing the *ODSPA*, the Honourable Janet Ecker, then Minister of Community and Social Services (the “Minister”), announced the government’s plans to make major changes to the social assistance scheme in order to ensure that the families of persons with disabilities would no longer be prevented from improving the quality of life for their children.

“I am pleased to inform you of my government’s plans for a new income support program to better meet the needs of people with disabilities.

...

Under the proposed program, people with disabilities will be able to keep more of their liquid assets and compensation awards, and they would be allowed a higher limit on life insurance policies. They would also be able to benefit more from gifts and inheritances so their families could provide a more secure future for their adult children.”[emphasis added]

Letter from Minister J. Ecker, Ministry of Community and Social Services (5 June 1997).

See also:

Ontario, Ministry of Community and Social Services, News Release 97-11, “Ontario Moves to Create New Income Support Program for People with Disabilities” (5 June 1997).

Ontario, Ministry of Community and Social Services, “Backgrounder: Ontario Disability Support Program (ODSP)” (5 June 1997).

Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 019A (2 June 1998) (Hon. Janet Ecker) http://www.ontla.on.ca/web/house-proceedings/house_detail.do?Date=1998-06-02&Parl=36&Sess=2&locale=en at pp. 9-10.

34. As a result, the *ODSPA* provides for numerous ways in which families can support their disabled children without disentitling them to disability benefits. For example, an adult disabled child is treated as being financially independent from their parents, and is therefore assessed as a “benefit unit” separate from their parents. Unlike an Ontario Works recipient, parental income is not included in the calculation of financial eligibility for ODSP applicants who live with their parents. Thus, regardless of whether their parents are rich or poor, an adult disabled child can live with their parents without losing their individual entitlement to ODSP benefits. There is,

however, a reduction of their ODSP entitlement from the full amount to an amount designated as “board and lodging”. At the time of the decision Jocelyn would have been entitled to benefits of \$746 as a “boarder” living with her mother, as compared to \$979 as a renter.⁴ Thus, a parental contribution towards the recipient’s costs is assumed in determining the benefit level.

O. Reg. 222/98, s. 1(1) and s. 2(1).

O. Reg. 134/98 (Ontario Works), s. 1(1), s. 2(1) and s. 11(3).

ODSP Directive 2.1, “Who is Eligible: Dependent Adults” (November 2009) at pp. 1-2 and 6.

OW Directive 3.4, “Living with Parents” (February 2009) at pp. 2 and 8.

O.Reg. 222/98 at s. 33(1) (Historical version for the period November 1, 2006 to April 19, 2007).

35. In accordance with the Regulation, Jocelyn’s parents are entitled to make certain gifts and voluntary payments to assist Jocelyn without compromising her eligibility for monthly ODSP benefits. They are entitled to give her up to \$6,000 a year for any purpose without deduction from her ODSP income⁴. They are also entitled to provide unlimited amounts to or on Jocelyn’s behalf for approved disability related expenses. The Regulation provides that circumstances in which a parent can make payments to a disabled child without penalty include the following:

43(1) The following shall not be included in income: ...

9. Payments from a trust or from a life insurance policy, gifts or other voluntary payments, that are applied to, ...

i. expenses for disability related items or services for a member of the benefit unit that are approved by the Director and that are not and will not be otherwise reimbursed,

9.1 Payments, other than payments under paragraph 9, that are made pursuant to a court order or under a government funded program and that are specifically made for a purpose listed in paragraph 9 and are applied to that purpose.

...

⁴ A person is a “boarder” where their “landlord” purchases and prepared food (see ODSP Directive 6.3).

13. Payments in addition to a payment under paragraphs 1 to 12 that are payments from a trust or life insurance policy or gifts or other voluntary payments up to a maximum of \$6,000 for any 12-month period.⁵

...

19. Subject to subsection (3), the person's beneficial interest in assets held in one or more trusts and available to be used for maintenance if the capital of the trusts is derived from an inheritance or from the proceeds of a life insurance policy.

O. Reg. 222/98, s. 43(1) [emphasis added].

36. Thus, the Director's assertion that the "ODSP is a program of last resort for disabled people in financial need" is far too narrow given the program's fundamental goal of sharing responsibility for disabled children between families and government. The Divisional Court was correct when it stated "The Legislature intended to create a partnership with families in order to encourage families to contribute financially to family members without being penalized for that contribution. It is within the context of that purpose that we must interpret the phrase that considers income to be a payment on behalf of or for the benefit of the person with the disability." Allowing an adult child living at home to apply for ODSP independently and permitting parents to provide gifts of up to \$6,000 annually or of unlimited amounts for disability-related supports are significant ways in which the ODSP scheme encourages the sharing of responsibility for disabled children.

See Appellant's factum, para. 69.

Appellant's Appeal Book, Tab 3: Divisional Court Judgment, p. 16, paras. 33-34.

⁵ At the time of the Director's decision (February 1, 2007) this amount was set at \$5,000. It was increased to \$6,000 in November 2008.

C. The interpretation of “income” in its statutory context: The child support payments are income to Jocelyn’s mother.

- i. *The statutory language of s. 37 of the Regulation: the definition of “income” is ambiguous and its application requires a contextual interpretation.*

37. Subsections 37(1) and (2) of the Regulation set out the definition of income:

37(1) Subject to sections 38 to 43, income shall be determined for a month by adding the total amount of all payments of any nature paid to or on behalf of or for the benefit of every member of the benefit unit during the period determined by the Director.

(2) For the purpose of subsection (1), income shall include the monetary value of items and services provided to the members of the benefit unit as well as amounts of income deemed to be available to members of the benefit unit [emphasis added].

O. Reg 222/98, s. 37(1) and (2).

38. Contrary to the assertion of the Director, the statutory definition of “income” is not “clear and unambiguous”, particularly as applied to the context of this appeal. The Director is correct to assert that the definition is “broad”, but it is the very breadth of that general language which creates ambiguity. It is not difficult to illustrate how an unexamined application of such general language could go too far.

39. There is a continuum of payments that could be described as being made “for” and “on behalf of” an individual. Some payments clearly fall within the definition of “income”, for example the purchase of clothing for the sole use of the child. On the other hand, some payments, while constituting a benefit to the child, are so remote as to render their characterization as “income” absurd; for example, public funding for Jocelyn’s special education program, or the installation of street signage around the property of a deaf child.

40. While the Director makes the argument that child support is always a payment for the benefit of the child, it can equally be argued in this case that the child support payments are a benefit to the custodial parent. In fact, OW and ODSP typically do treat child support payments as income to the receiving parent. Thus, a “broad” reading of the legislation *can and does result in a single payment being characterized as income to two different people at the same time*. For example, in SBT File No. 0403-01820, prior to a successful Tribunal appeal holding that child support was income to the mother, a \$300 child support payment was being deducted from the OW receiving mother and then deducted again from the ODSP recipient child for a total deduction from the household of \$600. It is the role of the reviewing court or tribunal to ensure that its interpretation avoids this kind of absurdity and is consistent with the liberal and purposive approach set out in *Rizzo Shoes*.

See SBT File No. 0403-01820 (May 17, 2005, Murray).

Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27 at paras. 21-27

ii. Child support payments are a “benefit” to the custodial parent

41. Neither the *ODSPA* nor the Regulation specifically addresses the treatment of child support payments. Thus, evidence concerning the nature and context of the child support payments must be examined to determine whether the support falls within the statutory definition of “income.” It is submitted that in the circumstances of this appeal, child support paid to Jocelyn’s mother is a benefit to her that might become “income” to Jocelyn, but only when and if it is used for her specific benefit.

42. In assessing whether the child support payments in this case constitute “income” pursuant to the Regulation, it should be understood that this is an atypical child support scenario. The typical scenario arises where child support is paid “to” a custodial parent in receipt of OW or ODSP benefits for his or her family. In that scenario, it is clear that the child support is income to the benefit unit and the support is deducted from the parent’s social assistance payment.

Jocelyn’s situation is atypical. Jocelyn is an independent ODSP applicant. Support payments are not being made to Jocelyn; they are being made to her mother. Her mother is not in receipt of social assistance. These atypical circumstances require careful attention to the particulars of the child support order and the use made of the child support funds.⁶

43. The following features of the child support payments, noted in paragraphs 7 and 15 above, are particularly relevant to the income assessment:

- a) The court order provides that the support is payable to Jocelyn’s mother.
- b) The court order does not prescribe how the monies are to be spent.
- c) Jocelyn’s mother is under no obligation to account for how the funds are spent.
- d) Jocelyn is not a party to the court order and cannot enforce it in her own right.
- e) The support payments are tied to Jocelyn’s mother – they end if she dies.
- f) Jocelyn’s mother reports the child support as income on her personal income tax. The support is not reported by Jocelyn on her own returns.
- g) Jocelyn’s mother voluntarily uses the funds for disability-related services, but is not required to do so.

⁶ Notably, a court order requiring a custodial parent to use child support funds for identified disability-related expenses would be exempt from income under the Regulation. See s. 43(1)(9.1) of the Regulation: “Payments, other than payments under paragraph 9, that are made pursuant to a court order or under a government funded program and that are specifically made for a purpose listed in paragraph 9 and are applied to that purpose.”

44. The Divisional Court correctly relied on these features in concluding that child support payments flowing from her father to her mother could not be considered income to Jocelyn. The payments are not “available to” Jocelyn as set out in the Regulation. Jocelyn’s mother is not required to use the funds in any particular way. Jocelyn cannot compel the funds to be spent directly on her or for her benefit.

Appellant’s Appeal Book and Compendium, Tab 3: Divisional Court Judgment, pp. 17, para. 38.

45. It is noteworthy that this is the approach that has consistently been taken by the Social Benefits Tribunal (and its predecessor) in at least 13 appeals over the past 17 years. The Tribunal has specialized knowledge of the functioning of the ODSP program, and its relationship to OW, and has interpreted the legislation in a manner that is coherent, principled and avoids the danger of a “double deduction” outlined above. A theme that runs consistently through the SBT decisions is the role child support plays in allowing custodial parents (invariably the mothers) to act as caregivers and provide crucial support to disabled children as they age into adulthood. Some caution is warranted before interfering with the Tribunal’s established caselaw, although notably the Director has repeatedly ignored the Tribunal’s guidance for over a decade.

See: SARB K-11-11-12 (March 1993, Brooks and O’Connell); SARB T0226-40 (27 April 1999, Jackson and Scarff); SBT 9911-08043 (23 June 2000, Scarff); SBT 0104-03309 (10 October 2001, Bhatia); SBT 0302-00972 (19 December 2003, Walden-Stephan); SBT 0303-02032 (2 January 2004, Bhatia); SBT 0305-04531 (29 June 2004, Ching); SBT File No. 0403-01820 (17 May 2005, Murray); SBT 0501-00644 (27 September 2005, Doran); SBT 0512-09277 (5 May 2006, Corey); SBT 0606-05555 (1 February 2007, Jurak); SBT 0608-07608 (19 June 2007, LeBourdais); SBT 0706-07690 (19 November 2009, Lee).

46. A similar approach is found in *Favrod*, where the Divisional Court was asked to determine whether child support payments pursuant to an agreement were “income” to the child ODSP applicant. The Court focused on the intention of the parents that the child support funds

would be used by the mother to meet the exceptional needs of caring for a child with a disability. The Court also found it significant that the agreement provided that the support obligation to end with the death of the mother. In light of these characteristics, the Court concluded that it was appropriate for the Tribunal to hear evidence “as to the true nature of the payment.” The Court held that, in the circumstances of that case, the monthly payments were not income to the child for the purposes of ODSP.

Ontario (Disability Support Program, Director) v. Favrod, [2006] O.J. No. 653 (Div. Ct.) at para. 15-19.

47. The *Wedekind*, *Isovic* and *Keddy* cases relied upon by the Director are distinguishable from the circumstances of this appeal. In those cases the payments that were found to be “income” were made by an intermediary either “to” the recipient directly or “on behalf of” the recipient to discharge personal (income tax) liability and were made under a legal obligation to the recipient. In this appeal, the funds are also in the hands of an intermediary, but the key element upon which those decisions turned is lacking. There is no legal obligation on the part of the intermediary (Jocelyn’s mother) to make any payments to or for the benefit of Jocelyn.

Appellant’s Book of Authorities, Tab 2: *Wedekind v. Director of Income Maintenance Branch*, [1994] O.J. No. 2849 (C.A.)

Appellant’s Book of Authorities, Tab 5: *Keddy v. Ontario (Director, Disability Support Program)*, [2002] O.J. No. 3991. (Div. Ct.)

Appellant’s Book of Authorities, Tab 7: *London (City) v. Isovic*, [2009] O.J. No. 2457 (Sup. Ct.)

48. The Director argues that the ODSP scheme “carefully defines as income any payment which duplicates the intent of the payment by ODSP – for basic needs (food, clothing, etc.) and accommodation”. While the Director is simply not correct to make such a general statement (for example, inheritance trusts can be used to meet basic needs without penalty), the Divisional

Court's approach is entirely consistent with the Director's desired outcome. That is, contributions by Jocelyn's mother from child support towards basic needs such as clothing, would be considered income, subject to the prescribed exemptions, and would be deducted from Jocelyn's benefits once the \$6,000 cap for gifts and voluntary payments had been reached. There is no inconsistency as argued by the Director.

Appellant's Factum, para. 63-64.

49. It is submitted that a proper interpretation of the Regulation as applied to this support order leads to the conclusion that the payments to Jocelyn's mother cannot be characterized as income to Jocelyn. Instead, the Director must look to whether Jocelyn's mother actually makes payments "to", "on behalf of" or "for the benefit of" Jocelyn in order to determine whether there is income to Jocelyn within the meaning of the Regulation. Put another way, the child support payment is income to Jocelyn's mother when she receives it from the father. If she, in turn, pays the money to Jocelyn or uses it for her benefit, it becomes Jocelyn's income (subject to the exemptions in the Regulations).

iii. The Director's interpretation defeats the purpose of ODSP benefits and unfairly penalizes disabled children of separated parents

50. Treating the child support payments as income to Jocelyn defeats the program's objective of allowing parents increased opportunities to provide support to their disabled children without penalty and creates an unprincipled and unfair distinction between two-parent and single-parent households. The Divisional Court was correct in relying on these consequences as a basis for dismissing the appeal below.

Appellant's Appeal Book and Compendium, Tab 3: Divisional Court Judgment, pp. 17-18, paras. 35-39.

51. Where an adult child on ODSP lives with two parents the child is entitled to enjoy a standard of living that is the product of both parents' income. For example, if parents buy a new television, repair the roof or purchase new towels for the bathroom, these purchases could be said to also be "for the benefit of" the child, but there is no suggestion that those expenditures would be considered income to the child. Rather, they are purchases that form part of the "infrastructure" of the disabled child's "board and lodging". This is consistent with the program objective of allowing families, who have the means, to assist in achieving a higher standard of living than the government is able to provide through ODSP financial support.

52. Where parents are separated, the financial ability to maintain the household of the custodial parent is achieved, in part, through the payment of child support. The amount of child support is calculated on the basis of the payor's income – not the needs of the child and not the income of the custodial parent. It is payable regardless of whether the custodial parent has enough income to pay for the child's basic necessities. Thus, child support is intended to preserve, as much as possible, the standard of living the child enjoyed prior to the breakdown of the marriage. As Divisional Court noted, characterizing child support as income to the child undermines the important partnership objectives of the *ODSPA*.

Appellant's Book of Authorities, Tab 17: *DBS v. SRG*, [2006] S.C.J. No. 37 at para. 38.

Appellant's Appeal Book and Compendium, Tab 3: Divisional Court Judgment, pp. 17-18, paras. 35-39.

53. Characterizing child support payments as income, rather than looking at whether any part of the support is actually paid "to" or "on behalf of" the adult child by the custodial parent, has

additional consequences that are at odds with the program objectives:

- a. The total amount of the child support ends up being attributed to the child as income and deducted from benefits, whether or not any of it is actually spent on the child.
- b. Because the child support paid by the father is paid pursuant to a court order, it is not considered “voluntary” and therefore ineligible for \$6,000 annual exemption for gifts and voluntary payments for any purpose⁷, or the unlimited exemption for gifts and voluntary payments used for approved disability related expenses⁸ - even though Jocelyn’s mother voluntarily uses the funds for these purposes.
- c. Parents who are party to a support order are essentially forced to underwrite some or, in the case of Jocelyn, all of the costs of basic support that is normally intended to be provided by ODSP – something that is not required of parents in an intact relationship.

54. The Director’s interpretation results in significant financial disadvantage to a child living with one parent after relationship breakdown, relative to a child living in an intact family. There is no principled reason for this distinction. It is significant that the evidence in this case establishes that the majority of the child support payments are used to cover the costs of Jocelyn’s horse therapy and other disability-related needs. It is also significant that before the Tribunal the Director indicated that, had Jocelyn’s father paid for the horse therapy sessions

⁷ O.Reg 22/98 s.43 (1) 13.

⁸ O.Reg 22/98 s.43 (1) 9 i.

directly or had the support order specifically stated that payments were to be applied towards Jocelyn's disability related expenses, he would have exempted the payments as income. It is simply absurd to deny Jocelyn the benefit of this exemption simply because her parents are separated.

Appellants Appeal Book & Compendium, Tab 4: Tribunal Decision, pp. 25, 26, 28-30.

Appellants Appeal Book & Compendium, Tab 7: Tribunal Member's Notes, p. 128 (#6 & #8)

Appellants Appeal Book & Compendium, Tab 7: The Director's Report to the Tribunal, p. 51

55. By holding that the child support payments between Jocelyn's father and mother are not income to Jocelyn, the Divisional Court avoided this arbitrary and unfair result and brought Jocelyn's circumstances into harmony with the purpose and structure of the *ODSPA* and with the treatment of children in intact families: allowing Jocelyn to be treated as financially independent from her parents as other ODSP applicants are treated; allowing Jocelyn's parents to determine to what extent they are able to contribute directly to her support and activities; allowing gifts and voluntary payments coming from her mother to be eligible for the same exemptions that are available to other ODSP recipients; and allowing Jocelyn's mother to continue to use the child support payments for Jocelyn's therapeutic activities.

56. The Director has argued that the majority of the Divisional Court erred in the above analysis by allegedly concluding that an adult child living in a two-parent family would have no deduction of benefits regardless of any payments from the parents. The majority did not so err. The majority correctly identified the unfairness of an interpretation that would make parental contributions to the family standard of living through a child support order "income" to the child,

while similar contributions made by parents within an intact family would not have income consequences.

Appellant's Factum, paragraph 73.

Appellant's Appeal Book and Compendium, Tab 3: Divisional Court Judgment, pp. 17-18, paras. 39-40.

iv. Jocelyn is not attempting to create a new exemption: She is arguing for an interpretation that gives statutory exemptions proper effect

57. As noted above, the definition of "income" is subject to numerous exemptions, including exemptions for voluntary payments of up to \$6,000 per year and for payment of approved disability-related expenses of any level of cost. Jocelyn is not seeking to create a new "exemption" for child support payments as asserted by the Director. On the contrary, Jocelyn is urging an interpretation of "income" that is consistent with the reality of the support payments made to her mother and which will allow rather than defeat access to exemptions that are normally available for parental contributions.

Appellant's Factum, para. 68.

v. There are no "unintended consequences": The Director already treats child support as income to the custodial parent

58. The Director defends his interpretation of child support by pointing to certain "unintended consequences" which he says would result if child support were held to be income to the parent. The difficulty with this argument is that these "unintended consequences" are already the norm, and are in fact "intended".

59. The Director alleges that there are three unintended consequence that militate in favour of

its approach to the child support payments in this case. First, the Director suggests that if the custodial parent is in receipt of social assistance themselves, the deduction of child support from their benefits could constitute an “inequitable result” by reducing the parent’s own resources or disqualifying them from benefits. However, in such circumstances, child support is already treated as income to the parent and deducted from social assistance benefits. There are provisions that alleviate this hardship: if a parent is on social assistance and lives with their disabled adult child, the parent is not subject to the deduction of “boarder” income if the child is getting board and lodging benefits from ODSP, and in some circumstances the child may be entitled to a more generous income benefit if they are categorized as a “renter” along with their parents. Thus, while hardship can result, this is not an unintended consequence.

Appellant’s factum, paragraph 70.

ODSP Directive 2.1 (March 2009) at p. 8.

Appellant’s factum, Tab 2: O/Reg 222/98 at s. 39(2).

60. Second, the Director argues that there is a risk of creating a conflict between the definition of income in the Regulation and the practice as set out in government policy. The Director states that there is a Ministry policy “to exempt support payments made to single parents in receipt of ODSP who receive child support for children who are no longer in the benefit unit – for example, children who attend university and do not live at home.” The Director states that the support is not deducted “because the child is not receiving income support from the Ministry.”

Appellant’s factum, paragraph 74.

61. While a policy that conflicts with a regulation cannot prevail over the regulation, it is not

clear that there is a policy that has the effect described in the Director's factum. The Directive cited is the November 1999 ODSP Directive on the "Definition and Treatment of Income". It contains language that is far from clear and is not necessarily referring to support payments that are actually being received for a child who is no longer a dependent. The current Income Directive (now called 5.1), dated November 2010, does not address this situation at all. The separate "Spousal and Child Support" Directive (5.15) appears to provide instructions to caseworkers as to how to adjust the deduction from benefits when there is a termination of the child support obligation rather than the departure of the child from the household. Notably the instructions state that "a caseworker cannot change a global order for a spouse and children, even if the children are no longer included in the benefit unit." Thus, this policy would appear to confirm that child support payments are treated as income to the custodial parent, even where the child that is the subject of the child support is not in the benefit unit.

ODSP Directive 5.1: Definition and Treatment of Income (November 2010) at pp. 2, 3.

ODSP Directive 5.15: Spousal and Child Support (November 2010) at pp. 9, 10, 17.

62. As a third alleged "unintended consequence", the Director argues that treating child support as income to the parent would be unfair, because different children receiving ODSP benefits would have different incomes. However, far from being an unintended consequence, the entire structure of the ODSP program is built on the assumption that this is not only permissible but is encouraged. For example, the statutory exemptions allow for a recipient to have access to as much as \$100,000 from sources such as tort damages for "pain and suffering"⁹ or inheritance

⁹ O. Reg 222/98 ss. 43(1) 4.1.& 43(2)

trusts¹⁰. In addition, the program clearly contemplates that the children of wealthier parents can have access to unlimited disability-related services.

See Appellant's factum, paras. 71-72.

Appellant's Factum, Tab 2: O/Reg 222/98 at s. 43(2).

D. Conclusion

63. In accordance with the legislative scheme, including the principle that parents are able to share in the support of their adult disabled children without compromising their entitlement to ODSP benefits, the Divisional Court properly held that the support payments made by Jocelyn's father to Jocelyn's mother are not income within the meaning of the *ODSPA* and Regulations. In assessing income attributable to Jocelyn, it is the payments made by the custodial parent that the Director should consider. By looking only at the payments between the parents, the Director has improperly deprived Jocelyn of the benefit of the *ODSPA* including the income exemptions that would have allowed her mother to make the expenditures described in evidence without any impact on Jocelyn's benefits.

PART FOUR – ORDER REQUESTED

64. It is respectfully requested that this Honourable Court dismiss the appeal. In the event that the appeal is granted, the Respondent asks that the matter be sent back to the Social Benefits Tribunal to hear evidence and argument with respect to contravention of the *Ontario*

¹⁰ O. Reg 222/98 ss. 28(1) 19 & 28(2)

Human Rights Code.

65. The Respondent seeks no costs and asks that, given the nature of the issues and the parties, that no costs be awarded.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

February 9, 2011

Cynthia Wilkey

Income Security Advocacy Centre
425 Adelaide Street, 5th Floor
Toronto, Ontario
M5V 3C1

Tel: 416-597-5820
Fax: 416-597-5821

Joe Corbière

Algoma Community Legal Clinic Inc.
473 Queen Street East, Suite 301,
Sault Ste. Marie, Ontario
P6A 1Z5

Tel: (705) 942-4900
Fax: (705) 942-6894

Counsel for Jocelyn Ansell

Court File No. C52794

COURT OF APPEAL FOR ONTARIO

BETWEEN:

**THE DIRECTOR, ONTARIO DISABILITY SUPPORT PROGRAM,
MINISTRY OF COMMUNITY AND SOCIAL SERVICES**

**Appellant
(Moving Party)**

-and-

JOCELYN ANSELL

**Respondent
(Responding Party)**

CERTIFICATE RESPECTING RECORD AND ORAL ARGUMENT

I, Cynthia Wilkey, counsel for the Respondent, certify that:

1. An order under subrule 61.09(2) is not required.
2. The Respondent estimates that 1.5 hours will be required for oral argument.

February 9, 2011

Cynthia Wilkey
Counsel for the Respondent
Jocelyn Ansell

SCHEDULE A
AUTHORITIES

1. Canada Revenue Agency, P102(E): **Support Payments** (Rev.10).
2. *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235.
3. *Ontario (Disability Support Program) v. Favrod*, [2006] O.J. No. 653 (Div. Ct.).
4. *Dunsmuir v. New Brunswick*, [2008] 1. S.C.R. 190.
5. *Celgene Corp. v. Canada (Attorney General)*, 2011 SCC 1.
6. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27.
7. *Gray v. Director of the Ontario Disability Support Program*, [2002] O.J. No. 1531
8. *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] S.C.J. No. 14.
9. Letter from **Minister J. Ecker**, Ministry of Community and Social Services (5 June 1997).
10. Ontario, Ministry of Community and Social Services, **News Release** 97-11, “Ontario Moves to Create New Income Support Program for People with Disabilities” (5 June 1997).
11. Ontario, Ministry of Community and Social Services, “**Backgrounder: Ontario Disability Support Program (ODSP)**” (5 June 1997).
12. Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 019A (2 June 1998) at pp. 970-971 (**Hon. Janet Ecker**)
(<http://hansardindex.ontla.on.ca/hansardeissue/36-2/1019a.htm>).
13. Ontario, ODSP Directive 2.1, “**Who is Eligible: Dependent Adults**” (November 2009).
14. Ontario, OW Directive 3.4, “**Living with Parents**” (February 2009).
15. SBT File No. 0403-01820 (May 17, 2005, **Murray**).
16. SARB K-11-11-12/11 (March 1993; Brooks and O’Connell).

17. SARB T0226-40 (27 April 1999; Jackson and Scarff).
18. SBT 9911-08043 (23 June 2000; Scarff).
19. SBT 0104-03309 (10 October 2001; Bhatia).
20. SBT 0302-00972 (19 December 2003; Walden-Stephan).
21. SBT 0303-02032 (2 January 2004; Bhatia).
22. SBT 0305-04531 (29 June 2004; Ching).
23. SBT 0501-00644 (27 September 2005; Doran).
24. SBT 0512-09277 (5 May 2006; Corey).
25. SBT 0606-05555 (1 February 2007; Jurak).
26. SBT 0608-07608 (19 June 2007; LeBourdais).
27. SBT 0706-07690 (19 November 2009; Lee).
28. Ontario, ODSP Directive 5.1: **Definition and Treatment of Income** (November 2010).
29. Ontario, ODSP Directive 5.15: **Spousal and Child Support** (November 2010).

**SCHEDULE B
LEGISLATION**

1. *Ontario Disability Support Program Act*, 1997, S.O. 1997, C.25, Sch. B., ss. 1, 5(1)(c), 31(1).
2. Ontario Regulation 222/98, (*Ontario Disability Support Program Act*), ss.1(1), 2(1). 29-43, 44(1) s.45(1)
3. Ontario Regulation 222/98 (Historical version for the period November 1, 2006 to April 19, 2007), s.33.
4. Ontario Regulation 134/98 (*Ontario Works Act*), ss. 2(1), 11(3).
5. *Legislation Act, 2006*, S.O. 2006, c. 21, Sch. F, s. 64.
6. *Income Tax Act*, R.S.C. 1985, c. 1(5th Supp.), s. 56.1(4) and 60(1)(b).

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sch. B.

5. (1) No person is eligible for income support unless,

...

(c) the budgetary requirements of the person and any dependants exceed their income and their assets do not exceed the prescribed limits, as provided for in the regulations;

31. (1) Any party to a hearing before the Tribunal may appeal the Tribunal's decision to the Divisional Court on a question of law. 1997, c. 25, Sched. B, s. 31 (1).

O. Reg. 222/98.

1. (1) For the purposes of the Act and the regulations,

...

“dependant”, in relation to an applicant or recipient, means,

(a) a person who resides in the same dwelling place and who is,

(i) the spouse of the applicant or recipient,

(ii) a dependent child of the applicant or recipient or of his or her spouse, or

(iii) a dependent adult of the applicant or recipient or of his or her spouse, or

(b) a spouse who is absent from the dwelling place of the applicant or recipient if the absence is for a reason other than a breakdown in the relationship with no reasonable prospect of reconciliation; (“personne à charge”)

2. (1) For the purposes of the Act and the regulations, a person is a dependent adult, in relation to an applicant or recipient if,

(a) the applicant or recipient or the spouse included in the applicant's or recipient's benefit unit is the person's parent;

(b) the person resides in the same dwelling place as the applicant or recipient;

(c) the person is 18 years of age or older;

(d) the person is not financially independent, as determined under subsection (2); and

(e) the person has not been determined to be a person with a disability or a member of a prescribed class.

29. (1) The amount of income support for a benefit unit shall be calculated on a monthly basis by determining the budgetary requirements of the benefit unit in accordance with sections 30 to 33.1, reducing that amount in accordance with sections 33.2 to 36.2 and subtracting from that amount the income of the benefit unit, determined in accordance with sections 37 to 43. O. Reg. 222/98, s. 29 (1); O. Reg. 262/06, s. 3; O. Reg. 480/07, s. 2; O. Reg. 227/08, s. 2.

(2) Despite subsection (1), the budgetary requirements for a recipient in the month in which the recipient's effective date for eligibility for income support falls, as determined by the Director under section 20 of the Act,

(a) with respect to shelter, shall be deemed to be the lesser of,

(i) the amount the Director has determined for one full month's shelter costs, and

(ii) the amount of the recipient's actual shelter costs that remains unpaid on that effective date; and

(b) with respect to basic needs, shall be prorated based on the number of days remaining in the month beginning with that effective date. O. Reg. 222/98, s. 29 (2); O. Reg. 231/06, s. 2.

29.1 (1) Where the Director has made a new determination of the effective date of eligibility for income support under subsection 17 (2), the amount of income support payable for the period between the effective date of eligibility as determined under that subsection and the effective date of eligibility as previously determined under section 17 as it read prior to May 25, 2006 shall be calculated in accordance with this section. O. Reg. 411/06, s. 2.

(2) A person who was not in receipt of income assistance under the *Ontario Works Act, 1997* in the month in which his or her effective date of eligibility for income support fell, as previously determined under section 17 as it read prior to May 25, 2006, is eligible,

(a) for each full month of the period described in subsection (1), for an amount of income support equal to the amount of income support, exclusive of benefits, to which the person was entitled in the first full month of eligibility for income support, as previously determined under section 17 as it read prior to May 25, 2006;

(b) for any incomplete month of the period described in subsection (1), for an amount of income support prorated, on the basis of the number of days of eligibility, if any, in relation to the amount of income support, exclusive of benefits, to which the person was entitled in the first full month of eligibility for income support, as previously determined under section 17 as it read prior to May 25, 2006. O. Reg. 411/06, s. 2.

(3) For each full month of the period described in subsection (1), a person who was in receipt of income assistance under the *Ontario Works Act, 1997* in the month in which his or her effective date of eligibility for income support fell, as previously determined under section 17 as it read prior to May 25, 2006, is eligible for an amount of income support equal to the amount of income support, exclusive of benefits, to which the person was entitled in the first full month of eligibility for income support, as previously determined under section 17 as it read prior to May 25, 2006, less the amount of income assistance payable under that Act that was exempted for that month. O. Reg. 411/06, s. 2.

(4) Despite subsection (1), the amount of income support payable for the period described in that subsection may be calculated in accordance with section 29 if,

(a) a person with a new effective date of eligibility determined under subsection 17 (2) requests the Director to do so; and

(b) the Director is satisfied that there was a substantial change in the person's circumstances between the effective date of eligibility determined under subsection 17 (2) and the effective date of eligibility determined by the application of the four-month limit referred to in clause 17 (1) (b) or (2) (b), as those clauses read prior to May 25, 2006. O. Reg. 411/06, s. 2.

General Budgetary Requirements

30. (1) The budgetary requirements for an applicant or recipient to whom sections 32, 33 and 33.1 do not apply shall be equal to the sum of the following amounts:

1. The amount payable for basic needs determined in accordance with the following Table:

TABLE

No. of Dependants Other than a Spouse	Dependants 18 Years or older	Dependants 13 -17 Years	Dependants 0 - 12 Years	Recipient	Recipient and Spouse	Recipient and Spouse
				See Note 1 below	See Note 2 below	See Note 3 below
0	0	0	0	\$584	\$864	\$1,165
1	0	0	1	727	864	1,165
	0	1	0	745	882	1,183
	1	0	0	931	1,041	1,342
2	0	0	2	727	864	1,165
	0	1	1	745	882	1,183
	0	2	0	763	900	1,201
	1	0	1	931	1,041	1,342

	1	1	0	949	1,059	1,360
	2	0	0	1,109	1,238	1,539
For each additional dependant, add \$198 if the dependant is 18 years of age or older, or \$18 if the dependant is 13 - 17 years of age, or \$0 if the dependant is 0 - 12 years of age.						
Note 1.	A recipient if there is no spouse included in the benefit unit.					
Note 2.	A recipient with a spouse included in the benefit unit if Note 3 does not apply.					
Note 3.	A recipient with a spouse included in the benefit unit if each of the recipient and the spouse is a person with a disability or a person referred to in subparagraph 1 i of subsection 4 (1) or paragraph 6 of subsection 4 (1).					

2. If the applicant or recipient resides north of the 50th parallel and is without year round road access, an amount determined in accordance with the following Table:

TABLE

No. of Dependants Other than a Spouse	Recipient	Recipient and Spouse
0	\$154	\$255
1	254	299
2	296	343
For each additional dependant, add \$44		

3. The amount payable for the cost of shelter calculated under section 31.

4. For the month in which an approved health professional confirms that a member of the benefit unit requires a special diet because of a medical condition set out in Schedule 1 to Ontario Regulation 562/05 (Prescribed Policy Statements) made under the Act and specifies the medical condition and for each succeeding month, up to and including the month in which the Director requires reconfirmation of the requirement for a special diet, an amount that is the lesser of, for each member of the benefit unit,

i. the sum of the amounts determined by the Director in accordance with Schedule 1 to Ontario Regulation 562/05, and

ii. \$250.

5. For the month in which an approved health professional confirms that a member of the benefit unit is pregnant and for each succeeding month up to and including the month in which the pregnancy ends, and subsequently, if the member of the benefit unit is breast-feeding, for each succeeding month up to and including the month in which the infant is 12 months of age, a nutritional allowance equal to,

i. \$50, if an approved health professional confirms that the person requires a non-dairy diet, or

ii. \$40, otherwise. O. Reg. 222/98, s. 30 (1); O. Reg. 33/00, s. 7 (1, 2); O. Reg. 172/04, s. 3; O. Reg. 416/04, s. 1 (1); O. Reg. 291/05, s. 8 (1, 2); O. Reg. 563/05, s. 2 (1); O. Reg. 20/06, s. 1; O. Reg. 465/06, s. 1 (1, 2); O. Reg. 267/07, s. 1 (1-3); O. Reg. 480/07, s. 3; O. Reg. 227/08, s. 3; O. Reg. 363/08, s. 1 (1, 2); O. Reg. 180/09, s. 1; O. Reg. 382/09, s. 1 (1, 2);). O. Reg. 381/10, s. 1 (1, 2).

(2) The total amount paid under paragraphs 1 and 3 of subsection (1) with respect to a recipient and his or her spouse shall not exceed \$1,760. O. Reg. 222/98, s. 30 (2); O. Reg. 33/00, s. 7 (3); O. Reg. 416/04, s. 1 (2); O. Reg. 291/05, s. 8 (3); O. Reg. 465/06, s. 1 (3); O. Reg. 267/07, s. 1 (4); O. Reg. 363/08, s. 1 (3); O. Reg. 382/09, s. 1 (3); O. Reg. 381/10, s. 1 (3).

(3) Subsection (4) applies with respect to the special diet for a member of a benefit unit if,

(a) on April 30, 1998, the monthly amount determined for basic needs under the *Family Benefits Act* with respect to that member was increased under paragraph 6 of subsection 12 (5) of Regulation 366 of the Revised Regulations of Ontario, 1990 by an amount greater than \$250; and

(b) in each subsequent month, the additional cost required to provide the special diet has continued to be greater than \$250. O. Reg. 581/98, s. 4.

(4) Under the circumstances set out in subsection (3), the amount set out in subparagraph ii of paragraph 4 of subsection (1) shall be deemed to be the additional cost required to provide the special diet on April 30, 1998. O. Reg. 581/98, s. 4.

(5) If a member of a benefit unit is receiving an amount for a special diet on November 3, 2005, the following rules apply until the Director makes a determination as to whether the recipient meets the requirements for a special diet or until the amount of income support is reduced by the amount of the budgetary requirement for a special diet because the member of the benefit unit has failed to provide the information requested:

1. The Director shall request that the member of the benefit unit who is receiving an amount for a special diet provide information within 90 days after the request, unless an extension is granted by the Director, that confirms that he or she has a medical condition that meets the requirements for a special diet under paragraph 4 of subsection (1).

2. The member of the benefit unit who is receiving an amount for a special diet shall continue to receive the amount for a special diet that he or she received on November 3, 2005 until the Director receives the information requested under paragraph 1 and determines whether the recipient meets the requirements for a special diet under paragraph 4 of subsection (1).

3. If the member of the benefit unit who is receiving an amount for a special diet fails to provide the information requested under paragraph 1 within 90 days after the request, unless an extension is granted by the Director, the Director shall reduce the amount of income support for the benefit unit by the amount of the budgetary requirement for a special diet. O. Reg. 563/05, s. 2 (2).

Shelter

31. (1) In this section,

“shelter” means the cost for a dwelling place used as a principal residence with respect to any of the following:

1. Rent, other than amounts paid for parking and cable.
2. Principal and interest on a mortgage or loan incurred to purchase the dwelling place or to make repairs that the Director determines are necessary in order for the property to continue to be used as a dwelling place.
3. Occupancy costs paid under an agreement to purchase the dwelling place.
4. Taxes.
5. Premiums for an insurance policy with respect to the dwelling place or its contents.
6. Reasonable and necessary payments, approved by the Director, for the preservation, maintenance and use of the dwelling place.
7. Common expenses required to be contributed for a condominium unit or a co-operative housing unit except that portion of the common expenses allocated to the cost of energy for heat.
8. The following utilities, if they are not included in rent or common expenses:
 - i. An energy source used for household purposes other than for heat.
 - ii. Water and sewage.
 - iii. Rental of a furnace and a hot water heater.

9. Rent under a land lease.

10. The cost of energy for heat. O. Reg. 222/98, s. 31 (1); O. Reg. 167/99, s. 5.

(2) The following rules apply for calculating the cost of shelter:

1. Determine the actual cost payable for shelter under subsection (1).

2. Determine the maximum amount payable for shelter in accordance with the following Table:

TABLE

Benefit Unit Size	Maximum Monthly Shelter Allowance
1	\$469
2	737
3	799
4	868
5	936
6 or more	970

3. Subject to paragraph 4, the amount payable for shelter shall be the lesser of the amount determined under paragraph 1 and the maximum amount determined under paragraph 2.

4. If the cost of energy for heat exceeds the maximum amount payable for shelter under paragraph 2, the cost payable for shelter shall be the cost of energy for heat.

5. The amount payable for shelter determined under paragraph 3 or 4 shall be increased by \$66 if the applicant or recipient has a spouse included in the benefit unit and both spouses are persons with a disability or members of a prescribed class described in subparagraph 1 i of subsection 4 (1) or paragraph 6 of subsection 4 (1).

6. If an applicant or a recipient is a tenant of an authority or agency that provides low rental housing accommodation on behalf of Canada, Ontario or a municipality, shelter does not include that portion of the rent for which the applicant or recipient is liable with respect to a person living in that rental accommodation who is not a member of the benefit unit. O. Reg. 222/98, s. 31 (2); O. Reg. 273/98, s. 3; O. Reg. 33/00, s. 8; O. Reg. 416/04, s. 2; O. Reg. 291/05, s. 9; O. Reg. 465/06, s. 2; O. Reg. 267/07, s. 2; O. Reg. 363/08, s. 2; O. Reg. 382/09, s. 2; O. Reg. 309/10, s. 2; O. Reg. 381/10, s. 2.

Budgetary Requirements for Persons in Institutions

31.1 Revoked: O. Reg. 465/06, s. 3.

32. (1) In this section,

“institution” means,

(a) a place of residence referred to in paragraph 3, 3.1, 3.2, 3.3, 4 or 5 of subsection 4 (1),

Note: On January 1, 2011, clause (a) is amended by striking out “paragraph 3, 3.1, 3.2, 3.3, 4 or 5” and substituting “paragraph 3, 3.1, 3.2, 3.3, 4, 5, 8 or 9”. See: O. Reg. 523/10, ss. 2 (1), 5 (1).

Note: On July 1, 2011, clause (a) is amended by striking out “paragraph 3, 3.1, 3.2, 3.3, 4, 5, 8 or 9” and substituting “paragraph 3, 3.1, 3.2, 3.3, 5, 8 or 9”. See: O. Reg. 523/10, ss. 2 (2), 5 (2).

(b) a long-term care home under the *Long-Term Care Homes Act, 2007*,

(c), (d) Revoked: O. Reg. 111/10, s. 1 (1).

(e) a group home for persons with a developmental disability under the *Developmental Services Act*,

Note: On July 1, 2011, clause (e) is revoked. See: O. Reg. 523/10, ss. 2 (3), 5 (2).

(f) a place designated under the regulations under the *Health Insurance Act* as a hospital or a health facility for the provision of insured services to chronically ill patients and that is a hospital for chronically ill patients, a chronic care hospital or a chronic unit attached to a general or convalescent hospital,

(g) a community resource center established under section 15 of the *Ministry of Correctional Services Act* for parolees or persons on probation under that Act,

(h) a residential facility providing treatment, care or rehabilitation programs under the *Child and Family Services Act*, and

(i) a provincial residential school for persons whose vision or hearing is impaired.

(j) Revoked: O. Reg. 394/04, s. 5.

O. Reg. 222/98, s. 32 (1); O. Reg. 299/01, s. 2; O. Reg. 436/01, s. 2; O. Reg. 394/04, s. 5;
O. Reg. 111/10, s. 1 (1).

(2) The budgetary requirements of an applicant or recipient resident in an institution shall be an amount equal to the sum of,

(a) \$130 for each member of the benefit unit residing in an institution;

(b) \$916 for residents of a long-term care home under the *Long-Term Care Homes Act, 2007*; and

(c) \$923 for residents of a group home for persons with a developmental disability under the *Developmental Services Act, O. Reg. 381/10, s. 3*.

Note: On January 1, 2011, clause (c) is revoked and the following substituted:

(c) \$923 for residents of,

(i) a group home for persons with a developmental disability under the *Developmental Services Act*,

(ii) an intensive support residence under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*,

(iii) a supported group living residence under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*.

Note: On July 1, 2011, clause (c) is revoked and the following substituted:

(c) \$923 for residents of an intensive support residence or a supported group living residence under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*.

See: O. Reg. 523/10, ss. 2 (5), 5 (2).

See: O. Reg. 523/10, ss. 2 (4), 5 (1).

Budgetary Requirements in other Cases

33. (1) The budgetary requirements for an applicant or recipient who receives board and lodging from the same source and who is not a person whose budgetary requirements are determined under section 32 shall be equal to the sum of the following amounts:

1. The amount set out in subparagraph i, ii or iii, as the case may be:

i. \$744, if the applicant or recipient is a single person or a sole support parent.

- ii. \$1,127, if there is a spouse included in the benefit unit and subparagraph iii does not apply.
- iii. \$1,485, if there is a spouse included in the benefit unit and both spouses are persons with a disability or members of a prescribed class described in subparagraph 1 i of subsection 4 (1) or paragraph 6 of subsection 4 (1).

2. If the applicant or recipient has one or more dependants other than a spouse, the amount determined in accordance with the following Table:

TABLE

	Age of Dependant		
	18 Years or Older	13 - 17 Years	0 - 12 Years
A. Benefit unit with no spouse included			
1. First dependant	\$436	\$262	\$227
2. For each additional dependant, add to amount in item 1	212	128	95
B. Benefit unit with spouse included			
1. For each dependant, add	212	128	95

3. If the applicant or recipient resides north of the 50th parallel and is without year round road access, an amount determined in accordance with the following Table:

TABLE

Number of Dependants Other than a Spouse	Recipient	Recipient and Spouse
0	\$154	\$242
1	245	279

2	284	316
For each additional dependant, add \$41.		

4. For the month in which an approved health professional confirms that a member of the benefit unit requires a special diet because of a medical condition set out in Schedule 1 to Ontario Regulation 562/05 (Prescribed Policy Statements) made under the Act and specifies the medical condition and for each succeeding month, up to and including the month in which the Director requires reconfirmation of the requirement for a special diet, an amount that is the lesser of, for each member of the benefit unit,

i. the sum of the amounts determined by the Director in accordance with Schedule 1 to Ontario Regulation 562/05, and

ii. \$250.

5. \$61 (Special Boarder Allowance).

6. For the month in which an approved health professional confirms that a member of the benefit unit is pregnant and for each succeeding month up to and including the month in which the pregnancy ends, and subsequently, if the member of the benefit unit is breast-feeding, for each succeeding month up to and including the month in which the infant is 12 months of age, a nutritional allowance equal to,

i. \$50, if an approved health professional confirms that the person requires a non-dairy diet, or

ii. \$40, otherwise. O. Reg. 222/98, s. 33; O. Reg. 273/98, s. 4; O. Reg. 33/00, s. 9; O. Reg. 172/04, s. 4; O. Reg. 416/04, s. 5; O. Reg. 291/05, s. 10; O. Reg. 563/05, s. 3 (1); O. Reg. 20/06, s. 2; O. Reg. 465/06, s. 5; O. Reg. 267/07, s. 4; O. Reg. 480/07, s. 4; O. Reg. 363/08, s. 4; O. Reg. 180/09, s. 2; O. Reg. 382/09, s. 4 (1-4); O. Reg. 381/10, s. 4.

(2) Subsection (3) applies with respect to the special diet for a member of a benefit unit if,

(a) on April 30, 1998, the monthly amount determined for basic needs under the *Family Benefits Act* with respect to that member was increased under paragraph 6 of subsection 12 (5) of Regulation 366 of the Revised Regulations of Ontario, 1990 by an amount greater than \$250; and

(b) in each subsequent month, the additional cost required to provide the special diet has continued to be greater than \$250. O. Reg. 581/98, s. 5.

(3) Under the circumstances set out in subsection (2), the amount set out in subparagraph ii of paragraph 4 of subsection (1) shall be deemed to be the additional cost required to provide the special diet on April 30, 1998. O. Reg. 581/98, s. 5.

(4) If a member of a benefit unit is receiving an amount for a special diet on November 3, 2005, the following rules apply until the Director makes a determination as to whether the recipient meets the requirements for a special diet or until the amount of income support is reduced by the amount of the budgetary requirement for a special diet because the member of the benefit unit has failed to provide the information requested:

1. The Director shall request that the member of the benefit unit who is receiving an amount for a special diet provide information within 90 days after the request, unless an extension is granted by the Director, that confirms that he or she has a medical condition that meets the requirements for a special diet under paragraph 4 of subsection (1).
2. The member of the benefit unit who is receiving an amount for a special diet shall continue to receive the amount for a special diet that he or she received on November 3, 2005 until the Director receives the information requested under paragraph 1 and determines whether the recipient meets the requirements for a special diet under paragraph 4 of subsection (1).
3. If the member of the benefit unit who is receiving an amount for a special diet fails to provide the information requested under paragraph 1 within 90 days after the request, unless an extension is granted by the Director, the Director shall reduce the amount of income support for the benefit unit by the amount of the budgetary requirement for a special diet. O. Reg. 563/05, s. 3 (2).

Budgetary Requirements for Residents of Interval and Transition Homes

33.1 (1) Subject to subsection (2), an applicant's or recipient's budgetary requirements are determined under section 30 or subsection 33 (1), as the case may be, if the applicant or recipient,

- (a) is a resident in an interval or transition home for abused women; and
- (b) needs assistance for the cost of shelter for her previous dwelling place in order to preserve her right to return to occupy that dwelling place as her principal residence. O. Reg. 394/04, s. 6.

(2) After three months of determining in accordance with subsection (1) the budgetary requirements of an applicant or recipient to whom that subsection applies, the Director may reduce the budgetary requirements of the applicant or recipient to an amount that is,

- (a) not less than the sum of \$128 for each member of the benefit unit, with respect to determinations relating to a month after October 31, 2009 and before November 1, 2010; and
- (b) not less than the sum of \$130 for each member of the benefit unit, with respect to determinations relating to a month after October 31, 2010.
- (c), (d) Revoked: O. Reg. 382/09, s. 5 (1).

O. Reg. 363/08, s. 5; O. Reg. 382/09, s. 5 (1); O. Reg. 381/10, s. 5 (1).

(3) The budgetary requirements of an applicant or recipient who is a resident in an interval or transition home but to whom subsection (1) does not apply are an amount equal to \$130 per month for each member of the benefit unit. O. Reg. 363/08, s. 5; O. Reg. 382/09, s. 5 (2); O. Reg. 381/10, s. 5 (2).

Reduction of Budgetary Requirements (Shared Custody) — General

33.2 If it has been determined that a member of a benefit unit is eligible to receive the Canada Child Tax Benefit for six months over a 12-month period (shared eligibility for the Canada Child Tax Benefit) in respect of a child or shares physical custody of a child on an approximately equal basis, as determined under subclause 2 (3) (c) (ii), the amount payable for that child under paragraphs 1, 2, 4 and 5 of subsection 30 (1) and paragraphs 3, 4 and 6 of subsection 33 (1) shall be reduced by 50 per cent. O. Reg. 227/08, s. 4.

34. Revoked: O. Reg. 309/10, s. 3.

Reduction of Budgetary Requirements — Persons Detained in Custody

35. (1) If a person is detained or residing in a place described in section 9, the budgetary requirements of the person for the month that he or she is first detained and of any subsequent full month that the person is detained shall be reduced for the number of days that the person is detained. O. Reg. 222/98, s. 35 (1).

(2) In the month that a person is released from a place described in subsection (1),

(a) the budgetary requirements, other than the amount payable for shelter, payable to or on behalf of the person shall be reduced for the number of days that the person was detained; and

(b) the budgetary requirements for shelter of the person may be reduced for the number of days that the person was detained. O. Reg. 222/98, s. 35 (2).

Reduction of Budgetary Requirements — Patient in a Hospital

36. (1) Subject to subsection (2), if a member of the benefit unit is a patient in a hospital, the Director may reduce the budgetary requirements for the person who is hospitalized. O. Reg. 222/98, s. 36 (1).

(2) Subsection (1) does not apply for the first three months that the member of the benefit unit is a patient in a hospital. O. Reg. 222/98, s. 36 (2).

Reduction of Budgetary Requirements — Person in Residential Substance Abuse Recovery Program

36.1 (1) Subject to subsection (2), if a member of the benefit unit resides in a facility for the purpose of participating in a residential substance abuse recovery program, the Director may reduce the budgetary requirements for that member. O. Reg. 167/99, s. 6.

(2) Subsection (1) does not apply for the first three months that the member of the benefit unit resides in such a facility. O. Reg. 167/99, s. 6.

Reduction of Budgetary Requirements — Person in Receipt of Ontario Child Benefit and Transition Child Benefit under Section 45.3 for Same Months

36.2 (1) If a member of a benefit unit receives a retroactive payment of the Ontario child benefit under section 8.6.2 of the *Income Tax Act* or a retroactive payment under subsection 122.61 (1) of the *Income Tax Act* (Canada) and during all or part of the period covered by the retroactive payment the recipient also received a transition child benefit under section 45.3, the budgetary requirements of the recipient shall be reduced, in accordance with subsection (2), in the month in which the retroactive payment is received. O. Reg. 480/07, s. 5.

(2) The amount of the reduction in the budgetary requirements under subsection (1) shall be calculated as follows:

$A = \text{the lesser of } B \text{ and } (C + (D - (E \times F)))$

where,

A = the reduction in the budgetary requirements,

B = the total amount of the transition child benefit received under section 45.3,

C = the total amount of the Ontario child benefit received under section 8.6.2 of the *Income Tax Act*,

D = the total payment with respect to dependent children that represents item “C” in the formula set out in subsection 122.61 (1) of the *Income Tax Act* (Canada),

E = the sum of \$43.75 for the first dependent child, \$41.99 for the second dependent child and \$41.41 for each additional dependent child, and

F = the number of months in which the transition child benefit was received.

O. Reg. 480/07, s. 5; O. Reg. 120/08, s. 1 (1).

(3) Despite subsection (2), a recipient's budgetary requirements shall not be reduced under this section to less than \$2.50. O. Reg. 120/08, s. 1 (2).

Calculating Income — General Rule

37. (1) Subject to sections 38 to 43, income shall be determined for a month by adding the total amount of all payments of any nature paid to or on behalf of or for the benefit of every member of the benefit unit during the period determined by the Director. O. Reg. 222/98, s. 37 (1).

(2) For the purpose of subsection (1), income shall include the monetary value of items and services provided to the members of the benefit unit as well as amounts of income deemed to be available to members of the benefit unit. O. Reg. 222/98, s. 37 (2).

(3) A payment to a person made with respect to a number of months shall be applied to those months. O. Reg. 222/98, s. 37 (3).

(4) Income as determined under subsections (1) to (3) shall be reduced in accordance with subsection (5) if,

(a) income is being determined for a month in which a recipient's budgetary requirements are reduced in accordance with section 36.2; and

(b) after the reduction described in clause (a), the recipient's budgetary requirements are less than or equal to income as determined under subsections (1) to (3). O. Reg. 120/08, s. 2.

(5) The amount of the reduction under subsection (4) shall be calculated in accordance with the following formula:

$$A = (B - C) + \$2.50$$

where,

A = the reduction in income for the month,

B = income for the month as determined under subsections (1) to (3), and

C = budgetary requirements for the month.

O. Reg. 120/08, s. 2.

Treatment of Earnings

38. The following rules apply with respect to the treatment of earnings:

1. The sum of the total amount of gross monthly income from employment, the amounts paid under a training program and the net monthly income as determined by the Director from an interest in or operation of a business shall be reduced by,

i. the total of all deductions required by law or by the terms of employment that are deductions,

A. from wages, salaries, casual earnings or amounts paid under a training program, and

B. made with respect to income tax, *Canada Pension Plan*, employment insurance, union dues or pension contributions,

ii. Revoked: O. Reg. 29/06, s. 5 (1).

iii. 50 per cent of the amount by which the monthly income determined under this paragraph exceeds the total amount of exemptions to which the person is entitled under subparagraph i,

iv. child care expenses actually incurred, and not otherwise reimbursed or subject to reimbursement up to the maximum amounts provided in paragraph 2, for each dependent child and for each child on whose behalf temporary care assistance is provided pursuant to section 57 of Ontario Regulation 134/98 (General), made under the *Ontario Works Act, 1997* if,

A. the child care expenses are necessary to permit a recipient or a spouse included in the benefit unit to be employed or to permit a dependent adult to be employed or to participate in an employment assistance activity,

B. the child care expenses are not paid to a member of the benefit unit, and

C. the recipient has not received reimbursement for the child care expenses through the Child Care Tax Credit under subsection 8 (15.2) of the *Income Tax Act*,

v. the employment related expenses attributable to the person's disability that are necessary to enable the person to be employed, up to a maximum of \$300 other than expenses,

A. that are reimbursed or subject to reimbursement, or

B. that relate to accommodating the person under section 17 of the *Human Rights Code*.

1.1 For the purposes of subparagraph 1 iv, payments made under section 8.5 of the *Income Tax Act* shall not be considered reimbursement for child care expenses actually incurred.

2. The maximum amount of child care expenses permitted for each child,

i. is the actual amount paid, if those expenses are paid,

- A. to a person licensed under the *Day Nurseries Act*, and
 - B. to a board, within the meaning of the *Education Act*, for an extended day program operated by the board under the *Education Act*, and
- ii. otherwise is \$600 per month.
3. The earnings of a dependent child or the amount paid to a dependent child under a training program shall not be included in income.
4. The earnings of a dependent adult who is attending secondary school full time or the amount paid to such a dependent adult under a training program shall not be included in income.
5. If a person's normal income is reduced because he or she is engaged in a labour dispute, that person shall be deemed to be in receipt of income from employment equal to the amount being received from that source in the month before that person's income was affected by the dispute.
6. If paragraph 5 applies, strike pay up to the amount deemed as income under that paragraph shall not be included as income.
7. The earnings of, or an amount paid under a training program to, any member of a benefit unit in attendance in a program of study at a post-secondary institution or earned or paid in the 16 weeks preceding attendance shall not be included in income if,
- i. the member of the benefit unit is enrolled in at least 60 per cent of a full-time course load or 40 per cent of a full-time course load if the person is in receipt of income support pursuant to subsection 3 (1) of the Act, and
 - ii. the member of the benefit unit,
 - A. is enrolled in a program of study approved under section 7 of Ontario Regulation 268/01 (Ontario Student Loans Made After July 31, 2001) made under the *Ministry of Training, Colleges and Universities Act*, or
 - B. is enrolled in a program of study at an institution approved under section 8 of Ontario Regulation 268/01, that prepares the member of the benefit unit for application for registration by a regulated profession named in Schedule 1 to the *Fair Access to Regulated Professions Act, 2006* or for application for registration by a health profession named in Schedule 1 to the *Regulated Health Professions Act, 1991*. O. Reg. 222/98, s. 38; O. Reg. 273/98, s. 6; O. Reg. 33/00, s. 11; O. Reg. 291/05, s. 12; O. Reg. 29/06, s. 5; O. Reg. 48/09, s. 2; O. Reg. 121/09, s. 4; O. Reg. 381/10, s. 6.

Boarder and Rental Income

39. (1) Subject to subsection (2), the following rules apply with respect to the treatment of boarder and rental income:

1. If a member of the benefit unit rents self-contained quarters, land or a garage to another person, 60 per cent of the gross income, as determined by the Director, received from the rental shall be included as income.

2. If a member of the benefit unit is providing lodging and meals to one or more persons, the amount of income shall be increased by an amount for each person equal to the greater of,

i. 40 per cent of the amount received from that person, and

ii. \$100.

3. If a member of the benefit unit is providing lodging without meals to one or more persons, the amount of income shall be increased by an amount for each person that is equal to the greater of,

i. 60 per cent of the amount received from that person, and

ii. \$100. O. Reg. 222/98, s. 39 (1).

(2) Boarder or rental income from a person is not included as income if the applicant or recipient or the spouse included in the benefit unit is a parent or grandparent of the person and,

(a) the person is a recipient of income support in his or her own right; or

(b) the person is a recipient of basic financial assistance under the *Ontario Works Act, 1997* in his or her own right. O. Reg. 222/98, s. 39 (2); O. Reg. 33/00, s. 12; O. Reg. 291/05, s. 13.

Sponsored Immigrants

40. The following rules apply with respect to undertakings given under the *Immigration Act* (Canada) or the *Immigration and Refugee Protection Act* (Canada):

1. If a member of the benefit unit is a person with respect to whom an undertaking has been given under the *Immigration Act* (Canada) or the *Immigration and Refugee Protection Act* (Canada) and he or she resides in the dwelling place of the person giving the undertaking or in accommodation owned or controlled in whole or in part by that person, income shall include an amount equal to the greater of,

- i. the amount of all payments available to the member of the benefit unit as determined by the Director under the undertaking given with respect to him or her, and
- ii. the amount of the budgetary requirements calculated in accordance with section 30 less the applicable amount determined in accordance with the following Table:

TABLE

No. of Dependants Other than a Spouse	Dependants 18 Years or older	Dependants 13 -17 Years	Dependants 0 - 12 Years	Recipient	Recipient and Spouse	Recipient and Spouse
				See Note 1 below	See Note 2 below	See Note 3 below
0	0	0	0	\$584	\$864	\$1,165
1	0	0	1	727	864	1,165
	0	1	0	745	882	1,183
	1	0	0	931	1,041	1,342
2	0	0	2	727	864	1,165
	0	1	1	745	882	1,183
	0	2	0	763	900	1,201
	1	0	1	931	1,041	1,342
	1	1	0	949	1,059	1,360
	2	0	0	1,109	1,238	1,539
For each additional dependant, add \$198 if the dependant is 18 years of age or older, or \$18 if the dependant is 13 - 17 years of age, or \$0 if the dependant is 0 - 12 years of age.						
The amount attributable to a dependent child shall be reduced by 50 per cent where budgetary requirements for the child were reduced under section 33.2.						
Note 1.	A recipient if there is no spouse included in the benefit unit.					
Note 2.	A recipient with a spouse included in the benefit unit if Note 3 does not					

	apply.
Note 3.	A recipient with a spouse included in the benefit unit if each of the recipient and the spouse is a person with a disability or a person referred to in subparagraph 1 i of subsection 4 (1) or paragraph 6 of subsection 4 (1).

2. Revoked: O. Reg. 394/04, s. 7 (3).

3. The amount calculated under paragraph 1 shall be deemed to be zero if,

i. the person giving the undertaking under the *Immigration Act* (Canada) or the *Immigration and Refugee Protection Act* (Canada) is himself or herself in receipt of or eligible for social assistance,

ii. the person giving the undertaking under the *Immigration Act* (Canada) or the *Immigration and Refugee Protection Act* (Canada) is himself or herself in receipt of a payment under Part II of the *Old Age Security Act* (Canada) or a payment under the *Ontario Guaranteed Annual Income Act*,

iii. the member of the benefit unit establishes to the satisfaction of the Director that there has been a breakdown in the undertaking by reason of domestic violence,

iv. the member of the benefit unit establishes to the satisfaction of the Director that he or she has a legal obligation to contribute to one or more of the elements of shelter cost set out in paragraphs 1 to 10 of subsection 31 (1) for the dwelling place where the person giving the undertaking under the *Immigration Act* (Canada) or the *Immigration and Refugee Protection Act* (Canada) and the member of the benefit unit reside or for the accommodation owned or controlled in whole or in part by the person giving the undertaking where the member of the benefit unit resides, or

v. the member of the benefit unit establishes to the satisfaction of the Director that he or she is required by the person giving the undertaking under the *Immigration Act* (Canada) or the *Immigration and Refugee Protection Act* (Canada) to pay for shelter in order to continue to reside in the dwelling place of that person or in accommodation owned or controlled in whole or in part by that person. O. Reg. 222/98, s. 40; O. Reg. 581/98, s. 6; O. Reg. 33/00, s. 13; O. Reg. 394/04, s. 7; O. Reg. 416/04, s. 7; O. Reg. 291/05, s. 14; O. Reg. 465/06, s. 7; O. Reg. 267/07, s. 6; O. Reg. 120/08, s. 3; O. Reg. 227/08, s. 5; O. Reg. 363/08, s. 6; O. Reg. 180/09, s. 3; O. Reg. 382/09, s. 6; O. Reg. 381/10, s. 7.

Exemptions — Payments by Ontario

41. (1) The following payments by Ontario shall not be included in income:

1. Income support under the Act.

2. A payment received under Ontario Regulation 224/98 (Assistance for Children with Severe Disabilities).

3. A payment under Ontario Regulation 223/98 (Employment Supports).

4. A payment made by a children's aid society on behalf of a child in care under the *Child and Family Services Act*.

4.1 A payment made by a children's aid society on behalf of a child receiving services under the *Child and Family Services Act*, if the society has determined that under clause 4 (1) (b) of Ontario Regulation 206/00 (Procedures, Practices and Standards of Service for Child Protection Cases), made under the *Child and Family Services Act*, that there are reasonable and probable grounds to believe that the child is in need of protection and the child has not been placed in the society's care,

i. by an agreement entered into under subsection 29 (1) of the *Child and Family Services Act*, or

ii. by an order made under clause 51 (2) (d), paragraph 2, 3 or 4 of subsection 57 (1), subsection 65 (1) or clause 65.2 (1) (c) of the *Child and Family Services Act*.

4.2 A payment made by a children's aid society on behalf of a child in the custody of a person pursuant to an order made under clause 65.2 (1) (b) of the *Child and Family Services Act*.

5. A payment received under clause 175 (f) of the *Child and Family Services Act*.

6. A payment received under subsection 2 (2) of the *Developmental Services Act*.

Note: On July 1, 2011, paragraph 6 is revoked. See: O. Reg. 523/10, ss. 3 (1), 5 (2).

7. A payment received under the *Ministry of Community and Social Services Act*.

8. A payment or refund under section 8 of the *Income Tax Act*.

9. A payment under subsection 147 (14) of the *Workers' Compensation Act*, as it read on December 31, 1997.

10. Basic financial assistance under the *Ontario Works Act, 1997* received in the first month of eligibility for income support.

10.1 A special benefit received under section 58.2 of Ontario Regulation 134/98 (General) made under the *Ontario Works Act, 1997*.

11. A payment with respect to employment assistance under Ontario Regulation 134/98 made to or on behalf of a member of the benefit unit.
12. A payment received under section 8.5 of the *Income Tax Act*.
13. Subject to subsections 43 (2) and (5), an amount received as compensation for non-economic loss under section 46 of the *Workplace Safety and Insurance Act, 1997* or section 42 of the *Workers' Compensation Act*.
14. An Ontario child benefit payment received under section 8.6.2 of the *Income Tax Act*.
15. A payment received under section 104.1 of the *Taxation Act, 2007* for a senior homeowners' property tax grant.
16. An Ontario property and sales tax credit payment or refund received under any of,
- i. section 99 of the *Taxation Act, 2007*,
 - ii. section 100 of the *Taxation Act, 2007*,
 - iii. section 101.1 of the *Taxation Act, 2007*,
 - iv. section 101.2 of the *Taxation Act, 2007*, and
 - v. section 104.11 of the *Taxation Act, 2007*.
17. An Ontario sales tax transition benefit received under section 104.12 of the *Taxation Act, 2007*.
18. A payment made in accordance with the *Ontario Child Benefit Equivalent Act, 2009*.
19. Subject to subsection (2), a payment under the Ministry of Municipal Affairs and Housing's Short Term Rent Support Program. O. Reg. 222/98, s. 41; O. Reg. 581/98, s. 7; O. Reg. 167/99, s. 7; O. Reg. 436/01, s. 3; O. Reg. 232/04, s. 1; O. Reg. 394/04, s. 8; O. Reg. 165/07, s. 4 (1); O. Reg. 272/07, s. 1; O. Reg. 121/09, s. 5 (1); O. Reg. 209/10, s. 3; O. Reg. 288/10, s. 2; O. Reg. 381/10, s. 8 (1).

Note: On January 1, 2011, subsection (1) is amended by adding the following paragraph:

20. A payment received under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*, if the payment is used or will be used within a reasonable time period to purchase the services and supports for which the payment was intended.

See: O. Reg. 523/10, ss. 3 (2), 5 (1).

(2) The maximum amount of the payment permitted for the purposes of paragraph 19 of subsection (1) is the amount by which the actual cost of shelter, determined in accordance with subsection 31 (1), exceeds the amount payable for shelter under subsection 31 (2). O. Reg. 381/10, s. 8 (2).

Exemptions — Payments by Canada

42. The following payments by Canada shall not be included in income:

1. A payment received as a tax credit under section 122.5 of the *Income Tax Act* (Canada).
2. A payment received under section 122.61 of the *Income Tax Act* (Canada) in or before June 2004, as reduced by that portion of the payment with respect to dependent children that represents item “C” in the formula set out in subsection (1) of that section.
3. A payment received under section 122.61 of the *Income Tax Act* (Canada) in or after July 2004 but before July 2005, as reduced by that portion of the payment with respect to dependent children that represents item “C” in the formula set out in subsection (1) of that section, and as increased by the sum of the following amounts:
 - i. \$4.00 for the first dependent child.
 - ii. \$3.41 for the second dependent child.
 - iii. \$3.25 for each additional dependent child.
- 3.1 A payment received under section 122.61 of the *Income Tax Act* (Canada) in or after July 2005 but before July 2006, as reduced by that portion of the payment with respect to dependent children that represents item “C” in the formula set out in subsection (1) of that section, and as increased by the sum of the following amounts:
 - i. \$21.58 for the first dependent child.
 - ii. \$20.66 for the second dependent child.
 - iii. \$20.33 for each additional dependent child.
- 3.2 A payment received under section 122.61 of the *Income Tax Act* (Canada) in or after July 2006 but before July 2007, as reduced by that portion of the payment with respect to dependent children that represents item “C” in the formula set out in subsection (1) of that section, and as increased by the sum of the following amounts:

- i. \$40.17 for the first dependent child.
- ii. \$38.82 for the second dependent child.
- iii. \$38.41 for each additional dependent child.

3.3 A payment received under section 122.61 of the *Income Tax Act* (Canada) in or after July 2007 but before July 2008, as reduced by that portion of the payment with respect to dependent children that represents item “C” in the formula set out in subsection (1) of that section, and as increased by the sum of the following amounts:

- i. \$43.75 for the first dependent child.
- ii. \$41.99 for the second dependent child.
- iii. \$41.41 for each additional dependent child.

3.4 A payment received under section 122.61 of the *Income Tax Act* (Canada) in or after July 2008.

3.5 A payment received as a tax credit under section 122.7 or 122.71 of the *Income Tax Act* (Canada).

4. A death benefit payment under the *Canada Pension Plan*.

5. A payment received from the Department of Indian Affairs and Northern Development (Canada) or from a band for board and lodging of a student attending a secondary school not on the reserve.

6. A payment received under the *Indian Act* (Canada) under a treaty between Her Majesty and a band, other than funds for post secondary education.

7. A payment made by a band as an incentive bonus for school attendance to any dependant who is attending school.

8. A payment received under Order in Council P.C. 1977-2496 made under section 40 of the *Indian Act* (Canada).

9. A payment received under the Extraordinary Assistance Plan (Canada).

10. A grant received under the *Employment Insurance Act* (Canada) and used for the purpose of purchasing a training course approved by the Director.

11. A Canada Education Savings Grant.

12. A payment received from Human Resources Development Canada under the program called the “Opportunities Fund for Persons with Disabilities”, if the payment has been or will be applied to costs incurred or to be incurred as a result of participation in employment-related activities that have been approved by the Director.

13. A loan, including a forgiven loan, or contribution received from the Residential Rehabilitation Assistance Program authorized by section 51 of the *National Housing Act* (Canada).

14. A benefit paid under section 4 of the *Universal Child Care Benefit Act* (Canada).

15. A payment received under the Pre-1986/Post-1990 Hepatitis C Settlement Agreement made as of December 14, 2006 among the Attorney General of Canada and Class Action Representative Plaintiffs, other than a payment for loss of income under section 2.05 of the Agreement, a payment for loss of services under section 2.06 of the Agreement and compensation to dependants under section 4.04 of the Agreement.

16. A payment from a municipality or a Tribal Council, on behalf of the Department of Indian Affairs and Northern Development (Canada), received between October 2005 and September 2006 by an evacuee from that part of the Fort Albany No. 67 Reserve on which members of the Kashechewan First Nation reside.

17. A payment under the *Canada Disability Savings Act* that is paid into a registered disability savings plan. O. Reg. 222/98, s. 42; O. Reg. 273/98, ss. 7, 11; O. Reg. 167/99, s. 8; O. Reg. 171/99, s. 2; O. Reg. 329/00, s. 4; O. Reg. 172/04, s. 5; O. Reg. 394/04, s. 9; O. Reg. 380/05, s. 1; O. Reg. 260/06, s. 1; O. Reg. 408/06, s. 1; O. Reg. 165/07, s. 5; O. Reg. 190/07, s. 1; O. Reg. 480/07, s. 7; O. Reg. 422/08, s. 2; O. Reg. 121/09, s. 6.

Other Exemptions

43. (1) The following shall not be included in income:

1. That portion of a loan, approved by the Director, that is,

i. applied or will be applied to the operation of a business,

ii. applied on an exceptional basis for medically necessary health related reasons if no other government program is available for the purpose,

iii. applied to expenses approved by the Director for disability related items or services,

iv. taken against a life insurance policy if that portion is or will be used for disability related items or services approved by the Director,

v. guaranteed under section 8 of the *Ministry of Training, Colleges and Universities Act* or made under the *Canada Student Financial Assistance Act* and, in either case, received by or on behalf of a student and relating to tuition, other compulsory fees, books, instructional supplies or transportation for the purpose of the definition of “education costs” in subsection 1 (1) of Regulation 774 of the Revised Regulations of Ontario, 1990 (Ontario Student Loans made before August 1, 2001) made under the *Ministry of Training, Colleges and Universities Act* or for the purpose of section 11 of Ontario Regulation 268/01 (Ontario Student Loans made after July 31, 2001) made under that Act,

vi. guaranteed under section 8 of the *Ministry of Training, Colleges and Universities Act* or made under the *Canada Student Financial Assistance Act*, if, in either case, the proceeds are received by or on behalf of a student who is,

A. a part-time student,

B. a dependent adult who is not a spouse included in the benefit unit, or

C. a sole support student as defined in subsection 1 (1) of Regulation 774 of the Revised Regulations of Ontario, 1990 made under the *Ministry of Training, Colleges and Universities Act*,

vii. applied or will be applied to the payment of first and last month’s rent necessary to secure accommodation for the benefit unit,

viii. applied or will be applied to the purchase of an asset exempt under subsection 28 (1), or

ix. applied to the purchase of household items necessary for the well-being of one or more members of the benefit unit and approved by the Director.

2. An award or grant made by the Ministry of Training, Colleges and Universities to a student enrolled in a post-secondary institution.

2.1 The portion of an award or grant, other than an award or grant under paragraph 2, or loan, other than a loan under subparagraphs 1 v and vi, that is approved by the Director for training or post-secondary education and that is or will be applied within a reasonable period to the cost of tuition, other compulsory fees, books, instructional supplies and equipment and transportation, if the person for whose benefit the award, grant or loan is provided is attending or will be attending the training or program of study for which it is intended.

3. A bursary received by a full-time student enrolled in a secondary school under paragraph 18 of subsection 8 (1) of the *Education Act*.

4. Subject to subsections (2), (3) and (5), an amount received as damages or compensation for,
 - i. pain and suffering as a result of injury to or the death of a member of the benefit unit, or
 - ii. expenses actually and reasonably incurred or to be incurred as a result of injury to or the death of a member of the benefit unit.
- 4.1 Subject to subsections (2) and (5), an amount received as an award for damages under clause 61 (2) (e) of the *Family Law Act* to compensate for loss of guidance, care and companionship as a result of death or injury.
5. A payment received under any of the following agreements to which the province of Ontario is a party:
 - i. The Helpline Reconciliation Model Agreement.
 - ii. The Multi-Provincial/Territorial Assistance Program Agreement.
 - iii. The Grandview Agreement.
6. That portion of a payment received from the sale or other disposition of an asset that is applied, or if the Director approves, will be applied towards,
 - i. the purchase by a member of the benefit unit of a principal residence used by the benefit unit,
 - ii. the purchase of any other asset that, in the opinion of the Director, is necessary for the health or welfare of a member of the benefit unit,
 - iii. the purchase of or conversion to an asset that is not included as an asset under section 28, or
 - iv. the purchase of or conversion to an asset that does not result in the recipient exceeding the prescribed limit for assets under section 27.
7. Subject to subsection (4), a donation received from a religious, charitable or benevolent organization.
8. Interest earned on that portion of the assets that are within the limits prescribed in section 27.
9. Payments from a trust or from a life insurance policy, gifts or other voluntary payments, that are applied to,
 - i. expenses for disability related items or services for a member of the benefit unit that are approved by the Director and that are not and will not be otherwise reimbursed, or

ii. education or training expenses that are approved by the Director and that,

A. are incurred with respect to a member of the benefit unit because of that person's disability, and

B. are not and will not be otherwise reimbursed.

9.1 Payments, other than payments under paragraph 9, that are made pursuant to a court order or under a government funded program and that are specifically made for a purpose listed in paragraph 9 and are applied to that purpose.

10. Subject to subsection (5), that portion of the interest earned by a trust referred to in paragraph 19 of subsection 28 (1),

i. that is re-invested into the capital of the trust and to which paragraph 19 of subsection 28 (1) continues to apply, or

ii. that is used for a purpose set out in paragraph 9.

11. Subject to subsection (5), that portion of the interest or dividends earned on life insurance policies,

i. that is re-invested in the policy,

ii. that is used to pay the premium, or

iii. that is used for a purpose set out in paragraph 9.

12. Payments approved by the Director received from any agency or governmental source on behalf of a child who is not a member of the benefit unit.

13. Payments in addition to a payment under paragraphs 1 to 12 that are payments from a trust or life insurance policy or gifts or other voluntary payments up to a maximum of \$6,000 for any 12-month period.

14. A payment received under the Ontario Hepatitis C Assistance Plan.

15. The interest earned from and reinvested into the Registered Education Savings Plan referred to in paragraph 26 of subsection 28 (1).

15.1 A gift or voluntary payment received for the purpose of making a contribution to a Registered Education Savings Plan, if the gift or payment is contributed as soon as practicable to a Registered Education Savings Plan that is exempt under paragraph 26 of subsection 28 (1).

15.2 An Educational Assistance Payment received from a Registered Education Savings Plan as defined in section 146.1 of the *Income Tax Act* (Canada) that is or will be applied, within a reasonable period, to the cost of tuition, other compulsory fees, books, instructional supplies and equipment, transportation and post-secondary education expenses related to the person's disability, approved by the Director.

15.3 A payment of contributions from a Registered Education Savings Plan as defined in section 146.1 of the *Income Tax Act* (Canada) to the subscriber or to the beneficiary if the payment is or will be applied by the beneficiary, within a reasonable period, to the cost of tuition, other compulsory fees, books, instructional supplies and equipment, transportation and post-secondary education expenses related to the person's disability, approved by the Director.

15.4 A gift or voluntary payment received for the purpose of making a contribution to a registered disability savings plan, if the gift or payment is contributed as soon as practicable into a registered disability savings plan exempt under paragraph 26.1 of subsection 28 (1).

15.5 The interest earned from and reinvested into a registered disability savings plan that is exempt under paragraph 26.1 of subsection 28 (1).

15.6 Payments from a registered disability savings plan that is exempt under paragraph 26.1 of subsection 28 (1).

16. A lump sum payment received under the 1986-1990 Hepatitis C Settlement Agreement made as of June 15, 1999 among the Attorney General of Canada, Her Majesty the Queen in right of Ontario and others, other than a loss of income payment or a loss of support payment.

17. A payment received from the Government of Alberta as compensation for sterilization.

18. A payment received under the Walkerton Compensation Plan, other than a payment for future lost income.

19. Grants received from the Home and Vehicle Modification Program funded under the *Ministry of Community and Social Services Act*.

20. Money paid under a contract of insurance for loss of or damage to real or personal property of a member of a benefit unit if the money is applied to or, if the Director approves, will be applied to,

- i. the purchase or repair of an asset that, under section 28, is not included as an asset,
- ii. the purchase or repair of any other asset that, in the opinion of the Director, is necessary for the health or welfare of a member of the benefit unit,

iii. the purchase or repair of an asset that does not result in the recipient exceeding the prescribed limit for assets under section 27,

iv. additional living expenses, including temporary shelter costs, if a peril covered by the contract of insurance makes the recipient's dwelling place used as principal residence unfit for occupancy, or

v. debt obligations of a member of the benefit unit.

21. Payments made by a local Disaster Relief Committee established pursuant to the Ontario Disaster Relief Assistance Program administered by the Ministry of Municipal Affairs and Housing, other than payments for loss of income.

22. An amount received as compensation, other than compensation for loss of income, related to a claim of abuse sustained at an Indian residential school, including compensation received under the Indian Residential Schools Settlement Agreement.

23. A personal credit within the meaning of section 5.07 of the Indian Residential Schools Settlement Agreement.

24. A death benefit payment under *An Act Respecting the Quebec Pension Plan*.

25. The value of grants, items or services provided for the purposes of energy efficiency and conservation by gas distribution utilities, local distribution companies, a municipality, the Ontario Power Authority, the Government of Ontario or the Government of Canada.

Note: On January 1, 2011, paragraph 25 is revoked and the following substituted:

25. The value of grants, payments, credits, services or items provided by or in accordance with a program funded by gas distribution utilities, local distribution companies, a municipality, the Ontario Power Authority, the Ontario Energy Board, the Government of Ontario or the Government of Canada, for the purposes of energy efficiency, conservation or affordability.

See: O. Reg. 523/10, ss. 4, 5 (1).

26. Payments made under the Quest for Gold – Ontario Athlete Assistance Program, administered by the Ministry of Health Promotion.

27. Payments made under the Transplant Patient Expense Reimbursement Program funded by the Ministry of Health and Long-Term Care, if the payments are used or will be used, within a reasonable period as determined by the Director, for the purpose for which they were intended. O. Reg. 222/98, s. 43 (1); O. Reg. 581/98, s. 8; O. Reg. 167/99, s. 9 (1, 2); O. Reg. 171/99, s. 3; O. Reg. 33/00, s. 14; O. Reg. 329/00, s. 5; O. Reg. 82/01, s. 2; O. Reg. 235/01, s. 2; O. Reg.

172/04, s. 6; O. Reg. 394/04, s. 10 (1-8); O. Reg. 291/05, s. 15; O. Reg. 165/07, s. 6; O. Reg. 422/08, s. 3 (1-3); O. Reg. 121/09, s. 7; O. Reg. 209/10, s. 4 (1, 2).

(2) The total amount allowed under paragraph 13 of section 41 and paragraphs 4 and 4.1 of subsection (1) shall not exceed \$100,000 unless the Director is satisfied that the amount exceeding \$100,000,

(a) is paid with respect to expenses referred to in subparagraph 4 ii of subsection (1) and is used or is to be used for those expenses; or

(b) is used or is to be used for a purpose set out in paragraph 9 of subsection (1). O. Reg. 394/04, s. 10 (9); O. Reg. 262/06, s. 5.

(3) The exemption under paragraph 4 of subsection (1) does not apply to amounts paid under the following provisions:

1. Subsections 13 (1), (2), (3), (7) and (8) of Regulation 672 of the Revised Regulations of Ontario 1990 (Statutory Accident Benefits Schedule — Accidents before January 1, 1994) made under the *Insurance Act*.

2. Section 19 of Ontario Regulation 776/93 (Statutory Accident Benefits Schedule — Accidents after December 31, 1993 and before November 1, 1996) made under the *Insurance Act*.

3. Section 12 of Ontario Regulation 403/96 (Statutory Accident Benefits Schedule — Accidents on or after November 1, 1996) made under the *Insurance Act*.

4. Section 12 of Ontario Regulation 34/10 (Statutory Accident Benefits Schedule — Effective September 1, 2010) made under the *Insurance Act*. O. Reg. 209/10, s. 4 (3, 4).

(4) The total amount allowed under paragraph 7 of subsection (1) shall not exceed the difference between \$100,000 and the total amount allowed under paragraph 19 of subsection 28 (1). O. Reg. 222/98, s. 43 (4).

(5) The exemptions from income under paragraph 13 of section 41 and paragraph 4, 4.1, 10 or 11 of subsection (1) apply if the recipient files an annual report in a form approved by the Director documenting all income and expense transactions relating to the assets for the year with respect to which the report is filed. O. Reg. 394/04, s. 10 (11).

(5.1) The exemption from income under paragraph 15.4 of subsection (1) does not include gifts or payments contributed to a registered disability savings plan if the contributions fail to comply with the condition required under subparagraph 146.4 (4) (g) (iii) of the *Income Tax Act* (Canada). O. Reg. 422/08, s. 3 (4).

(6) If the exemption from assets under paragraph 19 of subsection 28 (1) applies and income from those assets is paid other than monthly and is not otherwise exempt under this section, the income shall be calculated and included as income as if it were paid monthly in equal payments,

(a) over the 12 months next following the month in which the report referred to in subsection (5) is filed; or

(b) over the 12 months commencing in the month in which the payment is made if the report referred to in subsection (5) is not filed. O. Reg. 222/98, s. 43 (6).

Treatment of Canada Child Tax Benefit

43.1 (1) The Director may pay to Canada on behalf of a person who received income support part or all of an amount that Canada paid to the person and that was not excluded from the person's income under paragraph 2 of section 42 if Canada subsequently determines that the person was not eligible for the payment from Canada and notified the Director of that fact. O. Reg. 273/98, s. 8.

(2) An amount paid to Canada under subsection (1) shall be deemed to be income support. O. Reg. 273/98, s. 8.

44. (1) The following benefits shall be paid with respect to each of the members of a recipient's benefit unit if the Director is satisfied that he or she meets the criteria for them and income support is being paid on his or her behalf:

health benefits

1. An amount for health benefits equal to the sum of,

i. the cost for drugs prescribed for members of the benefit unit by an approved health professional, not including the co-payment that a member of the benefit unit is charged under the *Ontario Drug Benefit Act*, if those drugs have been approved by the Minister of Health and Long-Term Care and purchased from a dispensary during any month in which the person requiring the drugs is a member of the benefit unit,

ii. if the cost and the services and items have been approved by the Minister, the cost for members of the benefit unit other than dependent adults for,

A. dental services,

B. vision services, other than a periodic oculo-visual assessment as referred to in paragraph 1.1,

C. hearing services, and

D. items related to vision services and hearing services,

iii. the cost of diabetic supplies and surgical supplies and dressings for members of the benefit unit, if the cost of the item is not otherwise reimbursed or subject to reimbursement,

iii.1 the cost of transportation that is reasonably required in any month for medical treatment for members of the benefit unit and that is not otherwise reimbursed or subject to reimbursement, if the cost of that transportation in the month is \$15 or more,

iv. for persons resident in an institution referred to in clause (f) of the definition of “institution” in subsection 32 (1), an amount approved by the Director for dental services, dentures, prosthetic devices including eye glasses, clothing, wheelchairs and wheelchair accessories,

v. the amount a member of the benefit unit is required to pay for the consumer contribution for an assistive device under the Assistive Devices Program administered by the Ministry of Health, up to the amount approved under that program,

vi. if an assessment is required to determine eligibility for an assistive device under that program and there is no other source of funding for the assessment, the amount determined by the Director, and

vii. the cost of batteries and necessary repairs for mobility devices used by a member of the benefit unit if the cost of batteries and repairs is not otherwise reimbursed or subject to reimbursement.

1.1 Subject to subsection (1.0.0.1), an amount equal to \$39.15 for a periodic oculo-visual assessment for every member of the benefit unit once every 24 months.

2., 3. Revoked: O. Reg. 480/07, s. 8 (1).

community start up and maintenance

4. An amount, not exceeding the maximum amount to which a recipient is entitled under subsection (1.1), in respect of a residence if,

i. the recipient will be establishing a new principal residence or will be remaining in his or her current residence,

ii. the Director is satisfied that the recipient will need financial assistance to establish the new principal residence or to remain in his or her current residence,

iii. the recipient,

A. is being discharged from an institution that provided for his or her basic needs and shelter,

B. has satisfied the Director that it would be harmful to his or her health or welfare to remain in his or her current residence,

C. has been evicted from his or her current residence,

D. has received a notice of termination or a notice to quit with respect to his or her tenancy or a final demand for payment under a mortgage and has satisfied the Director that, if a payment is made, he or she will not be evicted from his or her current residence,

E. has had a utility within the meaning of paragraph 8 of subsection 31 (1) or the energy for heat as described in paragraph 10 of subsection 31 (1) to the current residence discontinued and has satisfied the Director that if a payment is made the utility or energy will be resumed, or

F. has received a notice that a utility within the meaning of paragraph 8 of subsection 31 (1) or the energy for heat as described in paragraph 10 of subsection 31 (1) to the current residence will be discontinued and has satisfied the Director that if a payment is made the utility or energy will not be discontinued, and

iv. the recipient,

A. has not received payments under this paragraph or under paragraph 4 of subsection 55 (1) of Ontario Regulation 134/98 (General) made under the *Ontario Works Act, 1997* or has received payments that in total are not greater than the maximum amount to which the recipient is entitled under subsection (1.1) within the preceding 24 months, or

B. has received payments under this paragraph or under paragraph 4 of subsection 55 (1) of Ontario Regulation 134/98 (General) made under the *Ontario Works Act, 1997* within the preceding 24 months the total of which equal the maximum amount to which the recipient is entitled under subsection (1.1), but the Director approves additional payments that in total are not greater than the maximum amount to which the recipient is entitled under subsection (1.1) because of exceptional circumstances.

guide dog

5. If a member of the benefit unit has a guide dog, an amount not exceeding \$73 for the care of the guide dog.

employment and training start up assistance

6. An amount determined by the Director for expenses approved by the Director and reasonably necessary for the person to begin a new employment or an employment assistance activity, up to

a maximum in any 12-month period with respect to any one person of \$500, if a recipient, a spouse included in the benefit unit, a dependent adult who is not attending secondary school full time or a dependent child who has received an Ontario Secondary School Diploma or its equivalent,

- i. begins or changes employment,
- ii. begins an employment assistance activity under the *Ontario Works Act, 1997*, or
- iii. begins any other activity intended to assist the person to become and stay employed that is approved by the Director.

exit from income support for employment

6.1 An amount of \$500 to be paid with respect to the month immediately preceding the month in which a recipient ceases to be eligible for income support if,

- i. the reason for ceasing to be eligible for income support is that the income of the person's benefit unit equals or exceeds the benefit unit's budgetary requirements as determined under this Regulation,
- ii. the income of the person's benefit unit includes income from employment, a training program or the operation of a business, and
- iii. no amount under this paragraph has been paid to the recipient in the 12 months immediately preceding the month in respect of which the amount is paid.

work-related expenses

6.2 A monthly amount of \$100 for work-related expenses for a recipient or a spouse included in the benefit unit who is not in attendance at a post-secondary institution in at least 60 per cent of a full-time course load or 40 per cent of a full-time course load if the person is in receipt of income support pursuant to subsection 3 (1) of the Act or for a dependent adult who is not in attendance at secondary school full time or at a post secondary institution in at least 60 per cent of a full-time course load if,

- i. he or she earns income from employment or a training program, or
- ii. his or her net income from the operation of a business as determined by the Director is a positive amount.

up front child care

7. An amount determined by the Director, up to a maximum in any 12-month period of the amount that the person would be entitled to as a deduction for child care under section 38 if,

i. a recipient, a spouse included in the benefit unit, a dependent adult or a dependent child,

A. begins, changes or maintains employment,

B. begins, changes or maintains an employment assistance activity under the *Ontario Works Act, 1997*, or

C. begins, changes or maintains any other activity intended to assist the person to become and stay employed that is approved by the Director, and

ii. in the opinion of the Director, the person is required to pay in advance for child care that is reasonably necessary to permit the person to begin, change or maintain his or her employment or activity.

necessary home repairs

8. A payment for home repairs to a recipient's principal residence in an amount determined by the Director if the Director is satisfied that the repairs are necessary in order to permit the home to continue to be used as a principal residence and that no other source of funding is available, but not including repairs,

i. with respect to which a loan is received through the Residential Rehabilitation Assistance Program authorized by section 51 of the *National Housing Act* (Canada),

ii. for the cost of digging a well,

iii. for the cost of internal renovation or remodelling unless the Director is satisfied that the renovation or remodelling is necessary to ensure privacy,

iv. for the cost of new foundations for premises,

v. for the cost of a new furnace, unless the Director is satisfied that the existing furnace is unsafe,

vi. for the cost of materials for insulation unless the Director is satisfied that the thermal insulation of the premises will meet the minimum standards set out in section 9.25 of Ontario Regulation 403/97 made under the *Building Code Act, 1992* and that the cost of those materials is reasonable in relation to the estimated future saving in the cost of heating the premises, or

vii. where, in the Director's opinion, the market value of the premises does not warrant incurring the cost of the repairs.

travel and transportation

9. If a person is resident in a long-term care home under the *Long-Term Care Homes Act, 2007* which was formerly an approved charitable home for the aged under the *Charitable Institutions Act* and, in the opinion of the Director, requires financial aid in order to travel in the community, an amount not exceeding \$30.

second residence

10. If a person is a person with a disability or a person referred to in subparagraph i of paragraph 1 of subsection 4 (1) or paragraph 6 of subsection 4 (1) and the person, while maintaining his or her normal place of residence, is required to temporarily change that residence in order to undergo training in a program that, in the opinion of the Director, will enhance the person's prospects for obtaining employment, an amount determined by the Director not to exceed the lesser of,

i. an amount equal to those costs of maintaining the normal place of residence during the training that are not otherwise reimbursed or subject to reimbursement, and

ii. \$455. O. Reg. 222/98, s. 44 (1); O. Reg. 581/98, s. 9; O. Reg. 167/99, s. 10; O. Reg. 239/99, s. 1 (1); O. Reg. 33/00, s. 15; O. Reg. 490/01, s. 1; O. Reg. 394/04, s. 11 (1-4); O. Reg. 135/05, s. 1 (1, 2); O. Reg. 291/05, s. 16; O. Reg. 29/06, s. 6; O. Reg. 262/06, s. 6; O. Reg. 330/06, s. 1 (1); O. Reg. 465/06, s. 8; O. Reg. 267/07, s. 7 (1, 2); O. Reg. 480/07, s. 8 (1); O. Reg. 363/08, s. 7; O. Reg. 48/09, s. 3; O. Reg. 382/09, s. 7; O. Reg. 111/10, s. 2; O. Reg. 381/10, s. 9.

(1.0.0.0.1) No benefits referred to in subsection (1) shall be paid with respect to an amount of income support payable as a result of a new determination of the effective date of eligibility for income support under subsection 17 (2). O. Reg. 411/06, s. 3.

(1.0.0.1) An amount under paragraph 1.1 of subsection (1) is only payable if,

(a) the member of the benefit unit has not had a periodic oculo-visual assessment or a major eye examination within the preceding 24 months; and

(b) the member of the benefit unit is not entitled to payment on his or her behalf for the periodic oculo-visual assessment or the major eye examination under the Ontario Health Insurance Plan established under the *Health Insurance Act*. O. Reg. 135/05, s. 1 (3).

(1.0.1) Revoked: O. Reg. 480/07, s. 8 (2).

(1.1) Subject to the approval by the Director under sub-subparagraph 4 iv B of subsection (1) of an additional payment under exceptional circumstances, the maximum amount payable under paragraph 4 of subsection (1) in any 24-month period is,

(a) \$1,500, if the recipient has one or more dependent children; or

(b) \$799, in all other cases. O. Reg. 239/99, s. 1 (2); O. Reg. 394/04, s. 11 (6).

(2) Despite paragraph 6 of subsection (1), the maximum amount payable under that paragraph shall be reduced by any amount paid under paragraph 6 of subsection 55 (1) of Ontario Regulation 134/98 made under the *Ontario Works Act, 1997* within the applicable 12-month period. O. Reg. 222/98, s. 44 (2).

(3) Despite paragraph 7 of subsection (1), the maximum amount payable under that paragraph shall be reduced by any amount paid under paragraph 7 of subsection 55 (1) of Ontario Regulation 134/98 made under the *Ontario Works Act, 1997* within the applicable 12-month period. O. Reg. 222/98, s. 44 (3).

(4) The amount paid under paragraph 7 of subsection (1) shall not constitute reimbursement for child care expenses for the purpose of determining deductions from income under section 38. O. Reg. 222/98, s. 44 (4).

(5) A payment under paragraph 8 of subsection (1) shall not exceed the proportion of the total cost of repairs that represents the person's proportionate interest in the property. O. Reg. 222/98, s. 44 (5).

(6) If, as a result of the actions of a dependent adult, a recipient's income support is reduced under section 24 for a period determined under subsection 24 (2), the benefit set out in subparagraph 1 i of subsection (1) shall be paid with respect to the dependent adult during that period, if the Director is satisfied that the dependent adult meets the criteria set out in that subparagraph and requires the drugs referred to in that subparagraph for a serious illness or serious health condition. O. Reg. 394/04, s. 11 (7).

(7) The condition in subsection (1) that income support must be paid on behalf of a member of a benefit unit in order for the member to be eligible for a benefit set out in a paragraph or subparagraph of subsection (1) is not satisfied if the only income support being paid on behalf of the member is one or more benefits set out in another paragraph or subparagraph of subsection (1). O. Reg. 394/04, s. 11 (7).

(8) In this section,

“major eye examination”,

(a) has the same meaning as a major eye examination as described in the document entitled “Schedule of Benefits for Optometry Services (November 1, 2004)”, published by the Ministry of Health and Long-Term Care and available from that Ministry, when the examination is performed by an optometrist, or

(b) has the same meaning as a major eye examination as described in the document entitled “Schedule of Benefits — Physician Services under the *Health Insurance Act* (July 1, 2003)”, including amendments made on and before December 1, 2004, published by the Ministry of Health and Long-Term Care and available from that Ministry, when the examination is performed by a physician; (“examen de la vue majeur”)

“periodic oculo-visual assessment”,

(a) has the same meaning as a periodic oculo-visual assessment as described in the document entitled “Schedule of Benefits for Optometry Services (November 1, 2004)”, published by the Ministry of Health and Long-Term Care and available from that Ministry, when the assessment is performed by an optometrist, or

(b) has the same meaning as a periodic oculo-visual assessment as described in the document entitled “Schedule of Benefits — Physician Services under the *Health Insurance Act* (July 1, 2003)”, including amendments made on and before December 1, 2004, published by the Ministry of Health and Long-Term Care and available from that Ministry, when the assessment is performed by a physician. (“bilan oculo-visuel périodique”) O. Reg. 135/05, s. 1 (4).

Extended Health Benefits

45. (1) In accordance with section 49.1 of the Act, the health benefits set out in subsection (1.1) shall be provided to former recipients and their dependants who meet the criteria set out in subsection

O. Reg 222/98 (Historical version for the period November 1, 2006 to April 19, 2007).

33. (1) The budgetary requirements for an applicant or recipient who receives board and lodging from the same source and who is not a person whose budgetary requirements are determined under section 32 shall be equal to the sum of the following amounts:

1. The amount set out in subparagraph i, ii or iii, as the case may be:

i. \$692, if the applicant or recipient is a single person or a sole support parent.

ii. \$1,050, if there is a spouse included in the benefit unit and subparagraph iii does not apply.

iii. \$1,384, if there is a spouse included in the benefit unit and both spouses are persons with a disability or members of a prescribed class described in subparagraph 1 i of subsection 4 (1) or paragraph 6 of subsection 4 (1).

2. If the applicant or recipient has one or more dependants other than a spouse, the amount determined in accordance with the following Table:

TABLE

	Age of Dependant	
	13 Years and Over	0-12 Years
A. Benefit unit with no spouse included		
1. First dependant	\$404	\$349
2. For each additional dependant, add to the amount in item 1	196	146
B. Benefit unit with spouse included		
1. For each dependant, add	196	146

3. If the applicant or recipient resides north of the 50th parallel and is without year round road access, an amount determined in accordance with the following Table:

TABLE

Number of Dependants Other than a Spouse	Recipient	Recipient and Spouse
0	\$143	\$224
1	227	258
2	263	293
For each additional dependant, add \$37.		

4. For the month in which an approved health professional confirms that a member of the benefit unit requires a special diet because of a medical condition set out in Schedule 1 to Ontario Regulation 562/05 (Prescribed Policy Statements) made under the Act and specifies the medical condition and for each succeeding month, up to and including the month in which the Director requires reconfirmation of the requirement for a special diet, an amount that is the lesser of, for each member of the benefit unit,

i. the sum of the amounts determined by the Director in accordance with Schedule 1 to Ontario Regulation 562/05, and

ii. \$250.

5. \$54 (Special Boarder Allowance).

6. For the month in which an approved health professional confirms that a member of the benefit unit is pregnant and for each succeeding month up to and including the month in which the pregnancy ends, and subsequently, if the member of the benefit unit is breast-feeding, for each succeeding month up to and including the month in which the infant is 12 months of age, a nutritional allowance equal to,

i. \$50, if an approved health professional confirms that the person requires a non-dairy diet, or

ii. \$40, otherwise.

O. Reg. 134/98 (Ontario Works Act).

1. (1) For the purposes of the Act and the regulations,

“dependant”, in relation to an applicant or recipient, means,

(a) a person who resides in the same dwelling place and who is,

(i) the spouse of the applicant or recipient,

(ii) a dependent child of the applicant or recipient or of his or her spouse, or

(iii) a dependent adult of the applicant or recipient or of his or her spouse, or

(b) a spouse who is absent from the dwelling place of the applicant or recipient if the absence is for a reason other than a breakdown in the relationship with no reasonable prospect of reconciliation; (“personne à charge”)

2. (1) For the purposes of the Act and the regulations, a person is a dependent adult, in relation to an applicant or recipient if,

(a) the applicant or recipient or the spouse included in the applicant’s or recipient’s benefit unit is the person’s parent;

- (b) the person resides in the same dwelling place as the applicant or recipient;
- (c) the person is 18 years of age or older;
- (d) the person is not financially independent as determined under subsection (2); and
- (e) the person has not been determined to be a person with a disability under the *Ontario Disability Support Program Act, 1997* or a member of a prescribed class under subsection 4 (1) of Ontario Regulation 222/98 (General) made under that Act.

11. (1) A dependent adult is not eligible for income assistance on his or her own behalf. O. Reg. 134/98, s. 11 (1).

(2) A person who is a dependent adult or a dependent child and who has a dependent child may apply for income assistance on behalf of the dependent child but is not eligible for income assistance on his or her own behalf. O. Reg. 134/98, s. 11 (2).

(3) A person who resides in the same dwelling place as his or her parent is not eligible for income assistance on his or her own behalf unless he or she is financially independent within the meaning of subsection 2 (2). O. Reg. 134/98, s. 11 (3); O. Reg. 272/98, s. 3.

(4) A person to whom subsection (3) applies and who has a dependent child may apply for income assistance on behalf of the dependent child. O. Reg. 165/99, s. 3.

Legislation Act, 2006, S.O. 2006, c. 21, Sch. F at s. 64.

s. 64(1). An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects.

(2) Subsection (1) also applies to a regulation, in the context of the Act under which it is made and to the extent that the regulation is consistent with that Act.

Income Tax Act, R.S.C. 1985, c. 1(5th Supp.).

s. 56.1(4) The definitions in this subsection apply in this section and section 56.

“child support amount”

“child support amount” means any support amount that is not identified in the agreement or order under which it is receivable as being solely for the support of a recipient who is a spouse or

common-law partner or former spouse or common-law partner of the payer or who is a parent of a child of whom the payer is a legal parent.

“commencement day”

“commencement day” at any time of an agreement or order means

(a) where the agreement or order is made after April 1997, the day it is made; and

(b) where the agreement or order is made before May 1997, the day, if any, that is after April 1997 and is the earliest of

(i) the day specified as the commencement day of the agreement or order by the payer and recipient under the agreement or order in a joint election filed with the Minister in prescribed form and manner,

(ii) where the agreement or order is varied after April 1997 to change the child support amounts payable to the recipient, the day on which the first payment of the varied amount is required to be made,

(iii) where a subsequent agreement or order is made after April 1997, the effect of which is to change the total child support amounts payable to the recipient by the payer, the commencement day of the first such subsequent agreement or order, and

(iv) the day specified in the agreement or order, or any variation thereof, as the commencement day of the agreement or order for the purposes of this Act.

“support amount”

“support amount” means an amount payable or receivable as an allowance on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and children of the recipient, if the recipient has discretion as to the use of the amount, and

(a) the recipient is the spouse or common-law partner or former spouse or common-law partner of the payer, the recipient and payer are living separate and apart because of the breakdown of their marriage or common-law partnership and the amount is receivable under an order of a competent tribunal or under a written agreement; or

(b) the payer is a legal parent of a child of the recipient and the amount is receivable under an order made by a competent tribunal in accordance with the laws of a province.

60. There may be deducted in computing a taxpayer's income for a taxation year such of the following amounts as are applicable

...

Support

(b) the total of all amounts each of which is an amount determined by the formula

$$A - (B + C)$$

where

A is the total of all amounts each of which is a support amount paid after 1996 and before the end of the year by the taxpayer to a particular person, where the taxpayer and the particular person were living separate and apart at the time the amount was paid,

B is the total of all amounts each of which is a child support amount that became payable by the taxpayer to the particular person under an agreement or order on or after its commencement day and before the end of the year in respect of a period that began on or after its commencement day, and

C is the total of all amounts each of which is a support amount paid by the taxpayer to the particular person after 1996 and deductible in computing the taxpayer's income for a preceding taxation year;

Court File No. C52794

DIRECTOR OF THE ONTARIO DISABILITY SUPPORT PROGRAM
Appellant

- and - **JOCELYN ANSELL**
Respondent

COURT OF APPEAL FOR ONTARIO

RESPONDENT'S FACTUM

INCOME SECURITY ADVOCACY CENTRE

425 Adelaide Street West, 5th Floor
Toronto, Ontario M5V 3C1

Cynthia Wilkey
LSUC #27159P

Tel: (416) 597-5820, ext. 5152
Fax: (416) 597-5821

ALGOMA COMMUNITY LEGAL CLINIC

473 Queen Street East, Suite 301
Sault Ste. Marie, Ontario P6A 1Z5

Joseph Corbière
LSUC #44958M

Tel: (705) 942-4900
Fax: (705) 942-6894

Lawyers for the Respondent