

COURT OF APPEAL FOR ONTARIO

BETWEEN:

GLYNN SURDIVALL

Appellant
(Respondent below)

- and -

DIRECTOR OF THE ONTARIO DISABILITY SUPPORT PROGRAM

Respondent
(Appellant below)

FACTUM OF THE APPELLANT

DATE: **January 30, 2013**

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PART I: IDENTIFYING STATEMENT

1. This is an appeal by Glynn Surdivall from a decision of the Divisional Court, made on March 30, 2012. The Divisional Court reversed a decision made by the Social Benefits Tribunal (“Tribunal”) made on March 25, 2011. The Tribunal had ordered that an overpayment Mr. Surdivall incurred in good faith while a recipient of Ontario Disability Support Program (“ODSP”) income support be reduced by half and that Mr. Surdivall pay back the remainder of the overpayment at a rate of \$10 per month.

PART II: OVERVIEW STATEMENT

2. The Appellant, Glynn Surdivall, is a disabled senior. He received ODSP income support until the age of 65, when he became eligible for a CPP pension and benefits for low-income seniors. Before he transferred to the new income security programs, ODSP assessed an overpayment. It is not in dispute that the overpayment arose through an innocent mistake on Mr. Surdivall’s part. Recovery of the overpayment is the subject of this appeal.

3. The Divisional Court concluded that neither the Director of ODSP (“the Director”) nor the Tribunal has discretion to order that an overpayment not be collected, regardless of the circumstances. In so doing, the Divisional Court over-turned over a decade of Tribunal case-law that had never been appealed by the Director.

4. However, the *Ontario Disability Support Program Act* (“ODSPA”) states that overpayments “may be recovered” by the Director. It is submitted that the use of the statutory language “may be recovered” grants the Director the discretion to decline to recover an overpayment in appropriate circumstances. Such flexibility is reasonable in the context of a government program

for low-income, disabled Ontarians. Indeed, even in the face of the Divisional Court's decision, the Director continues to exercise discretion over overpayment recovery.

5. The Divisional Court's decision prevents the Director and the Tribunal from exercising discretion in circumstances in which repayment would cause extreme financial hardship and/or unfairness for some of Ontario's most vulnerable residents.

PART III: SUMMARY OF FACTS

A. Background

6. Glynn Surdivall is a 67-year-old disabled man whose sole sources of income are a small CPP pension and social benefits for low-income seniors. Due to his long-term disabilities, prior to turning 65, he received income support from ODSP.

7. In 2009, while receiving ODSP income support, Mr. Surdivall lived in a market rent apartment with a friend. In August of that year, after a lengthy wait, Mr. Surdivall was offered an apartment in public housing at a reduced rent. As moving out of his apartment immediately would expose his roommate to the risk of eviction, Mr. Surdivall continued to reside in the market rent apartment while his friend sought a new roommate. He paid rent for both apartments during the intervening period. Far from being enriched by the arrangement, Mr. Surdivall was worse off financially.

Appeal Book, Tab 9: Note Detail at p. 26.

Appeal Book, Tab 10: Record of Hearing at pp. 29-33.

Appeal Book, Tab 4: Decision of the Tribunal at pp. 14-15.

8. As an ODSP recipient, Mr. Surdivall was eligible for a “shelter allowance” equivalent to the cost of the rent for his “primary residence” (up to a maximum). Mr. Surdivall believed that the apartment in which he was living was his primary residence.

Appeal Book, Tab 10: Record of Hearing at pp. 29-33.
 Appeal Book, Tab 4: Decision of the Tribunal at pp. 14-15.
O. Reg. 222/98 at s. 31.

9. Mr. Surdivall informed ODSP when he moved into the subsidized apartment. The ODSP worker “deemed” his “principal residence” to have been the apartment with a cheaper rent. An overpayment of \$4,440 was assessed, and ultimately reduced to \$3,050 after Mr. Surdivall requested an Internal Review.

Appeal Book, Tab 6: Letter from Regional Director (June 9, 2010) at p. 23.
 Appeal Book, Tab 7: Internal Review Request (June 25, 2010) at p. 24.
 Appeal Book, Tab 8: Decision on Internal Review (August 31, 2010), p. 25.

10. Mr. Surdivall appealed the overpayment decision to the Tribunal. In the meantime, \$35.85 was deducted from his monthly ODSP benefits to repay the overpayment.

Appeal Book, Tab 5: Notice of Appeal to Tribunal at pp. 19-22.
 Appeal Book, Tab 6: Letter from Regional Director (June 9, 2010), pp. 23.

11. Prior to the Tribunal hearing, Mr. Surdivall ceased to be a recipient of ODSP. As is the case with many recipients who leave ODSP, his financial situation had not significantly improved. Rather, at 65 he became eligible for the Canada Pension Plan, Old Age Security, and Guaranteed Income Supplement. Under these programs, his monthly income is \$1,644.43. His income remains below the poverty line.

Appeal Book, Tab 5: Notice of Appeal to Tribunal at p. 20.
 Statistics Canada (2011), “Income Research Paper Series: Low Income Lines, 2009-2010” (Ministry of Industry).

12. Following the termination of his ODSP income support, the Director instructed Mr. Surdivall to pay the outstanding overpayment by “cheque or money order made payable to the Minister of Finance”.

Appeal Book, Tab 8: Decision on Internal Review (August 31, 2010), p. 25.

B. The Tribunal’s Decision

13. Following a hearing on March 8, 2011, the Tribunal found that Mr. Surdivall was “credible” and “forthright.” The Tribunal concluded that not only did Mr. Surdivall honestly believe that he was not required to inform the Director of the subsidized apartment lease until he moved in, but also that “a portion of the legislation may support his position.” Nonetheless, the Tribunal concluded that Mr. Surdivall erred in his interpretation of his statutory obligations and that the overpayment was correctly assessed.

Appeal Book, Tab 4: Decision of the Tribunal at pp. 16-17.

14. The Tribunal then turned to the question of whether the Director should collect the overpayment, and concluded that, in light of Mr. Surdivall’s reasonable mistake as well as financial hardship, this was an appropriate case to exercise discretion:

The Tribunal is of the opinion that the discretion to recover an overpayment should be flexible in the sense that it should relate to the varying circumstances of each individual case in a manner consistent with the purpose of the Act.

In this particular case, when the Tribunal carefully reviewed the definition of shelter in the Act and Regulations and the calculation of rent the Tribunal accepts, for the reasons outlined above, that the Appellant was paying \$444 for the ten months in question. The Tribunal concludes from the testimony of the Appellant that in his opinion he was justified and that a portion of the legislation may support his position. However, the Tribunal reviewed the whole purpose and objectives of the Act and Regulations.

In addition, the Tribunal finds that the Appellant would experience financial hardship if he was expected to repay the full amount of the overpayment of \$3,050 because he is now on a fixed income.

However, while it is the opinion of the Tribunal that the Director should exercise some discretion in the collection of the overpayment the Tribunal also acknowledges that the Appellant has some responsibility to the tax payers of Ontario to repay a portion of the outstanding overpayment.

Appeal Book, Tab 4: Decision of the Tribunal at pp. 17-18.

15. The Tribunal ordered the Director to “collect half of the overpayment for a total of \$1,525. Arrangements are to be made for the Appellant to pay \$10 per month on the outstanding balance of the overpayment.” As the statutory authority to make such an order was not disputed by the respondent, the Tribunal did not address the issue in its reasons.

Appeal Book, Tab 4: Decision of the Tribunal at p. 18.

16. This Decision by the Tribunal was neither novel nor unique. The Tribunal had long been exercising discretion where recovery would be unjust in the circumstances.

C. The Decision of the Divisional Court

17. The Director appealed to the Divisional Court. For the first time, the Director raised the issue of the Tribunal’s authority to make an order respecting recovery of valid overpayments from former recipients.

18. The Director argued that while it has discretion over overpayment recovery, the Tribunal does not. Mr. Surdivall took the position that both the Director and the Tribunal have discretion to designate an overpayment as “uncollectable”. The Divisional Court granted the appeal but did not accept the position of either party. Rather, the Court concluded that “there is nothing in the statute which grants the Director the jurisdiction to forgive any part of the overpayment”, and that as a result, the Tribunal also lacks such jurisdiction.

Appeal Book, Tab 3: Decision of the Divisional Court at para. 18.

19. The Divisional Court concluded in *obiter* that there is discretion in terms of the amount the Director can deduct from current recipients in order to re-pay overpayments. This *obiter* finding is well-supported by the language of the statute and Mr. Surdivall does not seek to challenge this aspect of the Divisional Court's ruling.

Appeal Book, Tab 3: Decision of the Divisional Court at para. 23.
Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched. B, ss. 15(2), 18(3).

PART IV: ISSUES AND LAW

20. The following are the issues to be determined by this Honourable Court:

- a. Whether the Director of ODSP has discretion to not recover an overpayment, in whole or in part;
- b. Whether the Tribunal has discretion to order that an overpayment not be recovered, in whole or in part.

A. The standard of review

21. The *ODSPA* provides that the parties to a hearing before the Tribunal may appeal on “a question of law”.

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched. B, s. 31.
Director of the Ontario Disability Support Program v. Favrod, 2006 CanLII 4898 (Ont. Div. Ct.) at paras. 12 and 17.

22. The Divisional Court framed the issue of whether the Director and/or Tribunal have discretion over recovery of overpayments as a jurisdictional one. However, the Supreme Court has warned that “the category of true questions of jurisdiction is narrow indeed.” Rather, a Tribunal's interpretation of its own statute is presumed to be a question of statutory interpretation.

Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association, 2011 SCC 61 at para. 33.

23. Regardless, the interpretation of both the Director's and the Tribunal's statutory power to order that a portion of an overpayment not be collected from a former recipient is a question of law that should be reviewed on a standard of correctness.

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

Canada (Canadian Human Rights Commission) and Mowat v. Canada (Attorney General), 2011 SCC 53 at paras. 30-31.

B. The Director has discretion to not recover an overpayment, in whole or in part

i) The statutory scheme governing recovery of overpayments

24. Although ODSP serves some of the province's most vulnerable people, the rules governing ODSP are complex and difficult to understand. There are approximately 800 rules and regulations that must be applied before a recipient's eligibility and benefit entitlement can be determined. The "web of benefits and eligibility requirements results in confusion, inconsistency" and are "virtually impossible to communicate to clients."

Commission for the Review of Social Assistance in Ontario (July 2011), "A Discussion Paper: Issues and Ideas" at p. 28.

Commission for the Review of Social Assistance in Ontario (2012), *Brighter Prospects* at p. 13.

25. Given the complexity of the program, overpayments are not uncommon, and are frequently incurred for entirely innocent reasons, often as a result of errors by administrators.

26. The *ODSPA* defines an "overpayment" as an amount "provided to a recipient ... in excess of the amount to which the recipient was entitled." There are two elements to a decision to assess an overpayment. First, the Director looks backwards in time and retrospectively adjusts the "amount

of income support” to which a recipient was entitled. Second, in so doing, the assessment of the overpayment creates a collectable debt due to the Crown in right of Ontario. Contrary to the anticipated submission of the Director, collectability of an overpayment is not a decision that is separate from the decision to impose an overpayment.

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched. B, s. 14(1), (2.1).

27. The Director is responsible for administering the program. The Director’s powers and duties are identified in the statute, and include the following:

- s. 38. The Director shall,
- (a) receive applications for income support;
 - (b) determine the eligibility of each applicant for income support;
 - (c) if an applicant is found eligible for income support, determine the amount of the income support and direct its provision;
 - (d) administer the provisions of this Act and the regulations;
 - (e) determine how the payment of the costs of administering this Act and providing income support is to be allocated;
 - (f) ensure that the appropriate payments are made or withheld, as the case may be; and
 - (g) exercise the prescribed powers and duties.

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched. B, ss. 37-38.

28. The Director’s powers have been interpreted broadly, in order to permit the Director to ensure that the program operates equitably.

Dowswell v. ODSP, 2006 CanLII 7509 (Ont. Div. Ct.) at paras. 23-24.

29. Recovery of overpayments is amongst the Director’s statutory duties. The legislation sets out a number of ways in which the Director may recover overpayments:

- s. 14(4) An overpayment may be recovered by one or more of reduction of income support under section 15, notice under section 16 or a proceeding under section 17. [emphasis added].

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched. B, s. 14(4).

30. Each of the subsections describing a method of overpayment recovery employs the phrase “may be recovered.”

31. Reducing benefits (section 15 ODSPA): The Director “may” reduce monthly benefits up to a maximum of 10 percent. By way of policy, the Director exercises discretion to reduce benefits by only five percent, although deductions can be reduced even further or terminated altogether in cases where recovery would cause “undue hardship.”

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched. B, s. 15(1).

O. Reg 222/98, ss. 30, 51(1).

ODSP Income Support Directive 11.1: Recovery of Overpayments (November 2011).

32. By giving notice (section 16 ODSPA): The Director “may” give a recipient written notice of an overpayment, which is enforceable as if it were an order of the Superior Court of Justice. A notice under this section is only enforceable if the individual has exhausted their appeal rights. The statute provides that the notice must contain “prescribed” information, however no regulations prescribing the required information have been passed and this route is therefore effectively unavailable.

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched. B, s. 16.

33. In a court of competent jurisdiction (section 17 ODSPA): The Director “may” recover an overpayment as a debt due to the Crown in a court of competent jurisdiction.

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched. B, s. 17.

34. By any other means available to the Crown by law (section 14(5) ODSPA): Overpayments “may” also be recovered “by any remedy or procedure available to the Crown by law.” This

avenue of recovery typically entails reliance upon the Canada Revenue Agency's Refund Set-off Program.

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched. B, s. 14(5).

ODSP Income Support Directive 11.1: Recovery of Overpayments (November 2011) at pp. 5-6.
Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), s. 164(2).

35. The plain and ordinary meaning of the term “may” is to establish discretion. The scope of that discretion is a matter of statutory interpretation. These propositions are well established, as discussed below.

36. Remedial legislation, benefit-conferring legislation such as the *ODSPA* should be interpreted with a liberal and purposive approach. 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.

Gray v. Director of ODSP, 2002 CanLII 7805 (Ont. C.A.) at paras. 8-12.

Ontario v. Ansell, 2011 ONCA 309 at paras. 25-26.

37. Thus, the purpose of the program assists the process of interpretation. ODSP is a specialized program intended to help people with disabilities live as independently as possible. As noted by the Supreme Court in *Tranchemontagne*, the *ODSPA* is meant to “ensure support for disabled applicants, recognizing that the government shares in the responsibility of providing such support.” The purposes of the *ODSPA* are explicitly set out in the legislation in 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.

Tranchemontagne v. Ontario (Director, Disability Support Program), 2006 SCC 14 at para. 3.

Commission for the Review of Social Assistance in Ontario (July 2011), “A Discussion Paper: Issues and Ideas” at p. 13.

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

38. Bearing these principles in mind, there are three potential interpretations of the phrase “may be recovered” in the context of the *ODSPA*, ranging from the narrow to the broad. First, the discretion established through the phrase “may be recovered” could be limited to a choice in respect of the manner of recovery. This was the interpretation adopted by the Divisional Court.

39. Second, the discretion could also include a choice in respect of the timing and rate of recovery. As shall be addressed, the Supreme Court in *Mavi* adopted such an interpretation of the phrase in the context of recovery of sponsorship debts.

Canada (Attorney General) v. Mavi, 2011 SCC 30 (CanLII).

40. Third, the discretion could be interpreted broadly, to also include a choice in respect of whether an overpayment should be recovered at all, either in whole or in part. As shall be argued below, this broad interpretation of the Director’s discretion is most consistent with the language and intent of the *ODSPA*, as well as the Director’s own practice over the course of many years.

ii) The Director’s discretion is not limited to the method of recovery

41. The Divisional Court concluded that “the Director’s sole jurisdiction with respect to overpayments under the ODSP legislation is the manner in which the Director is to proceed to collect the overpayment.” While the Divisional Court purported to rely upon the Supreme

Court's decision in *Mavi*, in that case the Supreme Court actually rejected the position the Divisional Court took in this proceeding.

Appeal Book, Tab 3: Decision of the Divisional Court at paras. 18-19, 21.

42. In *Mavi*, the Supreme Court interpreted the words “may be recovered” in the context of social assistance-related sponsorship debts. When a permanent resident or Canadian citizen sponsors their family members to migrate to Canada, they are required to sign an undertaking that they will provide financially for those they sponsor for a set number of years. If their family members receive social assistance during the period governed by a sponsorship undertaking, a Crown debt is established that the sponsor must repay on demand.

43. Like the *ODSPA*, the *Immigration and Refugee Protection Act* (“*IRPA*”) states that sponsorship debts “may be recovered.” Subsection 145(2) of the *IRPA* states:

... an amount that a sponsor is required to pay under the terms of an undertaking is payable on demand to Her Majesty in right of Canada and Her Majesty in right of the province concerned and may be recovered by Her Majesty in either or both of those rights [emphasis added].

Immigration and Refugee Protection Act, SC 2001, c 27, s. 145(2).

44. The Supreme Court concluded that the words “may be recovered” in the sponsorship context creates a discretion that extends beyond simply the method of recovery (in that case, whether the debt is recovered by the federal or provincial government):

The applications judge thought the word “may” simply enables either level of government to enforce the undertaking. The point, however, is that nothing in the relevant sections explicitly requires Her Majesty to pursue collection of debts irrespective of the circumstances. Legislative use of the word “may” usually connotes a measure of discretion (*Interpretation Act*, R.S.C. 1985, c. I-21, s. 11). This is as one would expect. It seems too clear for argument that Parliament intended the federal and provincial Crowns to deal with debt collection in a rational, reasonable and cost-effective way. The Attorney General of Canada

concedes that Ministers have a “management discretion” in the conduct of departmental affairs. ... Effective management requires some measure of flexibility. Flexibility necessarily entails discretion. [Emphasis added].

Canada (Attorney General) v. Mavi, 2011 SCC 30 (CanLII) at para. 54.

45. Similarly, the discretion established by the phrase “may be recovered” in the *ODSPA* is not limited to the method by which the debt is recovered. An obligation to collect an overpayment, regardless of the circumstances, would not be “rational, reasonable and cost-effective.” Just as a simple example, it would not be rational or cost-effective to require the Director to make efforts to collect overpayments where the cost of seeking repayment would be greater than any possible recovery. In fact, the Director’s own policy about overpayment recovery states that no recovery takes place for overpayments that are \$2.50 or less.

ODSP Income Support Directive 11.1: Recovery of Overpayments (November 2011) at p. 4.

46. Adopting the Supreme Court’s language, “it seems too clear for argument” that the Legislature intended the Director to have effective management discretion with a measure of flexibility over debt collection.

iii) The Director has discretion over the “amount and terms of repayment” (the Mavi principle)

47. As noted above, the Supreme Court in *Mavi* held that the Crown is not required to pursue collection of debts, regardless of the circumstances. Indeed, the Supreme Court interpreted the phrase “may be recovered” to mean that “the amount and terms of repayment are therefore within the discretion of the government decision maker.”

Canada (Attorney General) v. Mavi, 2011 SCC 30 (CanLII) at paras. 58-60.

48. The Supreme Court noted that the *IRPA* authorized the government to make “an agreement requiring a sponsor to pay \$20 a month on a \$20,000 debt”, even if that “may never result in the full amount of the debt being paid.” The Court also concluded that debt recovery could be “deferred”.

Canada (Attorney General) v. Mavi, 2011 SCC 30 (CanLII) at paras. 45, 58-60.

49. Along with the power to set terms of repayment comes a duty of fairness. The government is obligated to permit a sponsor an opportunity to explain their relevant personal and financial circumstances that militate against immediate collection, and to defer collection where appropriate. The Supreme Court noted with approval that the Director has a procedure that identifies the types of cases that may be deferred from debt recovery. The current policy allows the Director to defer collection in the following types of circumstances (amongst others):

- The sponsor is incapacitated and unable to pay.
- There is third party verification of domestic violence or abuse by the sponsor against the sponsored person or vice versa.
- The sponsor is in receipt of Guaranteed Income Supplement (GIS) under the Old Age Security Act or Ontario Guaranteed Annual Income System (GAINS).
- The sponsor’s net family income (based on the previous year’s income tax return) is below the Low Income Cut Off amount which is published annually by Statistics Canada.
- The sponsor has documented extraordinary circumstances.

Canada (Attorney General) v. Mavi, 2011 SCC 30 (CanLII) at paras. 45, 73.

ODSP Income Support Directive 2.5: Tourists, Immigrants, Refugees and Deportees (December 2012) pp. 15-16.

For the corresponding provision in the Ontario Works program, see: Ontario Works Policy Directive 3.11: Sponsored Immigrants (October 2012) at p. 8.

50. The Supreme Court concluded that “this is the correct practice because under the Ontario policy the local social assistance agents are supposed to consider these factors *before* deciding to refer the matter for collection” (emphasis in original).

Canada (Attorney General) v. Mavi, 2011 SCC 30 (CanLII) at para. 73.

51. In this case, the Tribunal considered Mr. Surdivall’s circumstances and ordered, in part, that repayment be limited to \$10 per month. This type of order is consistent with the Supreme Court’s finding that “may be recovered” establishes discretion over the amount and terms of repayment.

52. However, the Divisional Court overturned this aspect of the order. Thus, as a result of the Divisional Court’s decision, ODSP recipients are treated less favourably than immigration sponsors. Unlike defaulting sponsors, the Director must collect overpayments from ODSP debtors regardless of their individual circumstances of ODSP debtors.

53. It is submitted that in so ruling, the Divisional Court erred. In keeping with the Supreme Court judgment in *Mavi*, it is submitted that the Director has discretion over the amount and terms of overpayment recovery. This includes the discretion to defer payment where appropriate, and to set a rate of recovery that reflects the financial circumstances of debtors.

iv) In addition, the Director has discretion over whether to recover an overpayment, in whole or in part

54. It is submitted that the discretion established by the *ODSPA* is broad, and includes discretion to order an overpayment to be uncollectable, either in whole or in part.

55. This interpretation of “may be recovered” is consistent with the Director’s own policies. ODSP Income Support Directive 11.1 explicitly provides that an overpayment can be designated as “uncollectable.” For example, in “extenuating circumstances”, an overpayment “resulting from an administrative error cannot be recovered”:

In extenuating circumstances, an overpayment resulting from an administrative error is uncollectable. For example, if change(s) remain unprocessed and the recipient has done everything in his/her control to bring the discrepancy to light, i.e. there is documented evidence that the recipient had advised of the error, there may then be grounds to consider the overpayment as uncollectible [sic]. Before determining that an overpayment will not be collected, the circumstances of individual cases must be reviewed by ODSP staff to make an appropriate decision. If the administrative error is considered uncollectible [sic] it is to be recommended for write-off in accordance with the procedures outlined in this directive. [Emphasis added].

ODSP Directive 11.1, “Recovery of Overpayments” (November 2011) at p. 3.

56. Even where an overpayment is not designated as entirely “uncollectable”, the policy directive contemplates that the Director can negotiate a settlement of the debt by way of partial payment. This necessarily entails treating a portion of the overpayment as “uncollectable.”

ODSP Income Support Directive 11.1, “Recovery of Overpayments” (November 2011) at p. 5.

57. In contrast to the Director’s position taken before this Honourable Court (and contrary to the Divisional Court’s ruling), the Director has stated that discretion will continue to be exercised in accordance with the above policy directive. In a memorandum to all ODSP managers, the Director stated: “The [*Surdivall*] decision does not change overpayment assessment and recovery practices by local offices.” The Director clearly considers discretion in respect of overpayment recovery to play an important role in the efficient administration of ODSP.

Memorandum from Jeff Butler and Patti Redmond, “Divisional Court Decision - *Director, Ontario Disability Support Program v. Surdivall* Div Ct. File No. 201/11” (April 20, 2012).

58. It is acknowledged that the Supreme Court in *Mavi* concluded that government could not “forgive” a sponsorship debt. Rather, sponsorship debts can only be “deferred”:

The fact is however that the Regulations *do* distinguish between payment “in full” and payments “in accordance with an agreement with that government”. This can only mean that the government is authorized to limit enforcement to whatever amount is agreed upon with the sponsor, and no floor or ceiling (short of forgiveness) is fixed by the Regulation ...what is contemplated ... is not a write-off but “agreed” levels of deferred enforcement.

Canada (Attorney General) v. Mavi, 2011 SCC 30 (CanLII) at paras. 59-60.

59. However, the discretion over debt recovery established by the *ODSPA* is broader than the immigration sponsorship context, for two reasons.

60. First, apart from similarity in respect of the phrase “may be recovered”, the *IRPA* and *ODSPA* each use different language to establish recovery obligations. In reaching its conclusion that the government could not forgive a sponsorship debt, the Supreme Court relied heavily on the terms of the sponsorship undertakings themselves as well as the language found in the *Immigration and Refugee Protection Regulation* requiring a defaulting sponsor to “reimburse the government concerned, in full or in accordance with an agreement with that government.”

Canada (Attorney General) v. Mavi, 2011 SCC 30 (CanLII) at paras. 58-60, 72.

61. By contrast, the *ODSPA* does not contain any comparable language limiting the discretion established by the words “may be recovered.” Therefore, it is submitted that the legislation establishes a broad discretion over when, how and whether to recover an overpayment.

62. This broad interpretation is precisely how the British Columbia Supreme Court has interpreted the use of the language “may be recovered” in the context of a provincial social

assistance program: “Section 12(4) of the *BC Benefits (Income Assistance) Act* provided that income assistance received “may be recovered” by the Crown in a court of competent jurisdiction. Again, this gives the Court discretion in whether to make such an order” [emphasis added].

Smith v. British Columbia, [2011] B.C.J. No. 425 (S.C.) at para. 152.

63. Second, the purposes of the two programs are quite different. The Supreme Court in *Mavi* took pains to distinguish immigration sponsorship debts from debts arising under government benefit programs: “we are dealing here with ordinary debt, not a government benefits or licensing program.” A sponsor voluntarily signs an undertaking after establishing they have the wealth required to provide for their family. In contrast, ODSP is a program of last resort for disabled people with no other way to meet their basic needs.

Canada (Attorney General) v. Mavi, 2011 SCC 30 (CanLII) at para. 41.

64. In the context of a program for Ontario’s most vulnerable, there must be flexibility in respect of debt collection in order to ensure that ODSP achieves its purpose of serving people with disabilities “effectively.” Two Tribunal decisions illustrate some of the challenges faced by disabled recipients and the situations in which recovering an overpayment could result in serious unfairness:

- a. An “incompetent” ODSP recipient living in a group home had his ODSP benefits paid to a trustee. The trustee misappropriated all of the payments for her own personal benefit. An overpayment of over \$6,000 was assessed because the trustee failed to report a change in circumstances. The ODSP recipient was responsible for the overpayment debt even though he received no benefit, and was neither competent nor personally obligated to report changes in circumstances to ODSP.

SBT 1105-03547 (2012) (Charron).

See also, SBT 1012-11713 (2012) (Gaon), where the holder of a power of attorney for an incompetent recipient defrauded ODSP, resulting in an overpayment assessed against the recipient:.

- b. An ODSP recipient arranged for ODSP to pay her rent directly to her landlord, because she was “incapable” of managing her finances. She informed her housing provider and ODSP when her son moved out. ODSP ought to have decreased her shelter allowance, but failed to do so even after she brought the error to her caseworker’s attention. ODSP later sought to recover \$1,350 it had erroneously paid to her landlord, although the appellant had seen no benefit from the overpayment and would suffer hardship if forced to repay.

SBT 1102-01061 (2011) (Ferguson).

65. The Director’s policy of not collecting overpayments where circumstances warrant reflects a transparent, flexible and accountable approach to debt collection in the context of ODSP. Debt recovery from individuals living well below the poverty line can represent enormous hardship, and undermine access to the necessities of life. In light of the broad language of the *ODSPA* and ODSP’s intent that government share responsibility for effectively serving people with disabilities, the phrase “may be recovered” should be interpreted as conferring a broad discretion over when, how and whether to collect an overpayment.

v) ***The Divisional Court erred in concluding that the Director lacks discretion to treat an overpayment as uncollectable***

66. Despite the foregoing, the Divisional Court concluded that “there is nothing in the statute which grants the Director the jurisdiction to forgive any part of the overpayment ... the Director has no discretion to compromise on a Crown debt.” It is submitted that the Divisional Court made four legal errors.

Appeal Book, Tab 3: Decision of the Divisional Court at paras. 18, 20.

67. First, the Divisional Court's decision relies upon the erroneous finding that only the Minister of Finance has the authority to make decisions about the collection of debts owed to the Crown arising under the ODSP.

Indeed, as the overpayment is a Crown debt, it would be virtually inconceivable that, given the requirements of accountability and transparency in dealing with public funds, any such power would be granted to the Director. Indeed, the *Financial Administration Act*, R.S.O. 1990, c. F.12 provides in s. 5(1) that, subject to any other Act, it is the Minister of Finance who may determine whether a debt due to the Crown is uncollectable or whether it should be collected.

Appeal Book, Tab 3: Decision of the Divisional Court at para. 18.

68. While the *Financial Administration Act* does indeed grant such a power to the Minister of Finance, there is nothing in the *FAA* that limits the power to determine that a debt is uncollectable to the Minister of Finance. To the contrary, the *FAA* provides as follows:

5. (1) Where a person has an obligation or debt due to the Crown or the Crown has a claim against a person, the Minister of Finance may, subject to any other Act affecting such obligation, debt or claim,

(a) negotiate and accept a settlement in payment and satisfaction of such obligation, debt or claim;

(b) determine that any such obligation, debt or claim is uncollectable; or

(c) determine that financial hardship, economic considerations or other circumstances do not warrant the collection or enforcement of any such obligation, debt or claim [Emphasis added].

Financial Administration Act, R.S.O. 1990, Chapter F.12, s. 5(1).

69. The Supreme Court in *Mavi* specifically rejected the argument that the federal *Financial Administration Act* precluded other statutes from addressing debt recovery:

The Attorney General of Canada contends that agreements for less than the full amount would be tantamount to a write-off in violation of the procedures set out

in the *FAA*. ... The *FAA* is a statute of very general application. It does not preclude Parliament from enacting more specialized legislative schemes for the management and enforcement of debts owed to the Crown under particular statutory programs. The *IRPA* is an example of such a specialized collection regime.

Canada (Attorney General) v. Mavi, 2011 SCC 30 (CanLII) at para. 60.

70. Similarly, the *ODSPA* is an example of a specialized collection regime. The use of the language “subject to any other Act” in Ontario’s *FAA* means that the statute does not override debt collection provisions found in other statutes. In other words, if (as argued above) the *ODSPA* grants the Director a discretionary power in respect of debt recovery, the *FAA* does not preclude the Director from exercising that discretion. With respect, the Divisional Court was incorrect to suggest otherwise.

RE the interpretation of the *FAA*, see: *Re S&M Laboratories Ltd. and The Queen in right of Ontario* (1979), 24 O.R. (2d) 732 (Ont. C.A.) at p. 4.

71. Thus, it is submitted that the nature and scope of the Director’s powers are dictated by the specific collection regime established in the *ODSPA* – not Ontario’s *FAA*.

72. Second, the Divisional Court was of the view that an order preventing the Director from “recovering half the overpayment is, effectively, a write-off of half the debt.” However, determining that a debt will not be collected is not tantamount to a write-off as suggested by the Divisional Court. Indeed, a “write-off” and “uncollectability” are not the same thing.

Appeal Book, Tab 3: Decision of the Divisional Court at para. 22.

73. A write-off is simply an accounting process that recognizes the reduced or zero value of an asset for the purposes of the government books. A write-off (or “deletion” as it is called in the *FAA*) is a step that the Lieutenant Governor in Council may take if the Minister of Finance

judges it to be in the public interest. However a write-off is conceptually (and in reality) different than a decision to treat an overpayment as “uncollectable.”

ODSP Directive 11.1, “Recovery of Overpayments” (November 2011) at pp. 11-12.
Financial Administration Act, R.S.O. 1990, Chapter F.12, ss. 5(2)-5(3).

74. For example, the Director’s policy directive distinguishes between a decision not to recover an overpayment and circumstances in which the Director will recommend that an overpayment be “written off”. As the policy makes clear, a debt that is written off can still be collected unless it is designated by the Director to be “permanently uncollectable”:

Uncollectible [*sic*] overpayment debts that are owed to the Crown are to be written off on an annual basis each fiscal year for accounting purposes. This provides an accurate account of the Government of Ontario’s fiscal situation.

... If opportunities to recover amounts owed improve at some point in the future, then collection efforts may resume. It should be noted that some overpayments that qualify under the write off criteria are permanently uncollectible [*sic*] e.g., the balance of an overpayment that was recommended for write-off as a reasonable settlement was negotiated.

ODSP Directive 11.1, “Recovery of Overpayments” (November 2011) at pp. 11-12.

75. . Thus, a decision to treat an overpayment as “uncollectable” is not the same thing as a “write-off,” although in many cases uncollectable debts are recommended for write-off. There is no jurisdictional barrier to treating an overpayment as wholly or partially uncollectable. Indeed, the Director can and does recommend overpayments it has designated as uncollectable for write-off as a regular administrative practice.

ODSP Income Support Directive 11.1, “Recovery of Overpayments” (November 2011) at pp. 11-12.
 See also, *Financial Administration Act*, R.S.O. 1990, Chapter F.12, ss. 5(2)-5(3).

76. Third, the Divisional Court erred by relying upon the *Conway* decision as a basis for its conclusion that the Director does not have the discretion to not collect an overpayment. Indeed, the *Conway* decision is noteworthy for having decided the opposite: while the Divisional Court

in that case held that the Social Assistance Review Board could not declare an overpayment debt “forgiven”, it nonetheless upheld the Board's decision ordering that a portion of an otherwise valid overpayment could not be recovered.

Appeal Book, Tab 3: Decision of the Divisional Court at para. 22.
Ontario (Ministry of Community and Social Services, Income Maintenance Branch) v. Conway, [1990] O.J. No. 2278 (Ont. Div. Ct.).

77. Finally, contrary to the Divisional Court’s conclusion, it is “conceivable” that a government program that serves some of Ontario’s most impoverished and vulnerable individuals would provide for a flexible approach to debt collection that takes hardship into account. Decisions not to recover debts are part of the every day management of government finances. In fact, the Auditor General of Ontario, in reviewing ODSP, recommended that the Director do a better job of identifying uncollectable overpayments. Non-recovery of overpayments is also a feature of the federal Employment Insurance regime.

Office of the Auditor General of Ontario (2011), *2011 Annual Report of the Office of the Auditor General of Ontario* (Toronto: Queen’s Press) at p. 373-374.
Employment Insurance Act, S.C. 1996, c 23 at s. 56.
Employment Insurance Regulations, SOR/96-332 at s. 114.

78. Thus, the Divisional Court erred in stating that “there is nothing in the legislative scheme under the ODSPA that suggested the Director has the power to forgive a debt to the Crown.” The language “may be recovered” permits the Director to defer collection both temporarily and permanently, and to set the rate of recovery.

Appeal Book, Tab 3: Decision of the Divisional Court at para. 18.

C. The statute grants the Social Benefits Tribunal the authority to substitute its discretion for that of the Director

79. The Divisional Court’s decision about the Tribunal’s jurisdiction was premised on its conclusion that the Director lacked discretion over overpayment recovery: “obviously, if the Director has no discretion to compromise on a Crown debt, the Tribunal has no such jurisdiction.” It is submitted that should this Honourable Court accept that the Director has jurisdiction over the collectability of an overpayment, it follows that the Tribunal does as well.

Appeal Book, Tab 3: Decision of the Divisional Court at para. 20.

i) The statutory appeal process

80. The Tribunal’s appellate jurisdiction is framed very broadly. Section 21(1) of the *ODSPA* confirms that the Tribunal can hear appeals from “any decision of the Director affecting eligibility for or the amount of income support.”

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched. B, s. 21(1).

81. The Tribunal’s remedial powers upon hearing an appeal are also broad:

26(1) In an appeal to the Tribunal, the Tribunal may,

(a) deny the appeal;

(b) grant the appeal;

(c) grant the appeal in part; or

(d) refer the matter back to the Director for reconsideration in accordance with any directions the Tribunal considers proper.

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched. B, s. 26(1).

82. The only relevant limitations on the above powers are that the Tribunal shall not “make a decision that the Director would not have authority to make”.

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched. B, ss. 2, 26(3), 29(3).

83. All appeals to the Tribunal are governed by the above provisions (ss. 21(1) 26(1) *ODSPA*). However, the Divisional Court's judgment states that Mr. Surdivall's appeal was made under section 16(3) of the *ODSPA*: "in an appeal under s. 16(3) of the Act, the task of the Tribunal is to determine whether or not there is an overpayment." The foregoing suggests that there is a separate appeal power governing overpayments.

Appeal Book, Tab 3: Decision of the Divisional Court at para. 20.

84. When read in context, it is clear that section 16(3) *ODSPA* does not establish a separate appeal regime for overpayments, but merely speaks to the process of enforcing an overpayment in the Superior Court:

16.(1) The Director may give a recipient notice in writing of a decision determining that an overpayment exists and, if the Director does, the notice shall set out the amount of the overpayment and the prescribed information concerning the decision.

(2) A decision determining that an overpayment exists shall be final and enforceable against the recipient as if it were an order of the Superior Court of Justice if,

(a) notice of it has been given under subsection (1);

(b) the time for commencing an appeal to the Tribunal has expired; and

(c) no appeal has been commenced.

(3) If the decision is appealed and an overpayment is determined, the decision of the Tribunal shall be final and enforceable against the recipient as if it were an order of the Superior Court of Justice.

(4) If a recipient had a dependent spouse when an overpayment was incurred, the Director may give notice in writing to the spouse respecting the overpayment.

(5) If the Director provides notice to a spouse under subsection (4), subsections (2) and (3) apply with necessary modifications to the spouse.

85. In addition, as noted above, there are no regulations prescribing the content of the "notice" as required by the statute, and thus the powers under section 16 *ODSPA* are not available to the Director.

ii) The Tribunal has the authority to overturn the Director's discretion in overpayment appeals

86. Subject to the limitation that it cannot make a decision that the Director could not have made, the Tribunal can hear evidence that was not before the original decision maker and can, based on that evidence, substitute its discretion for that of the Director in deciding whether an overpayment should be recovered or not.

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched. B, s. 26(1).

O. Reg 222/98 at s. 65.

Ontario (Director of Income Maintenance Branch, Ministry of Community & Social Services) v. Conway, [1990] O.J. No. 2278 (QL) (Div. Ct.).

Myttenar v. Director of Social Services, 2005 YKSC 73 (CanLII) at paras. 47-49.

87. The Legislature could have placed limitations on the Tribunal's powers in respect of overpayment recovery. For example, in Nova Scotia, the *Assistance Appeal Regulations* provide that the appeal board "shall not order that the overpayment be forgiven or waived." There is no similar legislative provision in Ontario.

Assistance Appeal Regulations, S.N.S. 2000, c. 27 at s. 15.

88. A recent Federal Court of Appeal decision in the context of employment insurance provides guidance as to why an appellate tribunal should have broad jurisdiction over overpayment recovery. The *Employment Insurance Act* specifically permits the Employment Insurance Commission to "write off" overpayments. However, for many years there was a question in respect of whether the Board of Referees shared that power as part of its appellate jurisdiction.

The Honourable Justice Stratas concluded that the Referees do have such jurisdiction.¹ While the

¹ The two other Justices on the Panel, while concurring in the result, did not address this jurisdictional issue, neither agreeing nor disagreeing with Justice Stratas's reasons for judgment.

decision addresses a different statutory framework, Justice Stratas made useful observations in respect of the principles that support a finding that a specialized appeal tribunal has jurisdiction to address such matters:

A contrary interpretation would mean that the writing-off of liabilities to repay the overpayment of benefits, a matter related to the entitlement to employment insurance benefits, would be diverted from this informal, specialized, efficient regime into the slower, more formal, more resource-intensive court system. That interpretation makes no sense. Only the clearest of statutory wording, not present here, could drive us to such a result.

Steel v. Canada, 2011 FCA 153 (Fed. C.A.) at para. 76.
Employment Insurance Act, S.C. 1996, c 23 at s. 114.
Employment Insurance Regulations, SOR/96-332 at s. 56.

89. Access to justice concerns are heightened in the context of social assistance, where recipients have fewer resources and are more marginalized than those who receive Employment Insurance. As noted by the Supreme Court in the context of this very Tribunal, the vulnerable individuals who appear before this Tribunal “merit prompt, final and binding resolutions of their disputes.” Moreover, the Supreme Court held that the *ODSPA* does not limit the Tribunal’s powers to those possessed by the Director, and that in certain circumstances the Tribunal has authority beyond that of the Director.

Tranchemontagne v. Ontario (Director, Disability Support Program), 2006 SCC 14, [2006] 1 S.C.R. 513 at paras. 29, 48.

90. To conclude that the Tribunal lacks the jurisdiction to rule on the recovery of overpayments would divert low-income and disabled individuals from an informal, efficient and expert regime of adjudication. Depending upon the collection process chosen by the Director, recipients could be forced into the “more formal, more resource intensive court system” referenced in *Steel*, or left without any forum at all in which to challenge recovery.

91. Absent explicit limitations in the legislation, the rules of statutory interpretation require that the discretion to recover overpayments be interpreted in a broad, liberal and purposive manner. The Tribunal's appeal and remedial jurisdiction are both framed very broadly in the *ODSPA*. Such broad authority is consistent with a social benefit legislation that must, as set out in section 1 of the *ODSPA*, "effectively serve" persons with disabilities who require assistance.

Newfoundland (Social Services Appeal Board) v. Butler, [1996] N.J. No. 91 (S.C.) at para. 30.

92. It is therefore respectfully submitted that the Tribunal did not exceed its authority in deeming that half of Mr. Surdivall's overpayment was an uncollectable debt and in making an order concerning recovery of the remainder.

iii) The Divisional Court's decision overturns well-established Tribunal caselaw interpreting its own statute

93. The Divisional Court's decision overturns a well-established practice by both the Director (formalized in written policy) and the Tribunal of exercising discretion to not recover overpayments where circumstances warrant.

ODSP Directive 11.1, "Recovery of Overpayments" (November 2011) at p. 3.

94. Since the Tribunal was first established more than a decade ago, it has issued numerous decisions that have never been appealed, exercising discretion to order an overpayment not be collected. Indeed, the Tribunal has developed a significant body of cases identifying the types of factors that will be considered in exercising its discretion in respect of overpayment recovery.

Factors that are typically considered include:

- a. Administrative error in the circumstances that caused the overpayment;
- b. Administrative delay in identifying and recovering an overpayment;

- c. Director's efforts to communicate with the appellant;
- d. Any errors and omissions by the appellant;
- e. The appellant's diligence in reporting;
- f. Any disabilities of the appellant;
- g. Other extenuating circumstances affecting the appellant;
- h. Whether collection of the overpayment would cause undue hardship.

See, for example: SBT 0206-03407 (2003) (Carson); SBT 0504-03308 (2006) (Jurak); SBT 0711-12876 (2008) (McDermott); SBT 0903-02062 (2010) (MacGuigan); SBT 1002-01643 (2010) (Kershaw); SBT 0907-05844 (2010) (Ferguson); SBT 0904-03741 (2010) (Buckley-Routh); SBT 1004-03107 (2011) (Charron); SBT 1003-02743 (2011) (Brown); SBT 1003-02957 (2011) (Riccio); SBT 1109-07983 (2011) (Wood); SBT 1102-00975 (2011) (Ferguson); SBT 0706-07899 (2011) (Kershaw); SBT 1007-06978 (2011) (Doran); SBT 1103-01812 (2011) (Ferguson); SBT 1102-01061 (2011) (Ferguson); SBT 1104-03025 (2011) (Gaon); SBT 0910-08813 (2011) (Wood); SBT 1103-02495 (2011) (Hummelen); SBT 1102-01213 (2011) (Riccio); SBT 1103-02012 (2012) (Walden-Stephenson); SBT 1105-03547 (2012) (Charron), SBT 1106-05032 (2012) (Deans), SBT 0909-08073/1105-03587 (amended decision) (2012) (Murray).

95. Indeed, in at least one appeal, the Director took the position that the Tribunal should cut an overpayment in half to acknowledge the unfairness of recovering an overpayment that was created because the ODSP office did not review the file for a number of years. The Director also argued that enforcement of the remainder should be limited to what the Appellant could reasonably afford at the time.

SBT 0303-02344R (2011) (Charron) at pp. 5, 7.

96. Based on all the foregoing, it is submitted that the Tribunal has the authority to overturn and/or modify the Director's exercise of discretion in respect of the recovery of overpayments.

PART V: ORDER SOUGHT

97. It is therefore respectfully requested that this Honourable Court grant this appeal and restore the Tribunal's order.

98. In the alternative, it is requested that this appeal be sent back for a new hearing. Mr. Surdivall's Tribunal hearing proceeded on the basis of an established line of jurisprudence at the Tribunal. Mr. Surdivall should have the opportunity to present his appeal having had the benefit of this Honourable Court's directions.

99. The Appellant is not seeking his costs in this appeal.

Date: January 30, 2013

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CERTIFICATE

1. An order under subrule 61.09(2) is not required.
2. The Appellant estimates that 2.0 hours will be required for oral argument.

DATED THIS 30th day of January 2013

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SCHEDULE A: LIST OF AUTHORITIES

1. *Director of the Ontario Disability Support Program v. Favrod*, 2006 CanLII 4898 (Ont. Div. Ct.).
2. *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61.
3. *Canada (Canadian Human Rights Commission) and Mowat v. Canada (Attorney General)*, 2011 SCC 53.
4. Commission for the Review of Social Assistance in Ontario (July 2011), "A Discussion Paper: Issues and Ideas" (excerpt).
5. Commission for the Review of Social Assistance in Ontario (2012), *Brighter Prospects* (excerpt).
6. Statistics Canada (2011), "Income Research Paper Series: Low Income Lines, 2009-2010" (Ministry of Industry).
7. *Dowswell v. ODSP*, 2006 CanLII 7509 (Ont. Div. Ct.).
8. *Gray v. Director of ODSP*, 2002 CanLII 7805 (Ont. C.A.).
9. *Ontario v. Ansell*, 2011 ONCA 309.
10. *Tranchemontagne v. Ontario (Director, Disability Support Program)*, 2006 SCC 14.
11. *Canada (Attorney General) v. Mavi*, 2011 SCC 30 (CanLII).
12. ODSP Income Support Directive 2.5: Tourists, Immigrants, Refugees and Deportees (December 2012).
13. Ontario Works Policy Directive 3.11: Sponsored Immigrants (October 2012).
14. ODSP Directive 11.1, "Recovery of Overpayments" (November 2011).
15. Memorandum from Jeff Butler and Patti Redmond, "Divisional Court Decision - *Director, Ontario Disability Support Program v. Surdivall* Div Ct. File No. 201/11" (April 20, 2012).
16. *Smith v. British Columbia*, [2011] B.C.J. No. 425 (S.C.).
17. *Re S&M Laboratories Ltd. and The Queen in right of Ontario* (1979), 24 O.R. (2d) 732 (Ont. C.A.).
18. *Ontario (Ministry of Community and Social Services, Income Maintenance Branch) v. Conway*, [1990] O.J. No. 2278 (Ont. Div. Ct.).
19. Office of the Auditor General of Ontario (2011), *2011 Annual Report of the Office of the Auditor General of Ontario* (Toronto: Queen's Press).
20. *Myttenar v. Director of Social Services*, 2005 YKSC 73 (CanLII).
21. *Steel v. Canada*, 2011 FCA 153 (Fed. C.A.).
22. *Newfoundland (Social Services Appeal Board) v. Butler*, [1996] N.J. No. 91 (S.C.).

23. SBT 1012-11713 (2012) (Gaon).
24. SBT 0206-03407 (2003) (Carson).
25. SBT 0504-03308 (2006) (Jurak).
26. SBT 0711-12876 (2008) (McDermott).
27. SBT 0903-02062 (2010) (MacGuigan).
28. SBT 1002-01643 (2010) (Kershaw).
29. SBT 0907-05844 (2010) (Ferguson).
30. SBT 0904-03741 (2010) (Buckley-Routh).
31. SBT 1004-03107 (2011) (Charron).
32. SBT 1003-02743 (2011) (Brown).
33. SBT 1003-02957 (2011) (Riccio).
34. SBT 1109-07983 (2011) (Wood).
35. SBT 1102-00975 (2011) (Ferguson).
36. SBT 0706-07899 (2011) (Kershaw).
37. SBT 1007-06978 (2011) (Doran).
38. SBT 1103-01812 (2011) (Ferguson).
39. SBT 1102-01061 (2011) (Ferguson).
40. SBT 1104-03025 (2011) (Gaon).
41. SBT 0910-08813 (2011) (Wood).
42. SBT 1103-02495 (2011) (Hummelen).
43. SBT 1102-01213 (2011) (Riccio).
44. SBT 1103-02012 (2012) (Walden-Stephenson).
45. SBT 1105-03547 (2012) (Charron).
46. SBT 1106-05032 (2012) (Deans).
47. SBT 0909-08073/1105-03587 (amended decision) (2012) (Murray).
48. SBT 0303-02344R (2011) (Charron).

SCHEDULE B: LEGISLATION

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

Purpose of Act

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.

Definitions

2. In this Act,

“applicant” means a person who applies for income support or on whose behalf such an application is made; (“auteur de demande”)

“Director” means the Director of the Ontario Disability Support Program appointed by the Minister; (“directeur”)

“income support” means assistance for the provision of basic needs, shelter, costs related to a person’s disability and other prescribed needs, and includes benefits; (“soutien du revenu”)

“recipient” means a person to whom income support is provided; (“bénéficiaire”)

“Tribunal” means the Social Benefits Tribunal established under the *Ontario Works Act, 1997*. (“Tribunal”)

Recovery of overpayments

14. (1) If an amount has been provided to a recipient under this Act in excess of the amount to which the recipient was entitled, the amount of the excess is an overpayment.

Same

- (2) If a recipient or a dependant fails to honour an assignment or an agreement to reimburse the Director, the prescribed amount is an overpayment.

Overpayment a debt due to the Crown

(2.1) An overpayment under this Act is a debt due to the Crown in right of Ontario.

Recovery of overpayments from other programs

(3) An overpayment enforceable against a recipient or the recipient's spouse under the *Ontario Works Act, 1997*, the *Family Benefits Act* or the *General Welfare Assistance Act* is recoverable under this Act even though the overpayment was made by,

- (a) a delivery agent under the *Ontario Works Act, 1997*;
- (b) a welfare administrator under the *General Welfare Assistance Act*; or
- (c) the Director under the *Family Benefits Act*.

Methods of recovery

(4) An overpayment may be recovered by one or more of reduction of income support under section 15, notice under section 16 or a proceeding under section 17.

Same, debts due to the Crown

(5) In addition to the methods referenced in subsection (4), an overpayment that is a debt due to the Crown in right of Ontario may be recovered by any remedy or procedure available to the Crown by law.

Reduction of income support

15. (1) The Director may recover the amount of an overpayment by deducting it from the recipient's income support.

Same

(2) The amount deducted under subsection (1) shall not exceed the prescribed amount unless the recipient agrees to a greater amount being deducted.

Notice of overpayment

16. (1) The Director may give a recipient notice in writing of a decision determining that an overpayment exists and, if the Director does, the notice shall set out the amount of the overpayment and the prescribed information concerning the decision.

Effect of notice

(2) A decision determining that an overpayment exists shall be final and enforceable against the recipient as if it were an order of the Superior Court of Justice if,

- (a) notice of it has been given under subsection (1);
- (b) the time for commencing an appeal to the Tribunal has expired; and
- (c) no appeal has been commenced.

Effect of appeal

(3) If the decision is appealed and an overpayment is determined, the decision of the Tribunal shall be final and enforceable against the recipient as if it were an order of the Superior Court of Justice.

Notice to spouse

(4) If a recipient had a dependent spouse when an overpayment was incurred, the Director may give notice in writing to the spouse respecting the overpayment.

Effect of notice to spouse

(5) If the Director provides notice to a spouse under subsection (4), subsections (2) and (3) apply with necessary modifications to the spouse.

Proceeding for recovery of overpayment

17. The Director may recover an overpayment as a debt due to the Crown in a court of competent jurisdiction, whether or not notice has been provided under section 16.

Decisions that may be appealed

21. (1) Any decision of the Director affecting eligibility for or the amount of income support, assistance under section 49 or extended health benefits under section 49.1, other than a decision referred to in subsection (2), may be appealed to the Tribunal.

Order of Tribunal

26. (1) In an appeal to the Tribunal, the Tribunal may,

- (a) deny the appeal;
- (b) grant the appeal;
- (c) grant the appeal in part; or

(d) refer the matter back to the Director for reconsideration in accordance with any directions the Tribunal considers proper.

Same

26(3) The Director shall give effect to the Tribunal's directions under this section.

Jurisdiction of Tribunal

29(3) The Tribunal shall not make a decision in an appeal under this Act that the Director would not have authority to make.

Appeal to Court

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.

Director

37. (1) The Director shall exercise the powers and duties conferred or imposed on the Director by this Act and the regulations.

Acting Director

(2) If the Director is absent or unable to act or the office of the Director is vacant, the employee of the Ministry designated by the Minister has and shall exercise the powers and duties of the Director.

Delegation

(3) The Director may, in writing, authorize a person or class of persons to exercise any of the powers or duties of the Director under his or her supervision and direction.

Decision of acting Director

(4) A decision made by a person exercising the Director's powers or duties under subsection (3) shall be deemed to be a decision of the Director.

Director's powers and duties

38. The Director shall,

- (a) receive applications for income support;
- (b) determine the eligibility of each applicant for income support;

(c) if an applicant is found eligible for income support, determine the amount of the income support and direct its provision;

(d) administer the provisions of this Act and the regulations;

(e) determine how the payment of the costs of administering this Act and providing income support is to be allocated;

(f) ensure that the appropriate payments are made or withheld, as the case may be; and

(g) exercise the prescribed powers and duties.

Ontario Disability Support Program Regulation, O. Reg 222/98

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. Subject to subsection (5), for the month in which the Director receives an application for a special diet allowance and is satisfied that a member of the benefit unit requires a special diet allowance because of a medical condition set out in Schedule 1 to Ontario Regulation 562/05 (Prescribed Policy Statements) made under the Act and for each succeeding month, up to and including the month in which the Director requests a new application and a reassessment of the requirement for a special diet allowance, 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.
- (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.
- (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.
- (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.
- (5) For the purposes of paragraph 4 of subsection (1), in order to establish for the Director that a member of the benefit unit requires, or in the case of a reassessment continues to require, a special diet allowance, the member shall submit to the Director the following:
1. A special diet allowance application form approved by the Director, specifying the medical condition for which the special diet allowance is being requested and completed by an approved health professional and the member.
 2. Additional information respecting his or her requirement for a special diet allowance because of a medical condition as requested by the Director under subsection 25 (2).
 3. An additional application form approved by the Director and completed by an approved health professional, other than the health professional who completed the application form under paragraph 1 or any earlier forms, as requested by the Director.
- (6) The following rules apply with respect to a member of a benefit unit who, on March 31, 2011, was receiving a special diet allowance because of a medical condition set out in Schedule 1 to Ontario Regulation 562/05 (Prescribed Policy Statements) made under the Act or who, on or before March 31, 2011, applied to receive a special diet allowance by submitting an application to the Director:
1. The member shall continue to receive the monthly amount to which the member was entitled under paragraph 4 of subsection (1) as it read on March 31, 2011 until the earlier of,

i. the date the Director makes a determination about the member's requirement for a special diet allowance in response to the member's application for a special diet allowance in accordance with paragraph 4 of subsection (1), and

ii. July 31, 2011.

2. The member shall be entitled to an increase in the special diet allowance effective as of April 1, 2011, if,

i. the member applies for a special diet allowance in accordance with paragraph 4 of subsection (1) on or before July 31, 2011, and

ii. the Director determines that the member is entitled to receive an amount for a special diet that is greater than the amount the member was entitled to receive in March, 2011.

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.

51. (1) For the purposes of subsections 15 (2) and 18 (3) of the Act, the prescribed amount is,

(a) 10 per cent of budgetary requirements; and

(b) 100 per cent of any arrears of income support, including arrears of income support payable under section 29.1, or any arrears of assistance under the *Ontario Works Act, 1997* payable to the recipient.

(2) For the purpose of subsection 18 (4) of the Act, the prescribed person is the Director of the Family Responsibility Office of the Province of Ontario or a person occupying a comparable position with a similar program in a jurisdiction with which Ontario has entered into an agreement regarding the reciprocal enforcement of support orders.

(3) If a recipient of income support ceased to be eligible because of an increase in the value of assets, the amount recoverable under section 14 of the Act shall not exceed the difference between,

(a) the maximum value of the assets owned by the persons who were members of the benefit unit while the person was ineligible; and

(b) the maximum value of assets permitted under section 27.

Conduct of Oral Hearing of Tribunal

65. (1) The appellant shall present his or her case first on an oral hearing of an appeal before the Tribunal unless the Director agrees otherwise.

(2) Unless the parties agree otherwise, a party who intends to produce written or documentary evidence or written submissions, other than reports referred to in subsections 64 (1) and (2), at an oral hearing shall provide copies of that evidence or those submissions to the other parties and the Tribunal,

(a) in the case of the appellant, at least 20 days before the hearing; and

(b) in the case of the Director and any other parties, at least 10 days before the hearing.

(3) If a party does not produce evidence or submissions in accordance with subsection 62 (2), clause 64 (1) (b) or subsection (2), the Tribunal may, on the terms and conditions it considers appropriate,

(a) adjourn the hearing;

(b) refuse to accept the evidence or written submissions; or

(c) accept the evidence or written submissions.

(4) The Tribunal shall ensure that the evidence at an oral hearing of an appeal is recorded by notes taken by a member of the Tribunal participating in the hearing or by a method from which a transcript can be produced.

Ontario Works Act, 1997, S.O. 1997, c. 25, Sch. A.

Recovery of overpayments

19. (1) If an amount has been provided to a recipient under this Act in excess of the amount to which the recipient was entitled, the amount of the excess is an overpayment.

Same

(2) If a recipient or a dependant fails to honour an assignment or an agreement to reimburse the delivery agent, the prescribed amount is an overpayment.

Overpayment as debt

(2.1) An overpayment by a delivery agent under this Act is a debt due to the delivery agent and may also be deemed by the Director to be a debt due to the Crown in right of Ontario.

Recovery of overpayments from other programs

(3) An overpayment enforceable against a recipient or the recipient's spouse under the *Ontario Disability Support Program Act, 1997*, the *Family Benefits Act* or the *General Welfare Assistance Act* is recoverable under this Act even though the overpayment was made by,

- (a) the Director under the *Ontario Disability Support Program Act, 1997*;
- (b) a welfare administrator under the *General Welfare Assistance Act*; or
- (c) the Director under the *Family Benefits Act*.

Methods of recovery

(4) An overpayment may be recovered by one or more of reduction of basic financial assistance under section 20, notice under section 21 or a proceeding under section 22.

Reduction of basic financial assistance

20.(1)The administrator may recover the amount of an overpayment by deducting it from the recipient's basic financial assistance.

Same

(2)The amount deducted under subsection (1) shall not exceed the prescribed amount unless the recipient agrees to a greater amount being deducted.

Notice of overpayment

21. (1) The administrator may give a recipient notice in writing of a decision determining that an overpayment exists and, if the administrator does, the notice shall set out the amount of the overpayment and the prescribed information concerning the decision.

Effect of notice

(2) A decision determining that an overpayment exists shall be final and enforceable against the recipient as if it were an order of the Superior Court of Justice if,

- (a) notice of it has been given under subsection (1);
- (b) the time for commencing an appeal to the Tribunal has expired; and
- (c) no appeal has been commenced.

Effect of appeal

(3) If the decision is appealed and an overpayment is determined, the decision of the Tribunal shall be final and enforceable against the recipient as if it were an order of the Superior Court of Justice.

Notice to spouse

(4) If a recipient had a dependent spouse when an overpayment was incurred, the administrator may give notice in writing to the spouse respecting the overpayment.

Effect of notice to spouse

(5) If the administrator provides notice to a spouse under subsection (4), subsections (2) and (3) apply with necessary modifications to the spouse.

Proceeding for recovery of overpayment

22. The administrator may recover an overpayment as a debt due to the delivery agent in a court of competent jurisdiction, whether or not notice has been provided under section 21.

Method of recovery, debt due to the Crown

22.1 The Crown in right of Ontario may recover an overpayment that is deemed to be a debt due to the Crown by any remedy or procedure that is available to the Crown by law if the administrator has given a recipient a notice in writing under section 21 and,

- (a) the time for commencing an appeal to the Tribunal has expired and no appeal has been commenced; or

(b) the decision is appealed and an overpayment is determined by the decision of the Tribunal.

Decisions which may be appealed

26.(1) Any decision of an administrator affecting eligibility for or the amount of basic financial assistance, other than a decision referred to in subsection (2), may be appealed to the Tribunal.

Appeal to Tribunal

28. (1) An applicant or recipient may appeal a decision of an administrator within the prescribed period after an internal review by filing a notice of appeal that shall include reasons for requesting the appeal.

Order of Tribunal

31.(1) In an appeal to the Tribunal, the Tribunal may,

- (a) deny the appeal;
- (b) grant the appeal;
- (c) grant the appeal in part; or
- (d) refer the matter back to the administrator for reconsideration in accordance with any directions the Tribunal considers proper.

Reasons

(2) The Tribunal shall give reasons for its decision.

Administrator to give effect

(3) The administrator shall give effect to the Tribunal's directions under this section.

Appeal to Court

36.(1) The Director and any party to a hearing may appeal the Tribunal's decision to the Divisional Court on a question of law.

Administrator appointed

43. Each delivery agent shall, with the approval of the Director, appoint an administrator to oversee the administration of this Act and the provision of assistance in the delivery agent's geographic area.

Jurisdiction of Tribunal

67.(1)The Tribunal shall not make a decision in an appeal under this Act that the administrator would not have authority to make.

Same

(2)The Tribunal shall not inquire into or make a decision concerning,

(a) the constitutional validity of a provision of an Act or a regulation; or

(b) the legislative authority for a regulation made under an Act.

Legislation Act, 2006, S.O. 2006, c. 21, Sch. F.

Rule of liberal interpretation

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.

Same

(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.

Financial Administration Act, R.S.O. 1990, c. F.12.

Settlement of or determination of uncollectability of debts, etc.

5. (1) Where a person has an obligation or debt due to the Crown or the Crown has a claim against a person, the Minister of Finance may, subject to any other Act affecting such obligation, debt or claim,

(a) negotiate and accept a settlement in payment and satisfaction of such obligation, debt or claim;

(b) determine that any such obligation, debt or claim is uncollectable; or

(c) determine that financial hardship, economic considerations or other circumstances do not warrant the collection or enforcement of any such obligation, debt or claim.

Deletion from the accounts

(2) The Lieutenant Governor in Council may delete from the accounts of the Government of Ontario any obligation, debt or claim that is the subject of a settlement or determination described in subsection (1) if the Minister of Finance recommends the deletion as being in the public interest.

Disclosure of deletion

(3) The aggregate amount for each ministry of all obligations, debts and claims that are deleted from the accounts under subsection (2) during a fiscal year must be reported in the Public Accounts or in the financial information supplementary to the Public Accounts for the fiscal year.

Effect of determination and deletion

(3.1) A determination made under clause (1) (b) or (c) with respect to an obligation, debt or claim and its subsequent deletion from the accounts under subsection (2),

(a) does not affect the liability of any person that is subject to the obligation, debt or claim; and

(b) does not preclude the Minister of Finance from doing anything that the Minister of Finance is authorized to do under subsection 43 (2).

Delegation

(4) The Minister of Finance may, in writing, delegate to a public servant employed under Part III of the *Public Service of Ontario Act, 2006* who works in a ministry but not in a minister's office, the authority to exercise any of the powers of the Minister of Finance under subsection (1) and may impose such conditions and restrictions on the delegation as the Minister considers appropriate.

Remission of amounts owing to or recoverable by the Crown

5.1 (1) In this section,

“other debt” means an amount owing to Her Majesty in right of Ontario other than a tax, fee, penalty or recoverable grant; (“autre dette”)

“penalty” includes any forfeiture or pecuniary penalty imposed or authorized to be imposed by any Act of the Legislature for any contravention of the laws relating to the collection of revenue or to the management of any public work producing tolls or revenue, even if part of the forfeiture or penalty is payable to another person; (“pénalité”)

“recoverable grant” means a grant, an amount in excess of a grant, an increment, an amount in excess of an increment, a monthly benefit, an amount in excess of a monthly benefit, a tax credit

and interest that is required to be paid or repaid by the recipient to Her Majesty under any Act; (“allocation recouvrable”)

“tax” includes any tax, interest, impost or toll payable to Her Majesty in right of Ontario, imposed or authorized to be imposed by any Act of the Legislature. (“taxes”) 2009, c. 34, Sched. J, s. 5.

Authority to remit

(2) Despite any other Act, the Lieutenant Governor in Council, on the recommendation of the Minister of Finance, may remit any tax, fee, penalty, recoverable grant or other debt if the Lieutenant Governor in Council considers it to be in the public interest to do so.

Same

(3) Despite any other Act, the Minister of Finance may remit any tax, fee or penalty that is \$10,000 or less if the Minister considers it to be in the public interest to do so.

Same

(4) A remission under this section may be total or partial, conditional or unconditional, and may be granted,

- (a) before, after or pending any suit or proceeding for the recovery of the tax, fee, penalty, recoverable grant or other debt in respect of which it is granted;
- (b) before or after any payment of it has been made or enforced by process or execution; or
- (c) in any particular case or a class of cases and before the liability to pay it or repay it arises.

Form of remission

(5) A remission under this section may be granted,

- (a) by forbearing to institute a suit or proceeding for the payment of the tax, fee, penalty or other debt, or for the repayment of the recoverable grant, in respect of which the remission is granted;
- (b) by delaying, staying or discontinuing any suit or proceeding already instituted;
- (c) by forbearing to enforce any judgment or by staying or abandoning any execution or process upon any judgment;
- (d) by the entry of satisfaction upon any judgment; or

(e) by repaying an amount of money paid to or recovered by the Minister for the tax, fee, penalty, recoverable grant or other debt.

Conditional remission

(6) If a remission is granted under this section subject to a condition and the condition is not performed, the tax, fee, penalty, recoverable grant or other debt that is remitted or to be remitted may be collected and all proceedings may be had as if there had been no remission.

Effect of conditional remission

(7) A conditional remission, upon performance of the condition, and an unconditional remission have effect as if the remission was made after the tax, fee, penalty, recoverable grant or other debt in respect of which it was granted had been sued for and recovered.

Payments

(8) Remissions granted under this or any other Act may be paid out of the Consolidated Revenue Fund.

Report

(9) Each remission of \$1,000 or more that is granted under this section shall be reported to the Legislature in the Public Accounts.

Remission has effect of pardon

(10) If a penalty imposed by any law relating to revenue has been wholly and unconditionally remitted under this section, the remission has the effect of a pardon for the offence for which the penalty was imposed and afterwards the offence has no legal effect prejudicial to the person to whom the remission is granted.

Interest and penalties on unpaid debts to Crown

10. (1) Where money that is owing by any person to the Crown or a public entity is not paid at the time for payment provided for by law or by the agreement, undertaking or arrangement under which the obligation to pay arose, the Crown or the public entity to whom the payment is owed may require the payment of interest or penalty on any such unpaid amount in accordance with this section, and such interest or penalty so required to be paid is a debt due to the Crown recoverable by action or by any other remedy or procedure available by law to the Crown for the collection of debts owed to the Crown.

Exception

(2) This section does not apply to a default in payment under a statute or regulation that expressly provides for interest or penalty on such default, and does not apply to any agreement,

undertaking or arrangement that expressly provides for interest or penalty payable on overdue payments, but the fact that a statute makes a default in the payment of money owing under it to the Crown or a public entity an offence does not prevent the imposition of interest or a penalty under this section in respect of money owing under that statute.

Statement of policy

(3) The Minister of Finance may issue general instructions establishing a policy to govern when, at what rate, in what amount, and in what circumstances the payment of interest or penalty may be required under subsection (1).

Amount of interest or penalty

(4) The Lieutenant Governor in Council may by order fix a maximum rate of interest or penalty for the purpose of this section either by specifying the rate or, in lieu of a specified rate, by specifying a formula or basis for determining from time to time the rate of interest or penalty payable under this section, and may establish the method and conditions for calculating and charging any such interest or penalty, and may provide for different penalties or rates of interest to be applicable to different classes of payment or to different amounts of payment in default.

Reduction

(5) The Minister of Finance may, in his or her discretion, authorize the forgiveness or noncollection of interest or penalty payable under this section, and may authorize the charging of a lower rate of interest or amount of penalty than the maximum under this section where the Minister of Finance considers that financial hardship, economic considerations or other circumstances warrant such authorization.

Application

(6) This section applies to the payment of interest or penalty on any amount owing to the Crown or a public entity on or after the 1st day of April, 1984 whether the obligation to pay such amount arose before or after that date.

Collection of debt by set-off

43. (1) In this section,

“Crown” includes any agency of the Crown; (“Couronne”)

“overpayment” means a payment of money to which the recipient is not entitled at the time of the payment or to which the recipient ceases to be entitled at any time after the payment. (“paiement en trop”).

Set-off

(2) If, in the opinion of the Minister of Finance, a person is indebted to the Crown or the Crown in right of Canada in any specific sum of money or has received an overpayment of a specified sum from the Crown, the Minister of Finance may,

(a) retain by way of deduction or set-off, out of any money that is due and payable by the Crown in right of Ontario to such person, such sum as the Minister of Finance sees fit in the circumstances; and

(b) pay such sum to such public officer as the Minister of Finance thinks appropriate to receive it.

Assistance Appeal Regulations, S.N.S. 2000, c. 27.

Overpayments

15 (1) Where an appeal is in respect of a decision involving an overpayment, the appeal board shall determine whether there has been an overpayment and the amount of the overpayment.

(2) Where an appeal board determines pursuant to subsection (1) that an overpayment has been made, the appeal board shall not order that the overpayment be forgiven or waived.

Family Benefits Act, R.S.O. 1990, Chapter F.2 (Repealed January 2011).

Refusal or suspension of benefit

12. Subject to section 13, the Director may refuse to provide or may suspend or cancel a benefit where,

(a) the applicant or recipient is not or ceases to be entitled thereto, or eligible therefor, under this Act or the regulations;

(b) the applicant or recipient is absent from Ontario;

(c) the applicant or recipient fails to provide to the Director or the Director's representative, including a field worker, the information required to determine initial or continuing entitlement to or eligibility for a benefit or the amount of an allowance; or

(d) any other ground for refusal, suspension or cancellation specified in the regulations exists.

Notice of proposal to suspend, etc.

13. (1) The Director shall not refuse an application for a benefit or suspend or cancel a benefit until more than ten days have elapsed after the Director has given notice of a proposal to do so, together with his or her reasons therefor, to the applicant or recipient.

Contents of notice

(2) A notice under subsection (1) shall inform the applicant or recipient that he or she may, within ten days after receipt of the notice, file with the Director written representations against the proposed action.

Powers of Director

(3) Where an applicant or recipient,

(a) does not file representations with the Director within ten days after receipt of a notice under subsection (1); or

(b) has so filed such representations and the Director has given consideration to them,

the Director may carry out the proposed action, and shall give notice of his or her decision, together with the reasons therefor, to the applicant or recipient.

Notice of variation

(4) Where the Director varies the amount of any allowance or benefit, the Director shall give notice of such variation, together with his or her reasons therefor, to the recipient.

Notice of decision

(5) A notice under subsection (3) or (4) shall inform the applicant or recipient that he or she is entitled to a hearing by the board of review if he or she delivers or mails to the chair of the board a request therefor in the prescribed form within thirty days after receipt of the notice, and an applicant or recipient who so mails or delivers such a request is entitled to a hearing by the board.

Extension of time for requesting hearing

(6) The board may extend the time for giving notice by an applicant or recipient under subsection (5), either before or after expiration of the time therein specified, where it is satisfied there are apparent grounds for claiming relief pursuant to a hearing or for appeal and that there are reasonable grounds for applying for the extension.

Powers of board after hearing

14(6) Where, after a hearing, the board of review has reviewed the decision of the Director, the board may,

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

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

Recovery of overpayments, etc.

17. Despite section 5 and subject to the regulations, the Director may recover from a recipient any sum paid to him or her by way of an allowance under this Act or any predecessor Act to which he or she was not entitled under this Act or such predecessor Act or in excess of any amount to which he or she was so entitled, whether by reason of non-disclosure of facts, misrepresentation or fraud, or for any other cause disentitling him or her to such an allowance, by reducing or suspending any allowance payable to the recipient or by proceedings to recover such sum as a debt due to the Crown in any court of competent jurisdiction.

General Welfare Assistance Act, R.S.O. 1990, Chapter G.6 (Repealed January 2011).

Welfare administrator defined

10. (1) In this section and section 11,

"welfare administrator" means municipal welfare administrator or regional welfare administrator, as the case may be.

Suspension, etc., of assistance

(2) A welfare administrator may refuse to provide or may suspend or cancel assistance under this Act where,

- (a) the applicant or recipient is not or ceases to be entitled thereto or eligible therefor under this Act or the regulations;
- (b) the applicant or recipient fails to provide to the welfare administrator or his or her representative the information required to determine initial or continuing entitlement to or eligibility for assistance or the amount of the assistance; or

(c) any other ground for refusal, suspension or cancellation specified in the regulations exists.

Opportunity to make submissions

(3) Where practicable, a welfare administrator shall afford an applicant for or recipient of assistance prescribed as general in the regulations an opportunity to make submissions before suspension, cancellation or refusal of the assistance to show why such action should not be taken, and the *Statutory Powers Procedure Act* does not apply to proceedings of a welfare administrator under this section.

Definition

11. (1) In this section,

"board of review" means the Social Assistance Review Board under the *Ministry of Community and Social Services Act*.

Application for review

(2) Any applicant or recipient affected by a decision of a welfare administrator made under this Act or the regulations in respect of the payment of a class of assistance prescribed as general in the regulations may by notice mailed within thirty days after he or she receives notice of the decision to the chair of the board of review request a hearing and review of the decision by the board, and an applicant or recipient who so mails or delivers such request is entitled to a hearing by the board.

Extension of time for requesting hearing

(3) The board of review may extend the time for giving notice by an applicant or recipient under subsection (2), either before or after expiration or the time therein specified, where it is satisfied there are apparent grounds for claiming relief pursuant to a hearing or for appeal and that there are reasonable grounds for applying for the extension.

Application

(4) Where an applicant or a recipient has filed a notice requesting a hearing under subsection (2), the provisions of sections 14, 15, 16 and 18 of the *Family Benefits Act* and section 16 of the *Ministry of Community and Social Services Act* apply with necessary modifications to a hearing and review by the board of review under this Act and appeals therefrom.

Recovery where recipient not entitled to assistance

12. A municipal welfare administrator or a regional welfare administrator may recover from a recipient any sum paid to him or her by way of assistance to which he or she was not entitled under this Act or in excess of any amount to which he or she was so entitled whether by reason

of non-disclosure of facts, misrepresentation or fraud or for any other cause disentiing him or her to such assistance by reducing or suspending any assistance payable to the recipient or by proceedings to recover such sum as a debt due to the municipality or to the Crown, as the case may be, in any court of competent jurisdiction.

Employment Insurance Act, SC 1996, c 23.

Appeal to board of referees

114. (1) A claimant or other person who is the subject of a decision of the Commission, or the employer of the claimant, may appeal to the board of referees in the prescribed manner at any time within

(a) 30 days after the day on which a decision is communicated to them; or

(b) such further time as the Commission may in any particular case for special reasons allow.

Employment Insurance Regulations, SOR/96-332.

D. Write-off of Amounts Wrongly Paid, Penalties and Interest

56. (1) A penalty owing under section 38, 39 or 65.1 of the Act or an amount payable under section 43, 45, 46, 46.1 or 65 of the Act, or the interest accrued on the penalty or amount, may be written off by the Commission if

(a) the total of the penalties and amounts, including the interest accrued on those penalties and amounts, owing by the debtor to Her Majesty under any program administered by the Department of Human Resources Development does not exceed \$20, a benefit period is not currently running in respect of the debtor and the debtor is not currently making regular payments on a repayment plan;

(b) the debtor is deceased;

(c) the debtor is a discharged bankrupt;

(d) the debtor is an undischarged bankrupt in respect of whom the final dividend has been paid and the trustee has been discharged;

(e) the overpayment does not arise from an error made by the debtor or as a result of a false or misleading declaration or representation made by the debtor, whether the debtor knew it to be false or misleading or not, but arises from

(i) a retrospective decision or ruling made under Part IV of the Act, or

(ii) a retrospective decision made under Part I or IV of the Act in relation to benefits paid under section 25 of the Act; or

(f) the Commission considers that, having regard to all the circumstances,

(i) the penalty or amount, or the interest accrued on it, is uncollectable, or

(ii) the repayment of the penalty or amount, or the interest accrued on it, would result in undue hardship to the debtor.

(2) The portion of an amount owing under section 47 or 65 of the Act in respect of benefits received more than 12 months before the Commission notifies the debtor of the overpayment, including the interest accrued on it, may be written off by the Commission if

(a) the overpayment does not arise from an error made by the debtor or as a result of a false or misleading declaration or representation made by the debtor, whether the debtor knew it to be false or misleading or not; and

(b) the overpayment arises as a result of

(i) a delay or error made by the Commission in processing a claim for benefits,

(ii) retrospective control procedures or a retrospective review initiated by the Commission,

(iii) an error made on the record of employment by the employer,

(iv) an incorrect calculation by the employer of the debtor's insurable earnings or hours of insurable employment, or

(v) an error in insuring the employment or other activity of the debtor.

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

Application to other debts

164(2) Instead of making a refund or repayment that might otherwise be made under this section, the Minister may, where the taxpayer is, or is about to become, liable to make any payment to Her Majesty in right of Canada or in right of a province, apply the amount of the refund or repayment to that other liability and notify the taxpayer of that action.

Residential Tenancies Act, 2006, SO 2006, c 17 at s. 44(3).

Period of notice, daily or weekly tenancy

44. (1) A notice under section 47, 58 or 144 to terminate a daily or weekly tenancy shall be given at least 28 days before the date the termination is specified to be effective and that date shall be on the last day of a rental period.

Period of notice, monthly tenancy

(2) A notice under section 47, 58 or 144 to terminate a monthly tenancy shall be given at least 60 days before the date the termination is specified to be effective and that date shall be on the last day of a rental period.

Period of notice, yearly tenancy

(3) A notice under section 47, 58 or 144 to terminate a yearly tenancy shall be given at least 60 days before the date the termination is specified to be effective and that date shall be on the last day of a yearly period on which the tenancy is based.

Period of notice, tenancy for fixed term

(4) A notice under section 47, 58 or 144 to terminate a tenancy for a fixed term shall be given at least 60 days before the expiration date specified in the tenancy agreement, to be effective on that expiration date.

Tenant's notice to terminate, end of period or term

47. A tenant may terminate a tenancy at the end of a period of the tenancy or at the end of the term of a tenancy for a fixed term by giving notice of termination to the landlord in accordance with section 44.