

**SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

BETWEEN:

██████████ ██████████

Appellant

and

DIRECTOR OF THE ONTARIO DISABILITY SUPPORT PROGRAM

Respondent

FACTUM OF THE APPELLANT

DATE: **April 20, 2016**

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PART I: IDENTIFYING STATEMENT

1. This is an appeal by [REDACTED] [REDACTED] from a decision of the Social Benefits Tribunal, made on January 5, 2016, dismissing his appeal from a decision of the Director of the Ontario Disability Support Program to provide him with a mileage rate of only 18 cents per kilometer for medically necessary travel. That decision arises from the Director's statutory obligation to compensate recipients for the "cost of transportation" for medical treatment, pursuant to section 44(1)(1)(iii.1) of O. Reg. 222/98.

PART II: OVERVIEW STATEMENT

2. Mr. [REDACTED] is a recipient of supports from the Ontario Disability Support Program, a social assistance program for persons with disabilities. The program serves some of Ontario's most vulnerable and impoverished residents. Recognizing that access to medical treatment is essential to the health and well-being of the program's recipients, the legislation requires the program to compensate recipients for the "cost of transportation" to medical treatment.

3. Mr. [REDACTED] has a number of complex health issues that require frequent medical appointments. As a result of his disabilities he must travel by his own personal vehicle. Mr. [REDACTED] is eligible for compensation for the cost of transportation for medical treatment.

4. If he travelled by any other mode of transportation, the program would compensate Mr. [REDACTED] for the actual cost of transportation. However, the mileage rate for those who drive themselves to their medical treatments is only 18 cents per kilometre, which does not cover the actual costs of driving. The Director has not provided any justification for that mileage rate, which has not increased since 2000, despite an increase of 132 percent in the cost of gas.

5. The Tribunal dismissed Mr. ██████'s appeal of the mileage rate on the basis that the mileage rate covers "operating costs" (gas, maintenance, tires) and that the "cost of transportation" does not include "ownership costs" (e.g. insurance, lease, depreciation) that are regularly included in mileage rates for other government medical travel programs.

6. The Tribunal erred in law in its statutory interpretation of the phrase "cost of transportation." While the phrase "cost of transportation" is not defined in the governing legislation, in the statutory context of the Ontario Disability Support Program, the phrase must be interpreted to mean the actual costs of travel, rather than a mere subsidy.

7. Mr. ██████ must travel as a direct result of his disability and, also as a direct result of his disability, he must travel in a manner that incurs both the operating and ownership costs of driving. The Tribunal's interpretation is arbitrary and discriminates against those who must travel by car as a result of their disability. In contrast, a mileage rate that takes into account both the ownership and operating costs of travel to medical treatment is consistent with the clear language of the legislation, the purpose of the medical travel benefit and a key objective of the program: to effectively serve people with disabilities.

PART III: SUMMARY OF FACTS

A. Background

8. ██████ ██████ is an Aboriginal man with multiple and complex health issues, including significant chronic pain. He is a recipient of income and other supports from the Ontario Disability Support Program.

9. Because of his medical conditions, Mr. [REDACTED] must travel frequently from his home in [REDACTED] for specialized treatments. Many of those treatments relate to his chronic pain. As a result, he incurs costs for travel that he would not incur but for his disabilities.

Appellant's Appeal Book, Tab 7: Transcript of Tribunal hearing at pp. 25, 29, 30.

B. The application for the medical travel benefit

10. The Ontario Disability Support Program provides a medical travel benefit that compensates recipients for the "cost of transportation" for medical treatment. There is no dispute that Mr. [REDACTED]'s travel to Toronto is medically necessary and eligible for compensation through the medical travel benefit. As elaborated below, the program provides compensation for medical travel based on the most cost-effective method of transportation.

Appellant's Appeal Book, Tab 7: Transcript of Tribunal hearing at pp. 26-27.

11. The best and cheapest method of transportation in light of Mr. [REDACTED]'s disabilities is for him to drive himself in his own car. As he explained, he cannot travel by public transit:

It was an option for me a decade ago. Five years ago. Four years ago. But my condition has deteriorated to a position now where I need an accessible parking permit. As you see I use a cane intermittently. The walking that's required to access public transit is too much with regards to the inability to access proper treatments to help and when I medicate, I'm not able to go to the appointments. So public transit, after discussion with my doctors, is not ... recommended.

Appellant's Appeal Book, Tab 7: Transcript of Tribunal hearing at pp. 27, 33-34.

12. Travel by taxi or by agency driver would be more expensive. In addition, it is good for his mental health to experience the independence and control of getting himself to his medical appointments.

Appellant's Appeal Book, Tab 2: Tribunal's Decision, p. 7, para. 7.

13. In recognition of the above factors, the program approved Mr. ██████'s travel by car. However, by policy (not legislation), the mileage rate is set at only 18 cents per kilometre, despite the fact that his driving costs are credibly estimated to be in the range of 45 cents per kilometre. As a result, he is forced to pay a substantial portion of his medical travel costs out of his own pocket, using money that is intended for his basic needs such as food and shelter.

Appellant's Appeal Book, Tab 7: Transcript of Tribunal hearing at p. 29.

14. The 18 cent mileage rate was established by policy in 2000 and has not been increased since that time. However, the cost of driving has increased steadily. For example, the price of gas has increased by 132 percent since 1995.

Ontario Disability Support Program, "Policy Directive 0605-06: "Mandatory Special Necessities" (December 1999) at p. 13.

Appellant's Appeal Book, Tab 12: Email from Statistics Canada, p. 91.

15. Mr. ██████ asked the Ontario Disability Support Program to review the mileage rate. That request was denied, as was his internal review request.

Appellant's Appeal Book, Tab 3: Letter from ██████ ██████ (September 5, 2014) at pp. 15-16.

Appellant's Appeal Book, Tab 4: Letter from ██████ ██████ (November 7, 2014) at pp. 17-18.

Appellant's Appeal Book, Tab 5: Internal Review Decision (January 6, 2015) at p. 19.

C. The appeal to the Social Benefits Tribunal

16. Mr. ██████ appealed to the Social Benefits Tribunal, arguing that the 18 cent mileage rate was inconsistent with the program's statutory obligation to compensate him for the cost of transportation for medical treatment.

17. The Tribunal denied his appeal. The Tribunal found that the medical transportation mileage rate was a discretionary decision, and that the mileage rate was sufficient to cover the costs of "operating" a vehicle, such as gas, maintenance and tires. The Tribunal concluded that it was reasonable for the program to exclude the ownership costs that must be incurred in order to drive the car to medical appointments (e.g. licensing, insurance), even though every other government medical travel benefit in evidence made no such distinction. The Tribunal also found that because there are explicit limits on other "health benefits" in the legislation, it is "more probable than not" that the Legislature intended to place limits on the medical transportation benefit.

Appellant's Appeal Book, Tab 2: Tribunal's Decision, pp. 12-14, paras. 20-28.

PART IV: ISSUES AND LAW

18. The following issue is to be determined by this Honourable Court: Whether the phrase "cost of transportation" in the regulation to the *Ontario Disability Support Program Act* should be interpreted to include the operating and ownership costs associated with driving a private vehicle to access medical treatment.

A. The standard of review is correctness

19. The *Ontario Disability Support Program Act* provides that the parties to a hearing before the Social Benefits Tribunal may appeal to the Divisional Court on “a question of law.”

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

20. The issue in this appeal is whether the Tribunal erred in law in its statutory interpretation of the phrase “cost of transportation.” As recognized by the Court of Appeal, the standard of review on questions of law from appeals of Tribunal decisions is correctness.

Surdivall v. Ontario, 2014 ONCA 240 (CanLII) at para. 67.

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

B. The legislative scheme ensures access to necessary medical treatment

21. The Ontario Disability Support Program is a social assistance program of last resort that provides income and other supports for deeply impoverished individuals with disabilities. The program serves some of the province’s most vulnerable residents. The support they receive is intended to help them live as independently as possible.

Surdivall v. Ontario, 2014 ONCA 240 (CanLII) at paras. 8, 35.

22. In recognition of the fact that many recipients face extraordinary costs related to their disabilities, the program includes a number of “health benefits” to assist in defraying these expenses. The health benefits are not discretionary. The legislation requires the program to cover costs such medications, hearing aids, diabetic supplies and assistive devices.

O. Reg. 222/98, s. 44(1).

23. The legislation provides compensation for the cost of travel for medical treatment, a “health benefit” that is vital to ensuring the health and well-being of disabled recipients:

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

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

...

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

O. Reg. 222/98, s. 44(1)(1)(iii.1).

24. To be approved for the medical travel benefit, a designated health professional must confirm the need to attend medical treatments as well as “the most economical mode of transportation that ... a person’s condition enables him/her to use.”

O. Reg. 222/98, s. 44(1)(1)(iii.1).

Appellant’s Appeal Book, Tab 9: ODSP Policy Directive 9.12, “Mandatory Special Necessities” (August 2013) at p. 62.

25. The legislation does not define “the cost of transportation,” nor does it set a rate of reimbursement for the various modes of travel. Instead, reimbursement for medical transportation has been established by way of policy:

Mode of Transportation	Coverage Available
Public Transportation	The lesser of the cost of all return trips per month or the cost of a monthly transit pass.
Private vehicle	18 cents per kilometre/18.5 cents in the North and North East Regions. Parking costs are covered with receipts.
Agency Driver	Agency fee or 18 cents per kilometre/18.5 cents in the North and North East Regions where there is no established fee.

Taxi	Return trip fare door to door.
Ambulance	Scheduled travel by ambulance.

Appellant’s Appeal Book, Tab 9: ODSP Policy Directive 9.12, “Mandatory Special Necessities” (August 2013) at p. 64.

26. The policy also states that the intention is to pay “for the actual cost of the travel/transportation.” Where the actual costs will exceed the amounts originally approved, “a reconciliation should take place based on verification of the actual expenses incurred.” However, in practice, the Director does not deviate from a mileage rate of 18 cents per kilometer (or 18.5 cents in the North) for travel by private vehicle and explicitly refused to deviate in this case.

Appellant’s Appeal Book, Tab 9: ODSP Policy Directive 9.2, “Mandatory Special Necessities” (August 2013) at pp. 62, 64, 67-68) (emphasis added).

27. The Director has nowhere provided a rationale for the 18 cent mileage rate.

C. The Tribunal erred in upholding the Director’s decision

28. The Tribunal found that a mileage rate of 18 cents was reasonable because it more than compensated Mr. ██████ for the operating costs of driving to his medical appointments, and further, that to provide an additional amount for ownership costs would give Mr. ██████ unjustified assistance with car ownership. The Tribunal concluded that the intent of the Legislature was that the “cost of transportation” would compensate only for operating costs.

29. The Tribunal was incorrect in reaching this conclusion. As argued below, a purposive interpretation of the “cost of transportation” requires the Ontario Disability Support Program to compensate recipients for the actual costs of travel for medical treatment. For those who must

travel by private car, the actual cost of transportation includes both operating and ownership costs. A mileage rate of 18 cents per kilometre is discriminatory, arbitrary, and is inconsistent with the legal requirements established in the Regulation. The Tribunal erred in law in upholding the Director's decision.

i) The “cost of transportation” must be interpreted to mean the “actual” costs of transportation

30. The *Ontario Disability Support Program Act* and its companion regulation are “remedial legislation” that must be interpreted with a liberal and purposive approach. The words of the legislation must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the legislation, the object of the legislation, and the intention of the Legislature. As the Court of Appeal recently observed in *Surdivall*, this well-known rule governs the extent of the Director's discretion. Any ambiguity should be resolved in the claimant's favour.

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

Surdivall v. Ontario, 2014 ONCA 240 (CanLII) at paras. 31-32.

31. The legislation explicitly sets out four objectives that guide interpretation of the statute:

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.

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

32. In considering these objectives, the Court of Appeal has found that the objective to “effectively serve persons with disabilities who need assistance” is especially significant, particularly in light of the very vulnerable population involved. In keeping with this approach, the Court of Appeal stated that the Ontario Disability Support Program will meet its objective of accountability to taxpayers “if public funds are spent fairly, honestly and reasonably.”

Surdivall v. Ontario, 2014 ONCA 240 (CanLII) at paras. 38, 44.

33. In considering what qualifies as “medical treatment” for the purposes of the medical travel benefit, this Honourable Court in *Fournier* was guided by a purposive approach, noting that to apply a “strict interpretation” would “be to ignore the intent of this remedial legislation ... that is indefensible in policy or in practice.” The medical travel benefit is intended to ensure that people with disabilities can access the medical treatments that they need in order to ameliorate their disabilities. The Court further observed that decisions about the medical travel benefit cannot be arbitrary.

Fournier v. Ontario, 2013 ONSC 2891 (CanLII) at paras. 63, 71.

34. The ordinary meaning of “cost of transportation” is the actual amount or price paid to move a recipient from one place to where they receive medical treatment. The language used in the legislation does not speak of “subsidizing” the cost of transportation, nor does it place any caps or limits on the cost of transportation. The legislation establishes a minimum (\$15) but no maximum. The policy directive itself explicitly commits to covering the “actual” cost of transportation, and has used such language since 1999.

Appellant’s Appeal Book, Tab 8: Black’s Law Dictionary, 7th ed., s.v. “cost” and “transportation” (referenced in Appellant’s Tribunal submission at p. 46, para. 23).

Appellant’s Appeal Book, Tab 8: Canadian Oxford Dictionary, 2001 ed., s.v. “cost” and

“transportation” (referenced in Appellant’s Tribunal submission at p. 46, para. 23).

35. Therefore, interpreting the “cost of transportation” to mean the “actual” cost of transportation is consistent with the plain meaning of the words in the legislation. It is also the correct interpretation, when applying a purposive approach to interpretation, because it serves people with disabilities effectively by ensuring access to necessary medical treatment and is accountable to taxpayers by being fair, honest and reasonable.

ii) The actual cost of transportation by car includes both the operating and ownership costs of driving

36. Determining the actual cost of transportation is a simple matter when travelling by public transit or taxi. However, the calculation is not so simple when it comes to driving. Numerous factors need to be taken into account, which are dependent on the specific vehicle and its driver. Where one lives, how one drives, how often one drives, the type of car, the age of the car and how much is spent on servicing and repairs, are all factors that influence the cost of driving.

37. In light of the impracticalities of costing under such individualized circumstances, it is reasonable for the Ontario Disability Support Program to generalize these factors and set a mileage rate. However, any policy decision must conform with the intention of the legislation and must have a defensible rationale.

38. The Canadian Automobile Association’s guide provides a useful outline for understanding and estimating the various costs of driving.

Appellant’s Appeal Book, Tab 8: Appellant’s Written Submissions to Tribunal at p. 41, para. 11.

39. According to the Association, there are two categories of driving costs. “Operating Costs” include gasoline, routine maintenance, and tires. “Ownership costs” include insurance premiums, license and registration fees, taxes and depreciation.

Appellant’s Appeal Book, Tab 10: Canadian Automobile Association, “Driving Costs: 2013 Edition” at pp. 80-81.

40. The average annual operating costs in 2013 ranged between 14.53 cents and 16.67 cents per kilometre, depending upon the size of the car. When ownership costs are factored in, the average cost of driving ranges between 37 and 66 cents per kilometre.

Appellant’s Appeal Book, Tab 10: Canadian Automobile Association, “Driving Costs: 2013 Edition” at pp. 76-78.

41. With respect to Mr. ██████████, his ownership costs are an inextricable part of his medical transportation costs. Ownership costs are real costs that he must pay out of pocket in order to access medical care. Because of his disability and the location of his medical treatment, Mr. ██████████ has no choice but to drive to his medical appointments. He cannot get to those appointments unless he pays the costs of insurance, leasing and other ownership costs. When he drives his vehicle to medical appointments, the value of his car depreciates.

42. To exclude ownership costs from the “cost of transportation” is to ignore the reality of driving a car. Not surprisingly then, the legislation itself does not draw a distinction between operating and ownership costs. Indeed, none of the other government programs in evidence that provide compensation for medical travel draws such a distinction.

43. For example, the *Income Tax Act* allows taxpayers to claim reasonable expenses incurred for using their private vehicle if they are required to travel more than 40 kilometres from their home to receive medical services that are unavailable locally.

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), ss. 118.2(2)(g), 118.2(4).

44. In *Mullin*, a taxpayer challenged Canada’s medical travel mileage rate of only 16 cents per kilometre, which was based on the estimated operating costs. The Tax Court ruled the mileage rate should take into account both operating and ownership costs and set the rate at 30 cents per kilometre. Seventeen years later, the medical travel rate for the “medical expense tax credit” has risen to 55 cents and is adjusted each year.

Mullin v. R., [1999] T.C.J. No. 190 at paras. 9.

Canada Revenue Agency, “Meal and vehicle rates used to calculate travel expenses for 2015.”

Canada Revenue Agency, “Income Tax Folio S1-F1-C1, Medical Expense Tax Credit” (January 19, 2016) (excerpt).

45. Ontario’s Northern Health Travel Grant program has a mileage rate of 41 cents per kilometre, and thus compensates for both operating and ownership costs. Similarly, the Workplace Safety and Insurance Board pays 38 cents per kilometre for medical travel, again compensating for operating and ownership costs.

Appellant’s Appeal Record, Tab 8: Appellant’s Written Submission to Tribunal, pp. 50-51 at para. 36 [referencing Ontario, “Patient Travel Assistance Programs in Ontario: Findings of a Review of the Northern Health Travel Grant Program and Cancer Care Ontario Radiation Referral Policy” and Ontario, “Fact Sheet: Northern Health Travel Grant Program” (April 2009) at p. 3].

Appellant’s Appeal Record, Tab 8: Appellant’s Written Submission to Tribunal, p. 53 [referencing WSIB, “Policy: General: Table of Rates, Document Number 18-01-05” (November 23, 2009)].

46. There is no basis for treating persons with disabilities who rely on the Ontario Disability Support Program differently than those who benefit from the other programs described above, particularly as such recipients are least able to afford such costs. The plain meaning of “costs of transportation” must include both the ownership and operating costs. To the extent there is any ambiguity, it should be resolved in the recipient’s favour.

iii) Excluding ownership costs from the actual cost of transportation is discriminatory

47. To exclude ownership costs from the cost of travel would discriminate against people who must travel by car because of the nature of their disabilities.

48. Given that by definition the very persons the statute is designed to support are persons with disabilities, it is “axiomatic that the Act must be interpreted in a manner that does not discriminate on the basis of disability and in a manner that recognizes the right of persons with disabilities to reasonable accommodation.” Where more than one interpretation is possible, the court should reject the interpretation that undermines human rights values or that results in unfair treatment among recipients of social assistance.

Pavon v. Ontario (Disability Support Program), 2013 ONSC 4309 at paras. 45, 48.

Ontario (Disability Support Program) v. Ansell, 2011 ONCA 309 at para. 48.

49. A social assistance program that provides a lower level of compensation for travel by car than other modes of travel has been found to be discriminatory. In *Chipperfield v. British Columbia*, the British Columbia Human Rights Tribunal considered a claim by a social assistance recipient who argued that her disability-related transportation costs were not subsidized to the same degree as those who could travel by public transit or taxi. She provided

expert evidence that her chronic pain-related disability required her to travel by car. Public transit and taxis were not an option. The Tribunal concluded that the social assistance program discriminated against Ms. Chipperfield by failing to provide her a level of subsidy equivalent to the subsidy provided to recipients whose disabilities permitted them to travel by taxi or public transit.

Chipperfield v. British Columbia (Ministry of Social Services), [1997] B.C.H.R.T.D. No. 20 at paras. 6-7, 12, 14, 39, 49, 56.

50. Similarly, by compensating the full cost of transportation for all recipients except those who must travel by personal car for reasons related to their disability, the Ontario Disability Support Program's mileage policy is discriminatory. Only recipients who drive themselves are forced to subsidize their own transportation. The "cost of transportation" should be interpreted to include ownership costs in order to avoid this discrimination and unfairness.

iv) The mileage rate set by the Director is arbitrary

51. The mileage rate cannot be justified because it is arbitrary. While the Director has discretion in setting mileage rates, the Director must have some defensible rationale for the mileage rate chosen. In this case there is no evidence supporting the mileage rate selected by the Director. If it wasn't arbitrary in 2000 when it was initially set, it certainly is now after 16 years and a 132 percent increase in the cost of gas.

Appellant's Appeal Book, Tab 12: Email from Statistics Canada p. 91.

Appellant's Appeal Book, Tab 13: Email from Statistics Canada (March 4, 2015) at pp. 92-93.

52. In contrast, the program places no limits on the amounts that agency drivers can charge to drive recipients to medical treatments and makes no inquiries to agencies about how their rates are set. This arrangement has the absurd result that when Mr. [REDACTED] briefly volunteered as an “agency driver” with a community agency, the Ontario Disability Support Program paid the agency 60 cents a kilometre (of which the agency paid him 40 cents per kilometre). When driving himself in the exact same car, the program paid only 18 cents. This discrepancy highlights the irrational and arbitrary nature of the mileage rate.

Appellant’s Appeal Book, Tab 7: Transcript of Tribunal hearing at pp. 28, 31.

Appellant’s Appeal Book, Tab 2: Tribunal Decision, pp. 9-10, paras. 12-13.

v) There is no legislative intent to exclude operating costs from the medical transportation benefit

53. The Tribunal’s conclusion that the Legislature must have intended to cover only the operating costs is inconsistent with the program’s actual practice. The mileage rate provided by the program is, and always has been, higher than the operating costs (as noted above, the average annual operating costs in 2013 were between 14.53 and 16.67 cents). Therefore, the Director must intend to cover something over and above the operating costs, and it is reasonable to assume that “something” is the ownership costs.

Appellant’s Appeal Book, Tab 10: Canadian Automobile Association, “Driving Costs: 2013 Edition” at pp. 76-78.

54. The Tribunal was incorrect to hold that limits on the “cost of transportation” are implied in the legislation. The Tribunal stated that because the legislation places limits or specific criteria for access to some of the health benefits – “for example, the dental care is not available to a

dependent adult” – “it is therefore reasonable that this benefit ‘cost of transportation’ also has limits.”

Appellant’s Appeal Book, Tab 2: Tribunal Decision at pp. 12-13, para. 24.

55. The principles of statutory interpretation suggest the opposite conclusion. If the legislation explicitly places limits on other health benefits but does not do so in respect of the medical travel benefit, it is reasonable to conclude that there are no limits on the “cost of transportation.” Rather, as argued above, the Legislature intended to cover the actual costs of transportation, including operating and ownership costs.

PART V: ORDER SOUGHT

56. It is therefore respectfully requested that this Honourable Court order the Director to compensate Mr. [REDACTED] for medical travel at a rate of 45 cents per kilometre, representing the best estimate of his actual costs. In the alternative, it is requested that this Honourable Court send the appeal back for redetermination with instructions that the Tribunal consider both operating and ownership costs as part of the “cost of transportation” for the purposes of the medical travel benefit.

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

Date: April 20, 2016

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Lawyers for the Appellant

CERTIFICATE

1. An order under subrule 61.09(2) is not required.
2. The Appellant estimates that 1.0 hour will be required for oral argument.

DATED THIS 20th day of April 2016

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SCHEDULE A: LIST OF AUTHORITIES

1. *Surdivall v. Ontario*, 2014 ONCA 240 (CanLII).
2. *Canada (Canadian Human Rights Commission) and Mowat v. Canada (Attorney General)*, 2011 SCC 53.
3. *Ontario v. Ansell*, 2011 ONCA 309.
4. *Fournier v. Ontario*, 2013 ONSC 2891 (CanLII).
5. *Mullin v. R.*, [1999] T.C.J. No. 190.
6. Canada Revenue Agency, “Meal and vehicle rates used to calculate travel expenses for 2015.”
7. Canada Revenue Agency, “Income Tax Folio S1-F1-C1, Medical Expense Tax Credit” (January 19, 2016) (excerpt).
8. *Pavon v. Ontario (Disability Support Program)*, 2013 ONSC 4309.
9. *Chipperfield v. British Columbia (Ministry of Social Services)*, [1997] B.C.H.R.T.D. No. 20.

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.

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.

General, O. Reg. 222/98.

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

HEALTH BENEFITS

1. An amount for health benefits equal to the sum of,
 - i. the cost for drugs prescribed for members of the benefit unit by an approved health professional, not including the co-payment that a member of the benefit unit is charged under the *Ontario Drug Benefit Act*, if those drugs have been approved by the Minister of Health and Long-Term Care and purchased from a dispensary during any month in which the person requiring the drugs is a member of the benefit unit,
 - ii. if the cost and the services and items have been approved by the Minister, the cost for members of the benefit unit other than dependent adults for,
 - A. vision services, other than a periodic oculo-visual assessment as referred to in paragraph 1.1,
 - B. hearing services, and
 - C. items related to vision services and hearing services,

ii.1 the cost of dental services for recipients and for spouses included in the benefit unit who are 18 years of age or older, if the cost and the services have been approved by the Minister,

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

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

iv. for persons resident in a place referred to in paragraph 3 of subsection 32 (2), an amount approved by the Director for dental services, dentures, prosthetic devices including eye glasses, clothing, wheelchairs and wheelchair accessories,

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

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

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

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

Medical expenses

118.2(2) For the purposes of subsection (1), a medical expense of an individual is an amount paid

...

(g) to a person engaged in the business of providing transportation services, to the extent that the payment is made for the transportation of

(i) the patient, and

(ii) one individual who accompanied the patient, where the patient was, and has been certified in writing by a medical practitioner to be, incapable of travelling without the assistance of an attendant from the locality where the patient dwells to a place, not less than 40 kilometres from that locality, where medical services are normally provided, or from that place to that locality, if

(iii) substantially equivalent medical services are not available in that locality,

(iv) the route travelled by the patient is, having regard to the circumstances, a reasonably direct route, and

(v) the patient travels to that place to obtain medical services for himself or herself and it is reasonable, having regard to the circumstances, for the patient to travel to that place to obtain those services;

Deemed payment of medical expenses

118.2(4) Where, in circumstances in which a person engaged in the business of providing transportation services is not readily available, an individual makes use of a vehicle for a purpose described in paragraph (2)(g), the individual or the individual's legal representative shall be deemed to have paid to a person engaged in the business of providing transportation services, in respect of the operation of the vehicle, such amount as is reasonable in the circumstances.

- and -

**DIRECTOR OF THE ONTARIO
DISABILITY SUPPORT PROGRAM**

Appellant

Respondent

Court File No. 53/16

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

FACTUM OF APPELLANT

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