



INCOME SECURITY ADVOCACY CENTRE
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September 5, 2019

Attention: Sean Hanley
Ministry of the Attorney General
Constitutional Law Branch
4th Floor, McMurtry-Scott Building
720 Bay Street
Toronto, Ontario M7A 2S9

Dear Sean Hanley:

RE: Notice of Claim: *Charter* challenge to deny social assistance to children

I am writing to advise you of our intention to bring a *Charter* application. As we will not be seeking damages, a notice of claim is not required under section 18 of the *Crown Liability and Proceedings Act*. As such, we write to you as a courtesy.

As of November 1, 2019, Ontario will eliminate a social assistance benefit, called the Transition Child Benefit, which is intended to pay for the necessities of children.

As particularized below, we intend to bring an application asserting that provincial legislation denying a “basic needs” allowance for children of social assistance recipients violates sections 7, 12 and 15 of the *Charter*. Without prejudice to our ability to amend the relief sought, we will be seeking an interim injunction, including a mandatory order for payment of the Transition Child Benefit pending final determination, and ultimately a declaration that the denial of basic needs for children is a violation of the *Charter*.

The relevant legislative provisions are appended to this letter.

Background

Ontario has two social assistance programs: Ontario Works and the Ontario Disability Support Program. These programs provide very low monthly payments to impoverished individuals and families who have no other means to pay for their necessities. Monthly benefits include a “basic needs” allowance (to cover necessities such as food and clothing) and a “shelter” allowance.

While Ontario's social assistance programs provide a basic needs allowance for adults, neither program provides a basic needs allowance for most children.¹ Instead, parents are expected to pay for their child's necessities with federal and provincial tax-delivered benefits (the Canada Child Benefit and Ontario Child Benefit).²

However, for families who are not eligible for the tax-delivered child benefits, Ontario's social assistance programs provide a basic needs allowance for their children called the Transition Child Benefit. The Transition Child Benefit pays a maximum of up to \$230 per month per child.³ The name of the benefit is misleading, as many families, are eligible for lengthy periods rather than on a transitional basis.

In addition, some families receive only partial tax-delivered benefits for children. That's because the amount of the child tax benefits are based on income from the prior tax year. Families who experience a sudden drop in income, due to a job loss for example, may be receiving very little as a tax benefit and rely on the Transition Child Benefit as a top-up until their tax benefits are adjusted in the next tax year.

The Ontario government has amended the social assistance regulations to eliminate the Transition Child Benefit on November 1, 2019.⁴ The only exception to the cancellation will be recipients of Ontario Works who live on a First Nation reserve.

The cut to social assistance for children will mean no money for their necessities such as food, clothing or diapers, with a devastating impact on the health and well-being of children.

Ministerial statements in Hansard, the provincial 2019 budget document and Ministry policy documents have identified several purposes for the cancellation of the Transition Child Benefit: to deny benefits to "refugee claimants", "illegal border crossers" and those who do not file their taxes⁵; to ensure that families on and off social assistance are treated equitably (in the sense that social assistance recipients should not receive something that other families do not –

¹ There is a small top-up of \$17 for sole support parents who rely on OW and \$143 for parents who rely on ODSP: O. Reg. 132/98 at s. 41(1); O. Reg. 222/98 at s. 30(1).

² This result is achieved by requiring recipients to apply for the Canada Child Benefit and Ontario Child Benefit as a condition of eligibility for social assistance and, once received, excluding the tax-delivered benefits as "income" for the purposes of calculating social assistance entitlements. See: O. Reg. 134/98 at ss. 13(2)(b.1), 52(1)(10), 53(2-3.4), 58.3; O. Reg. 222/98 at ss. 11(2)(b.1), 41(1)(14), 42(2-3.4), 45.3; *Income Tax Act*, RSO 1990, c.1.2 at s. 8.6.2; *Income Tax Act*, R.S.C. 1985, c. 1 at s. 122.6.

³ O. Reg. 134/98, s. 58.3; O. Reg. 222/98, s. 45.3.

⁴ O. Reg. 246/19 amends s. 58.3(1) of O. Reg. 134/98 to restrict eligibility for the Transition Child Benefit to persons resident in territories with First Nation Administrators; O. Reg. 247/19 amends s. 36.2 and revokes s. 45.3 of O. Reg. 222/98

⁵ Honourable Minister Lisa MacLeod, Hansard (May 27, 2019).

although we note that to qualify for social assistance, recipients must show a level of financial need to provide for their children that non-eligible families do not have).⁶

Particulars of the Claim

We intend to bring a *Charter* application by November 1, 2019. The particulars of the *Charter* claim are anticipated to be as follows:

1. The application will challenge the constitutionality of the social assistance regulations that operate together to deny a basic needs allowance for children of social assistance recipients: O. Reg. 134/98 at subsections 13(2)(b.1), 52(1)(10), 53(2-3.4), 58.3; O. Reg. 222/98 at subsections 11(2)(b.1), 41(1)(14), 42(2-3.4), 45.3.
2. The *Charter* provisions relied upon are sections 1, 7, 12, 15, 24(1), 52.
3. The application will rely on Canada's international law obligations to inform the scope of protection provided by the *Charter*. The UN *Convention on the Rights of the Child*,⁷ to which Canada is a signatory, commits Canada to making the best interests of children the primary consideration in all actions. The *Convention* recognizes the right of every child to benefit from social security, to an adequate standard of living and imposes an obligation on States to assist parents to ensure access to nutrition, clothing and housing (Articles 3, 26, 27).⁸

Section 7

4. The denial of a basic needs allowance for children of social assistance recipients deprives them of their rights to life and security of the person.
5. The deprivations arising from the denial of a basic needs allowance to children are contrary to the principles of fundamental justice because they are arbitrary, overbroad and grossly disproportionate.

⁶ Ontario (2019), "2019 Ontario Budget: Protecting What Matters Most" at p. 194, available at <http://budget.ontario.ca/pdf/2019/2019-ontario-budget-en.pdf> [accessed 12 August 2019]; Ministry of Children, Community and Social Services (July 31, 2019), "Questions and Answers for Municipal Ontario Works and Ontario Disability Support Program Staff: Social Assistance Reform: Upcoming Recipient Notification About Changes to the Transition Child Benefit" at p. 1. The application will not address the denial to families that are late filing taxes, as benefits are paid retroactively.

⁷ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> [accessed 12 August 2019].

⁸ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> [accessed 12 August 2019].

Section 12

6. The denial of a basic needs allowance for children of social assistance recipients is grossly disproportionate “treatment”.

Section 15

7. The denial of a basic needs allowance for children will have a disproportionate impact on protected groups such as women, children, Indigenous communities, racialized people, and people with disabilities. Intersectional equality principles will inform the analysis of the various grounds upon which Ontario’s denial of a basic needs allowance discriminates, including age, gender, race, family status, parental status, Aboriginality-residence, disability, citizenship and receipt of social assistance.

Section 1

8. The *Charter* violations occasioned by the elimination of children’s benefits cannot be saved by section 1 because they deepen poverty and cannot be justified in a free and democratic society.

Remedy

9. The remedies sought will include an interim injunction, declarations that the identified social assistance regulatory provisions violate sections 7, 12, and 15 of the *Charter* and are not saved by section 1; a mandatory order for retroactive payment of an adequate basic needs allowance for children.

We are not yet in a position to provide the name of the Applicants. Their identities will be provided with the Notice of Application and Notice of Constitutional Question.

Yours truly,

INCOME SECURITY ADVOCACY CENTRE



Jackie Esmonde
Staff Lawyer