

CV-14-518213
Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Applicant

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS
REPRESENTED BY THE MINISTRY OF COMMUNITY AND SOCIAL SERVICES,
THE MINISTER OF COMMUNITY AND SOCIAL SERVICES, THE DIRECTOR OF
ONTARIO DISABILITY SUPPORT PROGRAM and THE DIRECTOR OF ONTARIO
WORKS**

Respondents

**APPLICATION UNDER Rule 14.05(3) of the *Rules of Civil Procedure and the
Canadian Charter of Rights and Freedoms*, ss. 1, 7, 15, 24 and *Constitution
Act, 1982*, s. 52.**

NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The
claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than ^{4 p.m.} ~~2 p.m.~~ on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: December 16, 2014

Issued by:

Registrar

Address of court office 393 University Avenue
Toronto, ON M5G 1E6

TO: MINISTRY OF COMMUNITY AND SOCIAL SERVICES

Hepburn Block
6th Floor
80 Grosvenor St.
Toronto, ON M7A1E9

TO: HONOURABLE HELENA JACZEK, MINISTER OF COMMUNITY AND SOCIAL SERVICES

Hepburn Block
6th Floor
80 Grosvenor St.
Toronto, ON M7A 1E9

TO: PATTI REDMOND, DIRECTOR

Ministry of Community and Social Services
Ontario Disability Support Program
Hepburn Block
3rd Floor, Room 386
80 Grosvenor St.
Toronto, ON M7A 1E9

TO: JEFFREY BUTLER, DIRECTOR

Ministry of Community and Social Services
Ontario Works Branch
Hepburn Block
5th Floor
375 University Ave
Toronto, ON M5G 2M2

APPLICATION**1. THE APPLICANT MAKES APPLICATION FOR:**

- (a) A declaration that the decision and/or actions of the Respondents in knowingly implementing the flawed Social Assistance Management System ("SAMS") to deliver payments to dependent and vulnerable recipients of Ontario Works ("OW") and the Ontario Disability Support Program ("ODSP") ("Recipients") violated the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice under s. 7 of the *Canadian Charter of Rights and Freedoms* ("*Charter*") of those Recipients and that this violation is not saved by s. 1 of the *Charter*;
- (b) A declaration that the decision and/or actions of the Respondents in knowingly implementing the flawed Social Assistance Management System violated the equality rights in s. 15 of the *Charter* of the Recipients and that this violation is not saved by s. 1 of the *Charter*;
- (c) An order that this new flawed Social Assistance Management System cease to be used to deliver social assistant benefits to these vulnerable Recipients unless, and until, the system can provide reliable, timely and accurate benefits to the Recipients;
- (d) An order for the costs of this Application; and

- (e) Such further and other relief as counsel may advise and this Honourable Court permits.

2. **THE GROUNDS FOR THIS APPLICATION ARE:**

The Applicant

- (a) The Ontario Public Service Employees Union ("OPSEU") is a trade union that represents approximately 150,000 employees in the public sector and broader public sector of the Province of Ontario. These members include the employees who work as caseworkers and in other related positions in Ontario's Ministry of Community and Social Services, who are responsible for administering payouts under ODSP and OW and who provide frontline support to Recipients of ODSP and OW.
- (b) In their role as frontline caseworkers, OPSEU members have a caseload of individuals to whom they administer financial and other benefits under ODSP and OW. Their role includes ensuring that these individuals receive their benefits in a timely way.

The Respondents

- (c) The Ministry and Minister of Community and Social Services is responsible for administering Ontario's social assistance programs, including ODSP and OW. The Director of Ontario Works is responsible for supervising the administration of the *Ontario Works Act* and the provision of assistance under the *Act*, including ensuring that appropriate benefit

payments are made to recipients. The Director of the Ontario Disability Support Program is responsible for administering the *Ontario Disability Support Program Act* and the provision of assistance under the *Act*, including receiving applications for income support, determining the eligibility of each applicant and the amount of income support for each entitled applicant, directing the payment of income support, and ensuring that appropriate payments are made.

The Ontario Disability Support Program and Ontario Works Benefits Programs and Recipients

- (d) The Respondents administer two social assistance programs to help eligible residents of Ontario who are in financial need. These two programs provide a basic social safety net to Ontario's most vulnerable and marginalized residents. The Recipients of OW and ODSP benefits are dependent on these benefits to pay for their most basic and necessary living expenses, such as food and shelter.

- (e) ODSP provides basic financial support and employment assistance to disabled individuals who are unable to support themselves through gainful employment. In order to qualify for ODSP benefits an individual must have a substantial physical or mental impairment that directly results in a substantial restriction in the person's ability to engage in the activities of daily living such as attending to personal care, functioning in the community or functioning in the workplace.

- (f) OW provides financial support and employment assistance to eligible individuals in financial need, who are unemployed and have limited access to other resources. At issue in this Application is the payments for the financial assistance, which includes income assistance for the purposes of basic needs and shelter, benefits and emergency assistance.
- (g) There are strict requirements for receiving ODSP and OW benefits laid out in the *Ontario Disability Support Program Act*, the *Ontario Works Act*, and corresponding regulations. As a result, only those individuals who are truly financially destitute are entitled to these benefits.
- (h) Recipients of ODSP and OW benefits rely on their benefits from these programs to meet their basic necessities of life. Benefit payments are delivered on a regular, published schedule. Recipients are advised when benefits will be provided each month and depend on receiving their benefits on time to cover their necessities. A delay in receiving these benefits can have devastating effects on these individuals and their dependents.

The Social Assistance Management System

- (i) In or about January, 2014, the Respondents began training staff on SAMS, a human services case management platform developed by an outside contractor, an Irish software company now owned by IBM. SAMS

was designated by the Respondents as the new computer system to manage OW and ODSP payments.

- (j) In the months leading to the implementation of SAMS, OPSEU leadership and members repeatedly expressed concerns about the functionality of SAMS to the Respondents and their agents. OPSEU members specifically expressed concerns that SAMS had significant flaws and problems. The Respondents were warned that if significant improvements were not made to the program prior to the launch date, there would be very serious problems in administering and providing benefits to entitled OW and ODSP Recipients.
- (k) In spite of these warnings, the Social Assistance Management System was implemented in November, 2014. At this point, ODSP and OW caseworkers were required to use the new flawed system for all payments of benefits under ODSP and OW. After its launch, as predicted, there were ongoing errors in the SAMS system that seriously limited its ability to function and issue payments properly. The errors resulted in large scale overpayments, underpayments and/or delays in payments to vulnerable ODSP and OW Recipients for their November, 2014 payments.
- (l) SAMS continues to be riddled with errors. Ongoing delays and errors in payments are expected for the next monthly payouts. The system continues to have fundamental underlying problems. New problems are

arising on a regular basis and employees in many cases are instructed to override the system and create a myriad of temporary fixes that are both unreliable and will later need to be undone.

The Harm to Vulnerable and Marginalized Populations

- (m) The failure of the Respondents to pay the correct quantum of OW and ODSP benefits on the scheduled dates caused serious harm to already vulnerable and marginalized residents of Ontario.
- (n) Those OW and ODSP entitled individuals who were not paid the full quantum of their benefits, or who were paid late, suffered financial harm as well as harm to their physical and psychological integrity caused by being unable to or fearing that they would be unable to meet their basic needs, as well as those of their children and other dependents, including food, rent and health needs.
- (o) Overpayments will also cause hardship to OW and ODSP Recipients, as they will be required to make re-payments of funds already spent under extremely tight financial circumstances.
- (p) The delayed and inaccurate payments from a system that was known to be flawed could and should have been avoided. These payments unnecessarily created hardship in an already vulnerable population. Recipients of OW and ODSP are dependent on receiving their payments accurately and on time, given how highly dependent they are on these

funds for survival. The Respondents' errors constitute an affront to the dignity of the Recipients.

The *Charter* Violations

- (q) The Respondents' decisions and/or actions in implementing the Social Assistance Management System before its problems were fixed, and the Ministry's incorrect payments, non-payments and late payments of ODSP and OW, as set out above, violate the sections 7 and 15 *Charter* rights of individuals who are entitled to receive payments under ODSP and OW.
- (r) The Respondents' decisions and/or actions engage the Recipients' s. 7 *Charter* rights. They deprive the Recipients of security of the person by denying them their basic necessities of life, when the Respondents had promised to provide for those and knew the Recipients were highly reliant on receiving their benefits. This caused the Recipients serious physical and psychological harm. The failure to provide the Recipients the benefits to which they were statutorily entitled, with no notice and when the Recipients were reliant on the benefits for their basic necessities of life, constitutes a deprivation of security of the person and in some cases amounts to a threat to the deprivation of life itself.
- (s) These deprivations are not in accordance with the principles of fundamental justice. OW and ODSP benefit Recipients received inaccurate and/or untimely benefits because of a process that was known

to be flawed and error-ridden, was recklessly implemented, and could have been avoided.

- (t) The actions of the Respondents are arbitrary and grossly disproportionate to any legitimate government aim. ODSP and OW benefits were, and as the system continues to be flawed will continue to be, distributed in an inaccurate and untimely manner. This is contrary to and not consistent with the *Ontario Disability Support Program Act*, the *Ontario Works Act*, and the relevant regulations, which are systems designed to provide funds for the basic necessities of life. They aim to provide benefits to vulnerable individuals who require assistance in a reliable and timely manner, based on a set of clearly defined criteria. The Respondents' actions have had and will continue to have grave consequences to the benefit recipients. These consequences far outweigh any aim behind the Respondents' actions.
- (u) The Respondents' decisions and/or actions violate s. 15 of the *Charter* by discriminating against OW and ODSP recipients on the basis of their mental and physical disabilities and their status as social assistance recipients, and by denying them equal benefit and protection of the law:
- (v) The Respondents' actions deny important benefits and impose a burden on OW and ODSP recipients compared to other benefit recipients in

Ontario, who have not been subject to a flawed and error-riddled system in the receipt of basic financial assistance.

- (w) The actions of the Respondents are an affront to the dignity of OW and ODSP recipients. The Respondents proceeded with launching the Social Assistance Management System when the system was known to have significant problems and was not ready to be implemented. The Respondents proceeded, even though they knew that the recipients of OW and ODSP benefits were highly reliant on the timely and accurate payment of those benefits each month for their basic necessities of living.
- (x) The violations of s. 7 and s. 15 of the *Charter* do not constitute reasonable limits demonstrably justified in a free and democratic society pursuant to s. 1 of the *Charter*.

OPSEU'S Interest

- (y) OPSEU and its members have a genuine interest in the issues raised by this Application. OPSEU caseworkers are the frontline workers who must by statute provide ODSP and OW benefits in a timely and accurate way to the eligible recipients, but who are prevented from carrying out these statutory duties due to the implementation by the Respondents of a flawed system.
- (z) As the front line workers who have direct contact with benefits recipients, OPSEU caseworkers have personal information about the recipients and

develop close relationships in order to administer the program effectively to meet the programs' goals of providing assistance to these vulnerable groups.

- (aa) Clients of ODSP and OW are not well-positioned to act as parties in an application to challenge the delays and errors in the receipt of their benefits, particularly on an urgent basis. They are a vulnerable group facing a crisis in the provision of their basic needs. Individuals in the group are directing their attention to ensuring they have food, shelter and health services and have little capacity to challenge the breach of their rights under the *Charter*.

Statutory Provisions

- (bb) *Canadian Charter of Rights and Freedoms*, including ss. 1, 7, 15 and 24;
- (cc) *Constitution Act*, s. 52.
- (dd) *Ontario Disability Support Program Act, 1997*, S.O. 1997, Ch. 25, Schedule B, along with *Ontario Regulation 222/98*;
- (ee) *Ontario Works Act, 1997*, S.O. 1997, Ch. 25, Sch. A, along with Ontario Regulation 134/98;
- (ff) *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, Rule 14; and

(gg) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:

- (a) The Affidavit of Anne Leach, to be sworn, and the exhibits attached thereto;
- (b) The Affidavit of Dylan Linegar, to be sworn, and the exhibits attached thereto;
- (c) The Affidavit of Tara Langford, to be sworn, and the exhibits attached thereto;
- (d) The Affidavit of Cindy Kraakman, to be sworn, and the exhibits attached thereto; and
- (e) Such further and other evidence as counsel may advise and that this Honourable Court may accept.

December 16, 2014

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