

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

**BETWEEN:**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO  
AS REPRESENTED BY THE MINISTER OF CHILDREN, COMMUNITY  
AND SOCIAL SERVICES**

Applicant

-and-

**DESTINY ROBINSON-COOKE and the  
HUMAN RIGHTS TRIBUNAL OF ONTARIO**

Respondents

-and-

**INCOME SECURITY ADVOCACY CENTRE**

Intervener

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**FACTUM OF THE INTERVENER**

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May 10, 2024

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## PART I – OVERVIEW

1. People with disabilities often struggle with the tasks of daily living. For many individuals, a service dog can profoundly improve their quality of life. For those who rely on the Ontario Disability Support Program (“ODSP”) to survive, the Guide Dog Benefit can assist with the cost of a service dog. But the application of restrictive training and accreditation requirements make any such assistance illusory for most, deepening the inequality and hardship these individuals already face. This undermines the purposes of the *Ontario Disability Support Program Act*.

2. The Income Security Advocacy Centre (“ISAC”) is a specialty legal clinic funded by Legal Aid Ontario to serve low-income communities, including social assistance recipients across the province. ISAC intervenes in this application because this case has implications that extend beyond the immediate parties. The application will impact social assistance recipients across Ontario who are unable to access the Guide Dog Benefit under the Ministry policy implementing the Benefit. The policy puts social assistance recipients who have intersecting and complex disabilities at a particular disadvantage. They are unable to meet the requirements of the policy because the service dog training the Ministry policy requires is unavailable to them.

3. ISAC makes three submissions:

- (a) The purpose of the *Ontario Disability Support Program Act* scheme must inform the Court’s assessment of the Guide Dog Benefit’s purpose;
- (b) Arbitrariness, stereotyping, and prejudice are not necessary elements of the discrimination analysis; and

(c) This Court should apply a liberal and purposive interpretation of the Tribunal's authority to award public interest remedies.

## PART II – FACTS

4. ISAC does not take a position on the facts of the application.

## PART III – SUBMISSIONS

### **A. The purpose of the *Ontario Disability Support Program Act* scheme must inform the Court's assessment of the Guide Dog Benefit's purpose**

5. In this application, the Court is tasked with determining the Guide Dog Benefit's purpose in assessing whether the Human Rights Tribunal of Ontario reasonably found that the Ministry's discriminatory policy was not justified as a *bona fide* and reasonable requirement under Ontario's *Human Rights Code* (the "Code").

6. This Court must determine the purpose of the Guide Dog Benefit with reference to the defining provision in the governing legislation rather than with reference to the non-binding administrative policy that operationalizes the provision. Subsection 44(1)5 of O. Reg. 222/98, under the *Ontario Disability Support Program Act*, creates the Guide Dog Benefit, while Policy Directive 9.9 describes how the Benefit is currently administered.<sup>1</sup> Policy Directives do not have the force of law.<sup>2</sup>

7. The governing legislation does not require any particular certification of service dogs. However, the Policy Directive requires that a service dog be "specially trained" and

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<sup>1</sup> [O. Reg. 222/98](#), s. 44(1)5; ODSP [Policy Directive 9.9](#) – Guide dog benefit.

<sup>2</sup> *Moon v. Ontario (Director, Disability Support Program)*, [2002] O.J. No. 2045 (Div. Ct.) [Intervener's Book of Unreported Authorities ("BOA"), Tab 1, at 4-5], at para. 4.

“certified” by a “facility that meets the minimum standards established by Assistance Dogs International and that is a member of Assistance Dogs International”.<sup>3</sup> Policy Directive 9.9’s strict requirement compromises the purpose of s. 44(1)5 of O. Reg. 222/98, rather than defining the purpose in and of itself.

8. The text of the regulatory provision, the context of the *Act*, and the purposes of the *Act* all demonstrate that the Policy Directive’s strict requirements are unnecessary to accomplish the purpose of the Guide Dog Benefit. This is relevant to this Court’s assessment of whether the Policy Directive’s Assistance Dogs International requirement is a *bona fide* and reasonable requirement for the purpose of the discrimination analysis.<sup>4</sup> The Supreme Court has held that a discriminatory requirement will fail to have a “*bona fide* and reasonable justification” defence if the discriminatory requirement is not reasonably necessary to accomplish its purpose.<sup>5</sup>

***i. The Guide Dog Benefit’s text does not create limits***

9. Statutory interpretation is necessary to determine the purpose and limits of the Guide Dog Benefit. The modern approach to statutory interpretation requires that “the words of a statute must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the statute, its object, and the intention of the Legislature.”<sup>6</sup> The Supreme Court has affirmed that this requires attention to the

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<sup>3</sup> ODSP [Policy Directive 9.9](#) – Guide dog benefit.

<sup>4</sup> See *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 [“*Grismer*”], at para. 20; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 [“*Meiorin*”], at para. 54; and [Human Rights Code](#), R.S.O. 1990, c. H.19, s. 11.

<sup>5</sup> *Grismer*, at para. 20; *Meiorin*, at para. 54.

<sup>6</sup> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 117, citing *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, and *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, at para. 26, both quoting E. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87.

“text, context, and purpose” of a provision by administrative decision makers.<sup>7</sup>

10. The Guide Dog Benefit is set out in the *Ontario Disability Support Program Act*'s general regulation, O. Reg. 222/98, as follows:

**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:

GUIDE DOG

5. If a member of the benefit unit has a guide dog, an amount not exceeding \$84 for the care of the dog.<sup>8</sup>

Subsection 44(1) notes that “benefits **shall** be paid”, meaning that the obligation to pay the benefit is mandatory, not discretionary.<sup>9</sup> The provision also provides that the benefit is only available for recipients who are receiving income support under the *Act*.<sup>10</sup> In terms of the quantum of the benefit, the provision states that the Guide Dog Benefit provides “an amount not exceeding \$84 for the care of the dog”. For the purposes of this application, the “Director” and the Applicant Ministry are the same.

11. This Court has held, with respect to interpreting another mandatory benefit under s. 44(1), that reading in limits that are not specified in s. 44(1) itself is unreasonable.<sup>11</sup> The legislation does not define “guide dog” nor require that the dog have specialized training and certification for the Ministry to grant the Guide Dog Benefit.<sup>12</sup> Rather, the

<sup>7</sup> *Vavilov*, at para. 118. [Emphasis added].

<sup>8</sup> O. Reg. 222/98, s. 44(1)5.

<sup>9</sup> *Corrigan v. Ontario (Disability Support Program)*, 2016 ONSC 6212 (Div. Ct.), at para. 25. [Emphasis in original].

<sup>10</sup> 1806-04181 (Re), 2021 ONSBT 159, at para. 99.

<sup>11</sup> *Corrigan*, at paras. 29-30.

<sup>12</sup> Note that the regulatory provision at issue, s. 44(1)5, uses the term “guide dog”. The parties agree that the term “guide dog” includes guide dogs for blind and visually impaired persons as well as service dogs and hearing dogs, see, for example, Factum of the Applicant, at paras. 9-14; Factum of the Respondent, at para. 22.

provision states that a benefit must be paid to an ODSP recipient if the Ministry is satisfied that a recipient meets the benefit's "criteria". While other benefits under s. 44(1) have specific built-in criteria to meet, the sole Guide Dog Benefit criteria noted in its provision is having a guide dog.

**ii. Context for the Guide Dog Benefit: People with disabilities living in poverty**

12. Regulations must be read in the context of their enabling legislation.<sup>13</sup> Regulations "will generally be interpreted using the same rules and techniques as statute law, albeit never losing sight of the context of the enabling provisions that give rise to the regulations that complete and implement the statutory scheme."<sup>14</sup>

13. Under the legislation, a single person like Ms. Robinson-Cooke receives a maximum of only \$1,308 per month to meet their basic needs and to pay for their shelter costs.<sup>15</sup> This informs Ms. Robinson-Cooke's evidence that she needed to spend money she required for food, shelter, medications, and other basic needs to pay the costs associated with her service dog.<sup>16</sup>

14. In this context, the Guide Dog Benefit intends to assist people with disabilities who rely on a dog by subsidizing the associated costs of caring for the dog so that the recipient can afford to eat and pay for shelter. The Benefit recognizes a recipient's specific disability-related needs and provides support for the upkeep of a dog that helps them

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<sup>13</sup> *State Farm Mutual Automobile Insurance Company v. Old Republic Insurance Company of Canada*, [2015 ONCA 699](#), at para. 68.

<sup>14</sup> *S.H. v. D.H.*, [2019 ONCA 454](#), at para. 31.

<sup>15</sup> [O. Reg. 222/98](#), ss. 29.1-31.

<sup>16</sup> *Robinson-Cooke v. Ontario (Community and Social Services)*, [2023 HRTO 1133](#), at para. 114.



meet these needs.<sup>17</sup>

**iii. The purposes of the Act inform the purpose of the Guide Dog Benefit**

15. The Court of Appeal and this Court have held that the *Ontario Disability Support Program Act* is “remedial legislation” that should be given a fair, large, and liberal interpretation to ensure the attainment of its objective.<sup>18</sup> Since the *Act* and its regulations are benefits-conferring, any ambiguity arising from statutory interpretation must be resolved in favour of the claimant because of the importance of the benefits to the people who need them.<sup>19</sup>

16. The Ministry’s interpretation of the Guide Dog Benefit provision, as articulated in Policy Directive 9.9, resolves ambiguity *against* claimants like Ms. Robinson-Cooke. Some ODSP recipients live with multiple disabilities that are complex and can intersect in challenging ways. People with complex and intersecting disabilities may experience unique barriers that hinder their full and equal participation in society. For example, they may need support to communicate, to develop new skills, and to live independently. A service dog may assist them with overcoming the barriers they face. Requiring low-income persons with intersecting and complex disabilities to abide by strict certification requirements, which may not be practical or possible for them to comply with due to their disabilities, is the wrong approach to interpreting benefits-conferring legislation.<sup>20</sup>

17. The stated purposes of the *Act* are to establish a program that,

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<sup>17</sup> 1806-04181 (Re), at paras. [48-49](#), [100-102](#).

<sup>18</sup> *Gray v. Director of the Ontario Disability Support Program*, (2002) [59 O.R. \(3d\) 364](#) (C.A.), at paras. [10-12](#); *Fournier v. Ontario (Ministry of Community & Social Services)*, [2013 ONSC 2891](#) (Div. Ct.), at paras. [50-51](#).

<sup>19</sup> *Ibid.*

<sup>20</sup> 1611-08216 (Re), [2017 ONSBT 3115](#), at paras. [15-18](#).

- (a) provides income and employment support 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.<sup>21</sup>

Nothing can be gleaned about the definition of “guide dog” or applicable limits from the first purpose.<sup>22</sup> However, the other three purposes do assist with interpreting the Guide Dog Benefit provision.

18. The *Act’s* second purpose of recognizing that government, communities, families, and individuals share responsibility for providing such supports, requires that “guide dog” and any limits are interpreted in a flexible manner.<sup>23</sup> ODSP recipients are responsible for finding, obtaining, and paying for a dog that is trained to meet their specific needs and to perform tasks that mitigate their disability-related barriers. The Ministry’s minimal shared responsibility is to provide an additional stipend for the care of this dog.<sup>24</sup>

19. The Court of Appeal has specified that the third purpose of the *Act*, “to effectively serve persons with disabilities who need assistance” is “especially significant”.<sup>25</sup> To effectively serve persons with disabilities, the Guide Dog Benefit must be accessible to any recipient who demonstrates that they would benefit from a service dog. The focus under this purpose looks at a recipient’s need for the service dog and whether the dog functions to alleviate the person’s disability, thus allowing them to lead a more

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<sup>21</sup> [Ontario Disability Support Program Act, 1997](#), c. 25, Sched. B, s. 1.

<sup>22</sup> *Surdivall v. Ontario (Director, Disability Support Program)*, [2014 ONCA 240](#), at para. 37.

<sup>23</sup> *Ibid.*

<sup>24</sup> *1908-06007 (Re)*, [2020 ONSBT 889](#), at paras. 14-17, 23-24.

<sup>25</sup> *Surdivall*, at para. 38.

independent life and to retain their dignity.<sup>26</sup>

20. People with disabilities are not effectively served if the Ministry only grants the Guide Dog Benefit based on formalistic certification requirements from a single specialty organization, Assistance Dogs International. In practice, the failure to effectively serve persons with disabilities is demonstrated by Ms. Robinson-Cooke showing that no Assistance Dogs International organization based in Ontario is able to train and certify a dog for her specific disabilities.<sup>27</sup> A limit to the Guide Dog Benefit that prevents recipients with intersecting and complex disabilities from accessing the Benefit undermines the *Act's* purpose.

21. The fourth purpose of the *Act*, with respect to taxpayer accountability, will be upheld if public funds are spent “fairly, honestly, and reasonably”.<sup>28</sup> This purpose does not require the Ministry to spend as little money as possible. Regardless, at only \$84 per month, the Guide Dog Benefit provides a minimal amount of public funding compared to the higher, actual cost to keep a service dog trained, fed, healthy, and vaccinated.<sup>29</sup>

22. Providing the Guide Dog Benefit for ODSP recipients that use a service dog is financially prudent and a fair, honest, and reasonable use of public funds. Service dogs improve recipients’ mental and physical health and promote independence. This alleviates Ontario’s stretched and burdened health care system by reducing medical and emergency costs.<sup>30</sup> In this particular case, Ms. Robinson-Cooke’s service dog enabled

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<sup>26</sup> 2001-00384 (Re), [2022 ONSBT 560](#), at para. [40](#).

<sup>27</sup> Robinson-Cooke, at para. [88](#).

<sup>28</sup> Surdivall, at para. [44](#).

<sup>29</sup> 2301-00383 (Re), [2023 ONSBT 4668](#), at para. [12](#); 2206-02511 (Re), [2023 ONSBT 1185](#), at para. [15](#).

<sup>30</sup> 1810-06613 (Re), [2021 ONSBT 161](#), at para. [60](#); 1803-01624 (Re), [2020 ONSBT 1725](#), at para. [34](#).

her to decrease her reliance on public resources by facilitating paid work and a return to formal education.<sup>31</sup>

23. For the Guide Dog Benefit, a purposive approach to what qualifies as a “guide dog” includes a service dog. In *Fournier*, this Court noted that to apply a “strict interpretation” would “be to ignore the intent of this remedial legislation ... that is indefensible in policy or in practice.”<sup>32</sup> The Guide Dog Benefit intends to ensure that people with disabilities are compensated for the care of a dog that provides a disability support. Based on the Ministry’s current practice and in keeping with the intent of the legislation, “guide dog” must also include the supports provided by a service dog or a hearing dog.<sup>33</sup> Any other interpretation applies an indefensible strict interpretation.

***iv. Policy Directive 9.9 undermines the purpose of the Guide Dog Benefit***

24. The Ministry currently uses what *Fournier* refers to as an “indefensible” “strict interpretation” in Policy Directive 9.9.<sup>34</sup> Requiring a service dog to be “specially trained” and “certified” by a “facility that meets the minimum standards established by Assistance Dogs International and that is a member of Assistance Dogs International” is unduly restrictive, undermining the remedial purpose of the *Act*.<sup>35</sup> While some form of training and verification requirement of service dogs may be appropriate, the requirement cannot be so narrow that only a single, inaccessible organization acts as a gatekeeper.<sup>36</sup> This creates an insurmountable obstacle to the Guide Dog Benefit for Ms. Robinson-Cooke

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<sup>31</sup> *Robinson-Cooke*, at para. [29](#).

<sup>32</sup> *Fournier*, at para. [63](#).

<sup>33</sup> *2001-00384 (Re)*, at para. [27](#); *2003-02030 (Re)*, [2021 ONSBT 610](#), at para. [55](#).

<sup>34</sup> *Fournier*, at para. [63](#).

<sup>35</sup> ODSP [Policy Directive 9.9](#) – Guide dog benefit; *1806-04181 (Re)*, at paras. [26](#), [50-51](#), [106](#), and [110](#).

<sup>36</sup> *2206-02511 (Re)*, at paras. [11-12](#).

and others with complex disabilities, offending the purposes of the *Act*.

25. Policy Directives are administrative guidelines that do not have the force of law and are not legally binding.<sup>37</sup> The preamble to the Policy Directives notes that:

In keeping with the spirit of the legislation, staff should use this discretion to ensure that clients receive all of the benefits to which they are entitled. In accordance with its purpose of providing income support to persons with disabilities; the *Ontario Disability Support Program Act*, regulations and policies should be interpreted flexibly and broadly.<sup>38</sup>

26. This Court has held that Policy Directives reflecting unreasonable interpretations of the legislation should be disregarded.<sup>39</sup> In *Corrigan*, the Divisional Court found, with respect to another mandatory benefit under the *Act*, that restrictions on maximum compensation for medical travel were unreasonable because they failed to reflect the purpose of the regulatory provision the Policy Directive intended to operationalize.<sup>40</sup> The Court noted that reading in limits to the benefit that are not specified in the regulation is unreasonable.<sup>41</sup> The provision at issue in *Corrigan* – s. 44(1)1(iii.1) – is located in the same subsection of O. Reg. 222/98 as the Guide Dog Benefit provision – s. 44(1)5.<sup>42</sup>

27. In the present case, Policy Directive 9.9 similarly reads in limits to the Guide Dog Benefit. There is nothing in the wording of s. 44(1)5 of O. Reg. 222/98 that supports the proposition that “minimum standards established by Assistance Dogs International” are required. Reading in restrictive limits that fail to provide any access to the Guide Dog Benefit for ODSP recipients with intersecting and complex disabilities is unreasonable,

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<sup>37</sup> *Moon* [(“BOA”), Tab 1, at 4-5], at para. 4.

<sup>38</sup> ODSP [Policy Directives Preamble](#).

<sup>39</sup> *Corrigan*, at para. 30.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*, at para. 1.

violating the Policy Directives' preamble and the purpose of the Benefit.

28. The Social Benefits Tribunal has repeatedly found that the Assistance Dogs International certification requirement in Policy Directive 9.9 is inapplicable because this criteria fails to abide by the purposes of the Guide Dog Benefit.<sup>43</sup> The Ministry asserts that “no individual, regardless of disability, receives funding for a dog that has not been specially trained and certified.”<sup>44</sup> However, contrary to this submission, the Social Benefits Tribunal has rejected the Ministry's narrow Policy Directive and granted the Guide Dog Benefit to recipients with service dogs that are informally certified and are self-trained to address a recipient's specific disabilities.<sup>45</sup>

29. Having regard to these principles, any Ministry policy regarding the Guide Dog Benefit must be applied in a manner reflecting the purposes of the Guide Dog Benefit provision. The standards in Policy Directive 9.9 do not permit certification for low-income recipients living with intersecting and complex disabilities who require service dogs, contradicting the purposes of s. 44(1)5.

## **B. Arbitrariness, stereotyping, and prejudice are not necessary elements of the discrimination analysis**

### ***i. Section 15 of the Charter informs the analysis under the Moore test for prima facie discrimination***

30. There is only one test for discrimination under the *Code*. The three-part test set

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<sup>43</sup> See, for example, 2301-00073 (*Re*), [2023 ONSBT 3017](#), at para. 22; 2212-05838 (*Re*), [2023 ONSBT 2715](#), at paras. 13-19; 2001-00384 (*Re*), at paras. 25-27; 1911-08753 (*Re*), [2021 ONSBT 2128](#), at paras. 22-26; 1908-06007 (*Re*), at paras. 20-21; and 1611-08216 (*Re*), at paras. 21-25.

<sup>44</sup> See Factum of the Applicant, at para. 88; Factum of the Respondent, at para. 38.

<sup>45</sup> 1911-08753 (*Re*), at paras. 17-26; 1803-01624 (*Re*), at paras. 19-34; and 1611-08216 (*Re*), at para. 25.

out by the Supreme Court in *Moore* applies to all discrimination claims under the *Code*, regardless of the nature of the discriminating party.<sup>46</sup> Under the *Moore* test, a claimant must demonstrate that they have:

- a. a characteristic protected from discrimination;
- b. experienced an adverse impact with respect to a service; and
- c. that the protected characteristic was a factor in the adverse impact.<sup>47</sup>

31. In previous challenges to Policy Directives under the *Act*, the Human Rights Tribunal of Ontario correctly applied the *Moore* test to find *prima facie* discrimination under the *Code*.<sup>48</sup>

32. When discrimination arises from regulations or government policy, the *Charter's* guarantee of substantive equality can inform the *prima facie* discrimination analysis. However, replacing the *Moore* test with the s. 15 test is inappropriate. The *Charter* and the *Code* have different requirements which serve different purposes. In this case, the Tribunal applied the s. 15 test to inform its *Code* analysis of whether the application of Policy Directive 9.9 created an adverse impact based on a protected ground – the second and third parts of the *Moore* test.

33. Recently, the Supreme Court has set out the two stage s. 15 test for discrimination as follows: Does an impugned law or state action (a) create a distinction based on enumerated or analogous grounds, on its face or in its impact; and (b) impose a burden or deny a benefit in a manner that has the effect of reinforcing, perpetuating, or

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<sup>46</sup> *Moore v. British Columbia (Education)*, [2012 SCC 61](#), at para. [33](#); *Stewart v. Elk Valley Coal Corp.*, [2017 SCC 30](#), at para. [24](#).

<sup>47</sup> *Moore*, at para. [33](#).

<sup>48</sup> See, for example, *Abbey v. Ontario (Community and Social Services)*, [2016 HRTO 787](#), at para. [83](#), aff'd [2018 ONSC 1899](#) (Div. Ct.), not on this point.

exacerbating disadvantage.<sup>49</sup>

**ii. Seemingly neutral policies can create a distinction on a protected ground**

34. This is a case of adverse effects discrimination. In *Fraser*, the Supreme Court explained that in the context of adverse effects claims, the first branch of the test will be made out where there is a “disproportionate impact” on members of a protected group. This can occur in a number of ways. For example, “[a] law may include seemingly neutral rules, restrictions or criteria that operate in practice as ‘built-in headwinds’ that have the effect of placing members of protected groups at a disadvantage.”<sup>50</sup>

35. Policy Directive 9.9 is a seemingly neutral policy that is “designed well for some and not for others”.<sup>51</sup> There is no question that the Ministry needs some way of determining when a dog is a service dog rather than a pet. The Ministry designed a policy with the seemingly neutral criteria that a service dog must be trained and certified by a facility that is a member of Assistance Dogs International. That policy may work well for some; for example, people with a single physical disability for which Assistance Dogs International member organizations in Ontario train and certify service dogs. However, the Policy Directive does not work well for people with complex and intersecting disabilities, including mental health disabilities. As a result, the policy places members of that group at a disadvantage.

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<sup>49</sup> *Fraser v. Canada (Attorney General)*, [2020 SCC 28](#), at para. [27](#); *R. v. Sharma*, [2022 SCC 39](#), at para. [28](#).

<sup>50</sup> *Fraser*, at para. [53](#).

<sup>51</sup> *Fraser*, at para. [57](#); *Meiorin*, at para. [41](#).



**iii. Arbitrariness, stereotyping, and prejudice are not required to establish prima facie discrimination under the Code**

36. The Tribunal properly applied the second stage of the s. 15 test to inform the *prima facie* discrimination analysis under the *Code*. The Supreme Court of Canada clarified in several recent cases that arbitrariness, prejudice, and stereotyping are not required elements of the second stage of the s. 15 test under the *Charter*, and by extension, do not form any part of the test for *prima facie* discrimination under the *Code*.<sup>52</sup>

37. The Supreme Court emphasized that there is no rigid set of factors for a court to consider in assessing whether a claimant has experienced disadvantage, and that disadvantage may be economic, psychological, social, physical, or political.<sup>53</sup> In *Fraser*, the Supreme Court went on to specifically caution that establishing stereotyping, prejudice, or arbitrariness at the second stage of the test is not necessary.<sup>54</sup> Reiterating this point in *Sharma*, the Supreme Court held that these were “not necessary components” of the discrimination test and that they are not “categories into which a claim of discrimination must fit”.<sup>55</sup>

38. For *Code* discrimination claims arising from government laws or policies of general application, the Court of Appeal has instructed that “disadvantage” can “generally” be inferred where a claimant shows that a distinction based on a prohibited ground withholds a benefit available to others or imposes a burden not imposed on others.<sup>56</sup>

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<sup>52</sup> *Elk Valley*, at para. 45, citing *Québec (Attorney General) v. A*, [2013 SCC 5](#), at para. 327; *Fraser*, at paras. 78-80; and *Sharma*, at para. 53.

<sup>53</sup> *Fraser*, at para. 76.

<sup>54</sup> *Fraser*, at paras. 78-80.

<sup>55</sup> *Sharma*, at para. 53.

<sup>56</sup> *Ontario (Disability Support Program) v. Tranchemontagne*, [2010 ONCA 593](#), at paras. 88-90.

39. The Tribunal articulated the disadvantage Ms. Robinson Cooke faced: “The disadvantage was the fact that she could not access the [Guide Dog Benefit], and, as a result, fed her dog and paid for the veterinary care for Sasha out of her personal ODSP allocation, which was provided to ensure that she had adequate funds for food and medication for herself, as needed.”<sup>57</sup>

40. A claimant need not establish that the impugned law or policy **created** the barriers that make the requirement disadvantageous. Clearly, ODSP does not determine the availability of Assistance Dogs International-trained and certified service dogs in Ontario. However, courts and tribunals can consider pre-existing disadvantages protected groups face, “even if the state did not create them”.<sup>58</sup>

**C. This Court should apply a liberal and purposive interpretation of the Tribunal’s authority to award public interest remedies**

***i. Public interest remedies can address systemic discrimination in government policy***

41. The Ontario legislature chose to provide the Tribunal with broad authority to make public interest orders that promote compliance with the *Code*.<sup>59</sup> Subsection 45.2(1)3 of the *Code* provides that the Tribunal, on finding that a party breached the *Code*, may make:

**3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act.**

The *Code* further clarifies in s. 45.2(2) that an order under s. 45.2(1)3 has broad scope:

(2) For greater certainty, an order under paragraph 3 of subsection (1),

<sup>57</sup> *Robinson-Cooke*, at para. [114](#).

<sup>58</sup> *Fraser*, at para. [71](#); *Sharma*, at para. [31](#).

<sup>59</sup> *Human Rights Code*, R.S.O. 1990, c. H.19, s. [45.2](#).

(a) **may direct a person to do anything with respect to future practices**; and

(b) may be made even if no order under that paragraph was requested.

[Emphasis added.]

42. The *Code* is not only remedial legislation, but also “quasi-constitutional” in nature.<sup>60</sup> As a result, the Tribunal’s jurisdiction to make public interest orders must be interpreted broadly and liberally.<sup>61</sup>

43. The *Code* aims to remedy, rather than punish, with the purpose of removing discrimination.<sup>62</sup> With respect to public interest remedies in particular, the aim is to prevent further discrimination and to promote compliance with the *Code*.<sup>63</sup> Since *Code*-protected rights are quasi-constitutional rights, a breach of those rights is particularly serious and justifies effective and meaningful remedies.

44. Public interest remedies are so named because the public has an interest in preventing repeated discrimination. While individual remedies are intended to put the claimant back in the position they would have been in but for the discrimination, public interest remedies are meant to **change** the status quo by addressing the source of the discrimination.<sup>64</sup> The Tribunal properly exercised its remedial discretion in this case to

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<sup>60</sup> *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006 SCC 14](#) [“*Tranchemontagne SCC*”], at para. [33](#).

<sup>61</sup> *Rizzo Shoes*, at para. [36](#); [Legislation Act, 2006](#), S.O. 2006, c. 21, Sched. F, s. [64\(1\)](#).

<sup>62</sup> *Ont. Human Rights Comm. v. Simpsons-Sears*, [\[1985\] 2 S.C.R. 536](#), at para. [12](#).

<sup>63</sup> See, for example, *TA v. 60 Montclair*, [2009 HRTO 369](#), at para. [20](#); *Turner v. 507638 Ontario*, [2009 HRTO 249](#), at para. [51](#), citing *Pchelkina v. Tomsons*, [2007 HRTO 42](#), at paras. [33-34](#); *Nassiah v. Peel (Regional Municipality) Services Board*, [2007 HRTO 14](#), at para. [188](#); and *McKinnon v. Ontario (Correctional Services)*, [2007 HRTO 4](#), at paras. [6](#), [429](#).

<sup>64</sup> *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2019 CHRT 39](#), at para. [74](#), citing Gwen Brodsky, Shelagh Day & Frances Kelly, “The Authority of Human Rights Tribunals to Grant Systemic Remedies” [\(2017\) 6:1 Can J Hum Rts 1](#) at [18](#). See also Brodsky, Day & Kelly, at [3-4](#).

prevent other persons with complex and intersecting disabilities from experiencing the same discrimination as Ms. Robinson-Cooke.

45. Adverse effects discrimination will frequently require systemic remedies because the problems these cases address are often systemic. In *CN v. Canada (Canadian Human Rights Commission)*, the Canadian Human Rights Tribunal found that women seeking work at CN faced discrimination through (among other things) the operation of seemingly neutral requirements, like tests that screened out women disproportionately and were not job-related. The Supreme Court upheld a detailed systemic remedy that included ceasing the discriminatory tests, and a requirement to hire one woman for every four new hires in non-traditional jobs.<sup>65</sup>

46. Just like private respondents, governments are subject to public interest remedies at the Tribunal. In this case, the Ministry provides benefits that are crucial to the well-being of people with disabilities living in poverty. Human rights applications involving ODSP are often systemic in nature; they may affect **all** Ontarians who rely on the program to meet their basic needs. In fact, claimants may choose the Human Rights Tribunal of Ontario over the Social Benefits Tribunal because of the former's power to award public interest remedies. It would undermine the *Code's* effectiveness if public interest remedies were not applicable to state actors, or applied only if they were easy to implement. For these reasons, government resistance to public interest remedies poses a particular concern.

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<sup>65</sup> *CN v. Canada (Canadian Human Rights Commission)*, [\[1987\] 1 S.C.R. 1114](#); See also Brodsky, Day & Kelly, at [9](#), [11-13](#).

47. Section 45.2 of the *Code* permits the Human Rights Tribunal of Ontario to craft broad and detailed orders for future compliance with the *Code* regardless of whether the discriminating party is a public or private actor. The Tribunal has an important ***legislated*** role, set out in s. 45.2 of the *Code*. When exercising its remedial powers, the Tribunal is acting in accordance with legislative intent.<sup>66</sup>

***ii. The remedy in this case aligns with public interest remedies awarded in other cases***

48. In this case, the Tribunal directed the Ministry with respect to a process to follow to bring Policy Directive 9.9 into compliance with the *Code*. The Tribunal did not dictate what the new policy directive must say, nor set timelines for its completion.<sup>67</sup> The Tribunal's order was well within the bounds of the broad remedial discretion conferred upon it by the legislature, and aligns with public interest orders against government respondents upheld by courts in other cases.<sup>68</sup>

49. Human rights remedies should be “broad, creative, and effective”, remove the discrimination found, and prevent future violations.<sup>69</sup> These principles apply no differently where the discriminating party is a government actor.

50. For example, in *Association of Ontario Midwives*, the Ontario Court of Appeal held that a complex order requiring the Ministry to take multiple steps to bring the compensation scheme for midwives into compliance with the *Code*, and to have this

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<sup>66</sup> *Tranchemontagne* SCC, at paras. [35-36](#). See also Brodsky, Day & Kelly, at [33](#).

<sup>67</sup> *Robinson-Cooke*, at paras. [169-175](#).

<sup>68</sup> See, for example, *Ontario (Health) v. Association of Ontario Midwives*, [2022 ONCA 458](#); *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, [2021 FC 969](#) [*“First Nations Child and Family Caring Society of Canada FC”*].

<sup>69</sup> *Heintz v. Christian Horizons*, [2008 HRTO 22](#), at para. [276](#).

compliance monitored by a third party, was reasonable.<sup>70</sup> The Ontario Court of Appeal upheld that order, holding:

The *Code* provides the Tribunal with broad remedial discretion to order remedies that are fair, effective and responsive to the circumstances of the particular case. In exercising her remedial discretion, the Adjudicator fashioned a remedy based on the evidence that was before her. The [Ministry] has not pointed to any legitimate basis for interfering with the Tribunal's discretionary remedial decision.<sup>71</sup>

51. In *First Nations Child and Family Caring Society of Canada*, the Federal Court rejected the Attorney General of Canada's argument that the Canadian Human Rights Tribunal exceeded its authority. The Tribunal had directed the manner in which the federal government ought to implement Jordan's Principle in its policies and procedures.<sup>72</sup>

52. Remedies ordered by the Tribunal need not be easy for governments to achieve. No such requirement exists in either the *Code* or the jurisprudence. "To the contrary, where a remedy will be effective in achieving equality and the protection of human rights, human rights tribunals should not hesitate to make orders that require significant policy or operational changes, the adoption of particular programs, or measures that carry a heavy price tag."<sup>73</sup> Remedial orders may also involve consultation with relevant third parties, including persons with disabilities, recognizing that neither the Tribunal nor the parties may have sufficient expertise to address the discrimination effectively.<sup>74</sup>

53. The determination of public interest remedies falls within the specialized expertise

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<sup>70</sup> *Ontario Midwives*, at paras. [183-184](#).

<sup>71</sup> *Ibid*, at para. [183](#).

<sup>72</sup> *First Nations Child and Family Caring Society of Canada FC*, at paras. [125-39](#).

<sup>73</sup> *Heintz*, at para. [276](#).

<sup>74</sup> *Hughes v. Elections Canada*, [2010 CHRT 4](#), at para. [100](#).

of the Tribunal and attracts a high degree of deference.<sup>75</sup> In *Vavilov*, the Supreme Court noted that expertise may help explain an outcome that seems puzzling on its face.<sup>76</sup> While systemic remedies may appear to a court to be overreaching, they are routine at the Human Rights Tribunal of Ontario and fulfill the purpose of its administrative regime.<sup>77</sup>

54. This Court should confirm the Tribunal's authority to order the kind of meaningful remedies awarded in the decision below. Doing so best achieves the purpose of the *Code* and gives effect to the *Code*-guaranteed right to be free of discrimination.

55. This application will have a significant impact on social assistance recipients with intersecting and complex disabilities that rely on or would benefit from a service dog. This Court ought to bear in mind the effect its decision will have on the human rights of some of Ontario's most vulnerable residents – low-income people living with disabilities.

#### **PART IV – ORDER SOUGHT**

56. ISAC takes no position on the outcome of this application. ISAC seeks no costs and asks that no costs are awarded against it.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 10th day of May, 2024.



Adrian Merdzan & Robin Nobleman  
Lawyers for the Intervener

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<sup>75</sup> *Ontario Midwives*, at para. [183](#); *Hamilton-Wentworth District School Board v. Fair*, [2016 ONCA 421](#), at para. [93](#).

<sup>76</sup> *Vavilov*, at para. [93](#).

<sup>77</sup> See, for example, *Nassiah v. Peel (Regional Municipality) Services Board*, [2007 HRTO 14](#), at para. [212](#); and *McKinnon v. Ontario (Correctional Services)*, [2007 HRTO 4](#), at para. [550](#).

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

**BETWEEN:**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO  
AS REPRESENTED BY THE MINISTER OF CHILDREN, COMMUNITY  
AND SOCIAL SERVICES**

Applicant

-and-

**DESTINY ROBINSON-COOKE and the  
HUMAN RIGHTS TRIBUNAL OF ONTARIO**

Respondents

-and-

**INCOME SECURITY ADVOCACY CENTRE**

Intervener

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**CERTIFICATE OF THE INTERVENER**

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1. I, Adrian Merdzan, lawyer for the Intervener, Income Security Advocacy Centre, certify that:

- (a) in accordance with this Court's attached order and its endorsement in *Ministry of Community and Social Services v. Robinson-Cooke*, [2024 ONSC 2425](#) (Div. Ct.), at para. [17](#), the oral argument on behalf of the intervener will not exceed twenty (20) minutes in length;
- (b) in accordance with this Court's attached order and its endorsement in *Ministry of Community and Social Services v. Robinson-Cooke*, [2024 ONSC 2425](#) (Div. Ct.), at para. [17](#), this factum does not exceed twenty (20) pages in length; and
- (c) I am satisfied that every authority listed in Schedules A and B is authentic.



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Adrian Merdzan  
Lawyer for the Intervener



## SCHEDULE A: LIST OF AUTHORITIES

### I. JURISPRUDENCE

1. *Abbey v. Ontario (Community and Social Services)*, [2016 HRTO 787](#)
2. *Bell ExpressVu Limited Partnership v. Rex*, [2002 SCC 42](#)
3. *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [\[1999\] 3 S.C.R. 3](#) [“Meiorin”]
4. *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [\[1999\] 3 S.C.R. 868](#) [“Grismer”]
5. *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, [2021 FC 969](#)
6. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019 SCC 65](#)
7. *CN v. Canada (Canadian Human Rights Commission)*, [\[1987\] 1 S.C.R. 1114](#)
8. *Corrigan v. Ontario (Disability Support Program)*, [2016 ONSC 6212](#) (Div. Ct.)
9. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2019 CHRT 39](#)
10. *Fournier v. Ontario (Ministry of Community & Social Services)*, [2013 ONSC 2891](#) (Div. Ct.)
11. *Fraser v. Canada (Attorney General)*, [2020 SCC 28](#)
12. *Gray v. Director of the Ontario Disability Support Program*, (2002) [59 O.R. \(3d\) 364](#) (C.A.)
13. *Hamilton-Wentworth District School Board v. Fair*, [2016 ONCA 421](#)
14. *Heintz v. Christian Horizons*, [2008 HRTO 22](#)
15. *Hughes v. Elections Canada*, [2010 CHRT 4](#)
16. *McKinnon v. Ontario (Correctional Services)*, [2007 HRTO 4](#)
17. *Moon v. Ontario (Director, Disability Support Program)*, [\[2002\] O.J. No. 2045](#) (Div. Ct.) [(“BOA”), Tab 1, at 4-5]
18. *Moore v. British Columbia (Education)*, [2012 SCC 61](#)
19. *Nassiah v. Peel (Regional Municipality) Services Board*, [2007 HRTO 14](#)
20. *Ont. Human Rights Comm. v. Simpsons-Sears*, [\[1985\] 2 S.C.R. 536](#)
21. *Ontario (Disability Support Program) v. Tranchemontagne*, [2010 ONCA 593](#)
22. *Ontario (Health) v. Association of Ontario Midwives*, [2022 ONCA 458](#)
23. *Pchelkina v. Tomsons*, [2007 HRTO 42](#)
24. *Québec (Attorney General) v. A*, [2013 SCC 5](#)

25. *R. v. Sharma*, [2022 SCC 39](#)
26. *Rizzo & Rizzo Shoes Ltd. (Re)*, [\[1998\] 1 S.C.R. 27](#)
27. *Robinson-Cooke v. Ontario (Community and Social Services)*, [2023 HRTO 1133](#)
28. *S.H. v. D.H.*, [2019 ONCA 454](#)
29. *State Farm Mutual Automobile Insurance Company v. Old Republic Insurance Company of Canada*, [2015 ONCA 699](#)
30. *Stewart v. Elk Valley Coal Corp.*, [2017 SCC 30](#)
31. *Surdivall v. Ontario (Director, Disability Support Program)*, [2014 ONCA 240](#)
32. *TA v. 60 Montclair*, [2009 HRTO 369](#)
33. *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006 SCC 14](#)
34. *Turner v. 507638 Ontario*, [2009 HRTO 249](#)
35. *1611-08216 (Re)*, [2017 ONSBT 3115](#)
36. *1803-01624 (Re)*, [2020 ONSBT 1725](#)
37. *1806-04181 (Re)*, [2021 ONSBT 159](#)
38. *1810-06613 (Re)*, [2021 ONSBT 161](#)
39. *1908-06007 (Re)*, [2020 ONSBT 889](#)
40. *1911-08753 (Re)*, [2021 ONSBT 2128](#)
41. *2001-00384 (Re)*, [2022 ONSBT 560](#)
42. *2003-02030 (Re)*, [2021 ONSBT 610](#)
43. *2206-02511 (Re)*, [2023 ONSBT 1185](#)
44. *2212-05838 (Re)*, [2023 ONSBT 2715](#)
45. *2301-00073 (Re)*, [2023 ONSBT 3017](#)
46. *2301-00383 (Re)*, [2023 ONSBT 4668](#)

## II. SECONDARY AUTHORITIES

1. Gwen Brodsky, Shelagh Day & Frances Kelly, “The Authority of Human Rights Tribunals to Grant Systemic Remedies” [\(2017\) 6:1 Can J Hum Rts 1](#)

## SCHEDULE B: TEXT OF STATUTES, REGULATIONS, AND BY-LAWS

### I. STATUTES

#### A. [Human Rights Code](#), R.S.O. 1990, c. H.19

##### **Constructive discrimination**

**11 (1)** A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

- (a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or
- (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right. R.S.O. 1990, c. H.19, s. 11 (1).

**(2)** The Tribunal or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

**(3)** The Tribunal or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship.

##### **Orders of Tribunal: applications under s. 34**

**45.2 (1)** On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.
3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act.

**(2)** For greater certainty, an order under paragraph 3 of subsection (1),

- (a) may direct a person to do anything with respect to future practices; and

(b) may be made even if no order under that paragraph was requested.

**B. Legislation Act, 2006, S.O. 2006, c. 21, Sched. 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.

**C. 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.

**II. REGULATIONS**

**A. O. Reg. 222/98: GENERAL under the Ontario Disability Support Program Act, 1997, S.O. 1997, c, 25, Sched. B**

**Indexing of Certain Amounts**

**29.1 (1)** In this section,

“change to the cost of living” means, for a given year, the amount calculated using the following formula and rounded to the nearest thousandth:

$$(A \div B) - 1$$

in which,

“A” represents the cost of living index for the year in question, and

“B” represents the cost of living index for the year immediately preceding the year in question; (“variation du coût de la vie”)

“cost of living index” means, for a given year, the average Consumer Price Index for Ontario (All-Items), as published by Statistics Canada under the authority of the *Statistics Act* (Canada), for the months that make up the 12-month period ending on September 30 of the previous year. (“indice du coût de la vie”)

(2) This section applies to the following provisions:

1. Paragraph 1 of subsection 30 (1).
2. Subsection 30 (2).
3. The table to paragraph 2 of subsection 31 (2).
4. Paragraph 5 of subsection 31 (2).
5. Paragraphs 2 and 3 of subsection 32 (1).
6. Paragraphs 1, 2 and 2.1 of subsection 33 (1). O. Reg. 2/23, s. 1.

(3) On and after the first date on which an adjustment occurs under this section, the provisions to which this section applies are deemed, for all purposes of this Regulation, including for the purposes of this section, to set out the amounts as most recently adjusted under this section.

(4) Subject to subsection (6), if the change to the cost of living for a year is a positive number, on July 1 of that year each of the amounts set out in the provisions to which this section applies shall be adjusted using the formula,

$$C + (C \times D)$$

in which,

“C” represents the relevant amount, and

“D” represents the change to the cost of living for the year in which the adjustment occurs.

(5) If an adjusted amount is not a whole dollar amount, it shall be rounded up to the next whole dollar.

(6) No adjustment shall occur during a year if the cost of living index for the year is less than the cost of living index for the last year during which an adjustment occurred.

(7) If no adjustment occurs in a year by application of subsection (6), for the first subsequent year during which an adjustment is to occur, the value of “D” in subsection (4) shall represent the change to the cost of living for that year, calculated using the cost of living index for the last year during which an adjustment occurred as the value of “B” in the definition of “change to the cost of living” in subsection (1).

(8) Before July 1 in a year during which an adjustment is to occur, the Director shall publish on a website of the Government of Ontario the adjusted amounts that take effect on that date.

### **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, which is the sum of the following:
  - i. The amount determined in accordance with the following Table:

TABLE

Column 1 Number of dependent adults included in the benefit unit	Column 2 Recipient if there is no spouse included in the benefit unit	Column 3 Recipient with spouse included in the benefit unit, if Column 4 is not applicable	Column 4 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 3, 5.1, 5.2, 6, 7 or 8 of subsection 4 (1)
0	\$706	\$1,018	\$1,409
1	\$1,094	\$1,216	\$1,607
2 or more	\$1,293	\$1,437	\$1,828

- ii. If more than two dependent adults are included in the benefit, an additional amount of \$222 for each subsequent dependent adult included in the benefit unit.

- 1.1 An amount of \$143, in the case of a benefit unit in which no spouse is included and all dependants included in the benefit unit are less than 18 years old.
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

Number of Dependants other than a Spouse	Recipient Amount in dollars	Recipient and Spouse Amount in dollars
0	272	431
1	430	530
2	526	628

For each additional dependant, add \$102.

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 \$2,070.

(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.

### 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.

(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 Amount in dollars
1	522
2	821
3	889



4	964
5	1,041
6 or more	1,078

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 \$76 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 3, 5.1, 5.2, 6, 7 or 8 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.

## Benefits

**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:

[...]

## Guide Dog

5. If a member of the benefit unit has a guide dog, an amount not exceeding \$84 for the care of the guide dog.

## III. OTHER TEXTS

### A. Ontario Disability Support Program policy directives for income support

#### Preamble

[...]

The purpose of the policy directives is to enable consistent decision-making across the province and to ensure accountability for those decisions. The policy directives provide staff with the guidance they need to make decisions regarding the client's entitlement to

services, supports and benefits. The ODSP legislation and policies allow for discretion in many areas. In keeping with the spirit of the legislation, staff should use this discretion to ensure that clients receive all of the benefits to which they are entitled. In accordance with its purpose of providing income support to persons with disabilities; the ODSP Act, regulations and policies should be interpreted flexibly and broadly.

### **9.9 – Guide dog benefit**

#### ***Summary of policy***

Each member of the benefit unit who has a specially trained dog certified for use as a guide, hearing or service dog by an accredited training facility is eligible for an amount of \$84 per month to assist with the costs for the routine care of the dog.

#### ***Application of policy***

[...]

#### ***Accredited training facilities for service dogs and hearing dogs***

To be certified as a service or hearing dog, the dog must be trained and certified by a facility that meets the minimum standards established by Assistance Dogs International and the facility must be a member of Assistance Dogs International.

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO  
AS REPRESENTED BY THE MINISTER OF  
CHILDREN, COMMUNITY AND SOCIAL SERVICES**  
Applicant

-and-

**DESTINY ROBINSON-COOKE and the  
HUMAN RIGHTS TRIBUNAL OF ONTARIO**  
Respondents

**Court File No. 501/23**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)  
PROCEEDING COMMENCED AT TORONTO**

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