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Commission for the Review of Social Assistance in Ontario
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Dear Ms. Lankin and Dr. Sheikh,

RE: Comments on Commission Discussion Paper 2

We are writing to you in order to thank you for the work that has already gone into the Commission for the Review of Social Assistance in Ontario and to offer some constructive comments on your 2nd Discussion Paper. Our comments relate to both the general policy directions of the Commission paper and to several important specific issues, some of which are absent from the discussion paper. We will address the Commission's discussion questions as appropriate where we are able to do so.

Please note that we have not addressed issues specific to the aboriginal community in our submissions. We trust that our colleagues in the aboriginal community and aboriginal services sector will provide helpful submissions in that regard.

Introduction: The Need for Real Reform

Poverty is not only a matter of income, but also, more fundamentally, a matter of being able to live a life in dignity and enjoy basic human rights and freedoms. It describes a complex of interrelated and mutually reinforcing deprivations, which impact on people's ability to claim and access their civil, cultural, economic, political and social rights. In a fundamental way, therefore, the denial of human rights forms part of the very definition of what it is to be poor.¹

*Louise Arbour
United Nations High Commissioner for Human Rights (as she then was)*

¹ From the Foreword to "Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies", Office of the High Commissioner for Human Rights, Geneva
<http://www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf>

The Hamilton Community Legal Clinic / Clinique juridique communautaire de Hamilton (“the Clinic”) is disappointed in the overall approach to reform taken by the Commission in its 2nd Discussion Paper. Unfortunately, the Commission seems to have chosen an approach to reform that places a primary focus on structural and service delivery issues with an eye to real or imagined administrative savings, while skirting the fundamental questions of adequacy and eligibility.

In particular, the Clinic is extremely concerned regarding the Commission’s suggestion that the issue of “adequacy of benefits” should be balanced against 2 other “key objectives”: firstly “fairness as between people who are receiving social assistance and low-income people who are working but not receiving social assistance”, and secondly “work incentives”.

As we will discuss later in these submissions, Canada and Ontario have ratified the United Nations International Covenant on Economic, Social and Cultural Rights which guarantees the “right to an adequate standard of living” to every person in Ontario and Canada.² Thus, aside from the various other practical and ethical reasons for addressing adequacy as a necessary and overarching issue for real reform, the Governments of Canada and Ontario, and by implication this Commission, are bound by our international legal obligations to protect human rights.

Therefore we would strongly suggest to the Commission that it approach the issue of adequacy as a fundamental and necessary condition for social assistance reform: that is, if the Commission does not recommend that provincial social assistance rates provide an adequate standard of living, independent of other considerations, then this review of social assistance will be fundamentally flawed.

We understand that this Commission is operating at a time when the Government of Ontario is under pressure to cut its operating deficit, and that the Government of Ontario has currently chosen to seek advice on how it might do so by cutting expenditures.³ The aforementioned advice has come from former bank economist Don Drummond in the form of a commission that has been told to only look at government expenditures without considering the possibility of increased government revenues. We would suggest that the Commission for the Review of Social Assistance in Ontario is under no such constraints. Indeed the Commission has been specifically tasked with looking to best practices in other jurisdictions. To that end, we would strongly suggest that the Commission look internationally to jurisdictions that have focused on providing adequate assistance to recipients, such as the Scandinavian countries.

While we can appreciate that the Commission is feeling pressure from Government and the recent report of the Commission on the Reform of Ontario’s Public Services⁴ to weigh any discussion of adequacy against the current political direction for deficit reduction, this is not the primary mandate of this Commission. Although the stated

² See *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331, Can TS 1980 No 37 (entered into force 27 January 1980, accession by Canada 14 October 1970).

³ See “Public Services for Ontarians: A Path to Sustainability and Excellence”, Report of the Commission on the Reform of Ontario’s Public Services, by Don Drummond, February 2012
<http://www.fin.gov.on.ca/en/reformcommission/chapters/report.pdf>

⁴ Indeed the Drummond Commission has made specific recommendations to the Social Assistance Commission. See *supra*. note 3 at pp. 263-269

mandate of the Commission does not refer specifically to “adequacy”, we would suggest that this fundamental aspect of the Commission’s mandate must be read in as an international legal obligation of the Government of Ontario and an ethical imperative to the people of Ontario. Any recalcitrance by the current government to provide adequate evidence-based social assistances rates should in no way constrain the crucial recommendations of this Commission – recommendations that will be oft-repeated for years to come, and will be considered by successor governments also.

Chapter 1: Reasonable Expectations and Necessary Supports to Employment

The Clinic supports the recommendations of our sister clinic, the Income Security Advocacy Centre (“ISAC”), generally and also specifically with regard to this Chapter as ISAC has undertaken substantial consultations and research in this area.

We would also like to comment on particular aspects of this Chapter and raise some red flags regarding certain areas.

This general discussion concerning employment programs and supports is critical to social assistance reform. It is vitally important that the social assistance system in Ontario be closely linked and integrated with an employment supports program that is responsive to a diversity of need and the variety of barriers that people face to the labour market. The Clinic has tried to sketch some important considerations for such an approach in our previous submission, and we would again refer the Commission to our earlier submission in that regard.

That being said, we are extremely concerned regarding the discussion of participation agreements and assessment tools. Too often, we at the clinic witness a social assistance system that employs the participation agreement as a punitive aspect of the system: that is, recipients are funneled into a participation agreement that aims toward the shortest route to employment, whether or not such employment will help the recipients to remain off of social assistance, and often whether or not the participation agreement is realistic for the recipient. Any non-compliance by the recipient generally results in suspension and termination of benefits.

The participation agreement should be a collaborative effort between the recipient and the delivery agent whereby a number of employment/training goals are developed and a plan is instituted to reach those goals. Appeal rights should be built into the system to settle disagreements and problems.

Given the current experience with participation agreements, it is troubling to read that the Commission is considering instituting participation agreements for persons with disabilities who are in receipt of provincial social assistance. To that end the Discussion Paper looks at assessment tools for determining the vocational capacity of persons with disabilities. The Discussion Paper points out that such assessments have been employed in Australia and the UK and that there have been issues “regarding the validity of the tool and the way in which it is implemented”.⁵

⁵ See “Up to 500,000 wrongly denied incapacity benefit, figures show”, by Allegra Stratton, The Guardian, 3 January 2011:

<http://www.guardian.co.uk/politics/2011/jan/03/incapacity-benefit-compass-survey-dwp>

The implementation of participation agreements for ODSP recipients could have drastic repercussions for persons with disabilities in Ontario. It is hard to imagine how such a system could be implemented that would not cause severe levels of stress for many persons with disabilities, especially given the current internal adjudication practices at the Disability Adjudication Unit (“DAU”) of ODSP **whereby applicants with disabilities are routinely denied eligibility as the DAU clings to a more stringent disability test that does not conform to the views of the courts or to a plain reading of the legislation.**⁶

Indeed we were encouraged to see some recognition of the prevalence of mental health issues among ODSP applicants in the Discussion Paper. However, we were then disappointed that the Discussion Paper contained no analysis of why this is so. Anecdotally, it has been the experience of the Clinic that many of our clients develop mental health issues, or experience a serious exacerbation of those mental health issues, while they are dealing with the stress of trying to subsist on provincial social assistance benefits. The clinic represents many hundreds of ODSP applicants per year and our caseworkers are privy to the narratives of how our clients arrived at that point in time where they applied for ODSP benefits. To make matters worse, many of those ODSP applicants with mental health issues will be denied eligibility (often multiple times) before they are successful on appeal to the Social Benefits Tribunal. Our clinic represents appellants at the stage where they have appealed their denial of eligibility to the Tribunal.

Thus, our clinic is also extremely concerned regarding the discussion of assessment tools and of creating two new disability programs: one for persons with “severe” disabilities who will not be returning to the workforce, and another disability “supplement” for those persons with disabilities who are able to return to the workforce. In fact, the Clinic would suggest that consideration be given to expanding the current ODSP eligibility requirements to include a “permanently unemployable”⁷ category in recognition that not all substantial barriers to employment are medical in nature.

In the opinion of the Clinic, assessment tools should only be used to assess the kinds of supports and assistance needed by a person, and should not be used to monitor or determine eligibility. Assessment tools for vocational capacity and employability will be fundamentally flawed in that they will never capture the complex and changing nature of disabilities over time.

The foregoing points also begin to illustrate some of the serious problems inherent in the discussion around creating two separate disability programs: there will be fundamental problems in dividing disabled persons between those who can work and those who cannot due to the complex and changing nature of disabilities over time; such a split in the program will create administrative complexities and inefficiencies that will likely result in adverse health effects for recipients and may ultimately result in

⁶ For a discussion of some of the problems with the DAU see the previous submissions of the Hamilton Community Legal Clinic (September, 2011) at pp. 9-13.

⁷ The Commission will be aware that there was a “permanently unemployable” category employed by the Ministry prior to the introduction of the Ontario Disability Support Program.

increased costs across provincial ministries (MCSS, Health, MAG); and even the current test is applied by the Ministry in a way that does not accord with the views of the courts or even a plain reading of the legislation.

While we have tried to provide some helpful comments with regard to some of the discussion regarding disability benefits, we would refer the Commission to the comments of our colleagues in the ODSP Action Coalition for more detailed comments. The Clinic supports the submissions of the ODSP Action Coalition.

Chapter 2: Appropriate Benefit Structure

The Human Rights Lens

The Clinic believes that this is the most critical and foundational section of the Discussion Paper: if the government of Ontario does not pay adequate benefits to individuals and families in receipt of provincial social assistance, then the system will fail as a social safety net. Without adequate benefits, we will continue to see rampant homelessness, children changing schools repeatedly due to economic evictions and being unable to fully participate in school due to their family's poverty, foodbanks being as ubiquitous as fast food restaurants (albeit with limited access), and seriously compromised public health.

We are encouraged by some of the language in this section around the specific issues of adequacy and around the level of income “necessary to obtain the basics, such as safe, clean housing, a nutritious diet, clothing and transportation”. As the Commission is aware, our clinic was instrumental in developing a proposed piece of legislation entitled “An Act to Establish the Ontario Social Assistance Rates Board”, that was introduced as a private member's bill by the Hon. Ted McMeekin⁸ in the Legislature in 2007.⁹ That proposed legislation would have created an expert panel at arm's length from government that would be tasked with recommending evidence-based social assistance rates to the Provincial Government on an annual basis. The recommendations of the panel would be based on an analysis of the real costs of housing, nutritious food, and other necessities in communities across Ontario.

It is interesting to note that in discussing whether the provincial minimum wage might be an appropriate reference wage, the Discussion Paper observes “minimum wage is a political construct without a clear methodology for arriving at the figure”, but strangely does not make the same observation about provincial social assistance rates which similarly lack any clear methodology, or evidence-based approach.

The Clinic is particularly disappointed that the Commission minimizes the critical need for adequate benefit rates among recipients (and in the larger community), and the clear international obligation of the Government of Ontario to provide adequate levels of benefits to those individuals and families who rely on provincial social assistance

⁸ The bill was introduced before the Hon. Mr. McMeekin was appointed to cabinet.

⁹ See the former Bill 235, “An Act to Establish the Ontario Social Assistance Rates Board”, Private Member's Bill, Mr. Ted McMeekin (Ancaster, Dundas, Flamborough, Aldershot) (as he then was), 1st reading: June 4, 2007 (unfortunately the legislature was prorogued the following day in anticipation of an election) http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=1681&isCurrent=false&ParlSessionID=

programs. The Discussion Paper minimizes the issue of adequacy by repeatedly asserting that “adequacy of benefits” must be balanced against two other “key objectives”:

- Fairness as between people who are receiving social assistance and low-income people who are working but not receiving social assistance;
- Work incentives.¹⁰

This approach is wrong on its face. The Government of Ontario, through the Government of Canada, has ratified the United Nations International Covenant on Economic, Social & Cultural Rights (“the Covenant”). Article 11 of the Covenant reads in part:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.^{11 12}

Thus the Government of Ontario has an overarching international legal obligation to ensure rates that reflect an adequate standard of living for all recipients of provincial social assistance benefits. This legal obligation is independent of other social policy considerations, such as those put forward by the Commission in its discussion paper.

The United Nations Commission on Economic Social and Cultural Rights (“CESCR”) has had occasion in 1998 and 2006 to comment on the inadequacy of social assistance in Canada. One of our predecessor clinics presented a report, entitled “The Right to an Adequate Standard of Living in Hamilton” to the CESCR in Geneva during its periodic review of Canada in 2006.¹³ In its “Concluding Observations” on the Canadian Government Report, the CESCR made a number of comments regarding the inadequacy of social assistance including a direct recommendation:

¹⁰ See “Discussion Paper 2: Approaches for Reform” by the Commission for the Review of Social Assistance in Ontario, at page 18

¹¹ See *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3, Can TS 1976 No 46 (entered into force 3 January 1976, accession by Canada 19 May 1976) [ICESCR] at article 11. <http://www2.ohchr.org/english/law/cescr.htm>

¹² For other international obligations to an adequate standard of living see; *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, art 27, Can TS 1992 No 3 (entered into force 2 September 1990, ratified by Canada 13 December 1991) at art 27. *International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966, 660 UNTS 195, art 5, Can TS 1970 No 28 (entered into force 4 January 1969, ratified by Canada 14 October 1970). *Convention on the Rights of Persons with Disabilities*, GA Res 61/106, UNGAOR, 61st Sess, Supp No 49, UN Doc A/61/611, (2007) 2 at art 28.

¹³ See “The Right to An Adequate Standard of Living in Hamilton”, by Chabriol Colebatch, Craig Foye, and Deirdre Pike, The Income Security Working Group, 2006. <http://www2.ohchr.org/english/bodies/cescr/docs/hamilton.pdf>

The Committee Urges the State party to establish social assistance at levels which ensure the realization of an adequate standard of living for all.¹⁴

Currently, the Commission for the Review of Social Assistance in Ontario looks prepared to make recommendations to the Government of Ontario that ignore the Province's International Human Rights obligations. In so doing, the Commission appears set to recommend a process for setting Social Assistance Rates that will likely breach our international human rights obligations.

A Standing Committee of the House of Commons has also had occasion to comment on this issue:

Poverty reduction measures must not be seen only as charity work or only be guided by moral principles, but must be set within a human rights framework, specifically the recognition that governments have a duty to enforce socio-economic and civil rights. Adopting a human rights framework also limits the stigmatization of people living in poverty. The Committee fully endorses such a framework in this report.¹⁵

Given the critical need for enforcement with regard to the right to an "adequate standard of living", the Clinic urges the Commission to recommend an amendment to the Ontario Human Rights Code to include the following section:

s. 2.5 Every person who is in receipt of provincial social assistance has a right to a level of assistance that will allow them an adequate standard of living as guaranteed in a number of international treaties, particularly Article 11 of the International Covenant on Economic, Social & Cultural Rights.

The Practical Realities Revisited

As previously mentioned, there are also extremely compelling practical reasons for ensuring that the issues of adequacy is addressed directly and as soon as possible. Hamiltonians and Ontarians continue to witness worrying rates of poverty and an emergency situation with regard to the depth of poverty in our communities. As has been pointed out by many commentators and is acknowledged in the Commission's discussion papers, many individuals and families in receipt of provincial social assistance cannot meet their most basic needs. For example, many single unattached individuals who have their own apartment when they begin receiving Ontario Works assistance actually receive a level of assistance that ensures that they will lose their housing within a few months of being on assistance, unless they are fortunate enough

¹⁴ See "Concluding Observation of the Committee on Economic, Social and Cultural Rights: Canada", Committee on Economic, Social and Cultural Rights, Thirty-Sixth Session, Geneva, 1-19 May 2006, at Paragraph 53, page 8. Also see paragraphs 11(c), 20, 21, 26, 27, 28, and 62.

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/427/83/PDF/G0642783.pdf?OpenElement>

¹⁵ Senate, Subcommittee on Cities of the Standing Senate Committee on Social Affairs, Science and Technology, *In from the Margins: A Call to Action on Poverty, Housing and Homelessness* (December 2009) (Chair: Honourable Art Eggleton, PC) at p. 2 [Senate, *In from the Margins*].

to receive a housing subsidy. The fact that social assistance recipients are regularly facing the choice between paying the rent and feeding the kids is borne out by the foodbank statistics: about 75% of those accessing a foodbank in Hamilton are in receipt of provincial social assistance benefits.¹⁶

This depth of poverty among `welfare` recipients is not surprising, given that “welfare” rates were cut by about 22% overnight in 1995 leaving many individuals and families unable to subsist. Since that time the consumer price index (“CPI”) has risen about 35%, while “welfare” rates have increased less than 15%. Currently, it would take about a 63% increase in basic rates to restore 1993 levels.¹⁷ Even these startling numbers tend to underestimate the depth of real poverty faced by those on social assistance since the CPI does not fully reflect the increases in expenses faced by social assistance recipients whose major expense are housing, utilities, and food where increases have consistently outpaced the CPI.¹⁸

What the Commission Heard

We would suggest that the way in which the Commission has addressed adequacy by weighing it against two other key objectives is not only an approach that is in breach of Ontario’s international human rights obligations, it is also not reflective of the submissions made to the commission from across the province. The clinic’s own submissions were clear that the issues of adequacy and evidence-based rates are conditions precedent for any real reform of the social assistance system in Ontario, and judging from the companion document to the Discussion Paper,¹⁹ it appears that stakeholders across the province agree. The submissions include:

- *“The current social assistance rates are one of the greatest challenges to human services in the province”*
- Rates should reflect regional variations;
- Rates should cover additional necessities such as telephone and transportation;
- The Province should employ a Rates Board (see the former Bill 235) to set rates;
- Rates should be updated annually using the CPI;
- People should be able to keep more of their earnings;
- Market wages should be higher than SA rates;
- Drug coverage, dental care, and vision care should be available to all low-income Ontarians;
- People should receive a Guaranteed Annual Income;

¹⁶ See “Hamilton Hunger Count 2011” by Hamilton FoodShare at:

<http://www.hamiltonfoodshare.org/downloads/Hunger%20Count%20Report%202011.pdf>

¹⁷ see “Less on their Plate: Canada’s Poorest People Facing a Frightful Food Crisis”, by John Stapleton, 1 September 2011, <http://www.policyalternatives.ca/publications/monitor/less-their-plate>

¹⁸ Unfortunately, even the Ontario Child Benefit, which was meant to assist low-income families in Ontario, is clawed back at least partially from every family in receipt of provincial social assistance benefits and those families are treated inequitably with regard to the amount of the benefit that is clawed back. We would refer the Commission to the submissions of our colleagues from the Ontario Association of Social Workers, Hamilton Branch, Social Action Committee, in this regard.

¹⁹ “What we Heard: A Summary of Discussions on Social Assistance”, Commission for the Review of Social Assistance in Ontario, February 2012.

Fairness and Work Incentives

The Discussion Paper suggest that stakeholders' apparently universal concerns regarding the adequacy of rates should be balanced against: 1) the need for fairness between social assistance recipients and low wage workers (who are not in receipt of social assistance), and 2) the need for work incentives.

It is unfortunate that the Commission appears to be pitting low wage workers against individuals and families in receipt of public assistance in Ontario. While we at the Clinic strongly agree that "fairness" is a major concern when designing the social assistance system in Ontario, we strongly disagree that the issue of fairness to low wage workers (who are not on social assistance) should be related directly to social assistance recipients. Rather, we would suggest that it is generally unfair that low wage workers do not receive certain fundamental benefits, such as basic health and drug coverage, unless they are in receipt of social assistance. We can presume that the low wage worker (who is not on social assistance) has a higher income than they would receive on social assistance, since otherwise they would be eligible for social assistance and the question of fairness would be moot.

Thus, the issue of basic health/drug coverage (and some other limited benefits) are the fundamental considerations in discussing whether a low wage worker (who is not on social assistance) is better off than someone on social assistance. The issue of fairness is therefore resolved if low wage workers (who are not in receipt of social assistance) are provided these fundamental benefits that should be available to everyone. The issue of fairness is not between low wage workers and social assistance recipients, it is an issue of fairness between those who have basic health and drug coverage (including high-wage workers), and those who do not. Keeping social assistance rates artificially low does not solve the issues, it rather exacerbates the unfairness to low income individuals and families in Ontario, whether they are in receipt of social assistance or not.

The Clinic strongly supports extending basic health and drug benefits to all low-income Ontarians. It is a strategy that is almost universally supported. Even the Commission on the Reform of Ontario's Public Services, with its very austere approach to provision of public services, felt there was a compelling case to extending the Ontario Drug Benefit and other specific benefits on this basis. We are also in support of a much more robust earned income supplement, as well as a housing benefit to help all low income Ontarians pay for their housing.

The Discussion Paper indicates that "the literature suggests that more people are attracted to work as the financial rewards for working increase". One would not be surprised at such a correlation, but unfortunately the Discussion Paper does not go on to note that some of the research in this area points to a very modest disincentive correlation.²⁰

²⁰ With regard to the Mincome project in Manitoba, a social policy experiment from 1974-1979 whereby participants were provided with a guaranteed annual income, Derek Hum and Wayne Simpson write:

It should also be noted that many individuals and families who are in receipt of provincial social assistance will also be working, but not earning enough income to make them ineligible for benefits. Currently about 9% of the Ontario Works caseload in Hamilton have some employment income.²¹ When one also considers the thousands of Ontario Works recipients who are deferred from participation or have restriction on their participation (including the approximately 1500 who are awaiting a decision or an appeal regarding ODSP eligibility), then it becomes obvious that there is a high percentage of Ontario Works recipients for whom incentives are virtually meaningless.²²

Another group for whom the discussion of work incentives is not applicable are children. For the Ontario Works caseload in Hamilton, 38% of the benefit members are children with 19% below age 7, 12% aged 7 to 13 years, and 8% aged 13 to 17 years. Currently, the social assistance system in Ontario mortgages the futures of these children in order to support a theoretical hypothesis regarding work incentives that may not have a strong factual basis, and which is, at any rate, not applicable to them. These young community members represent the future of our communities in Ontario; when we mortgage their future, we mortgage our own.

The Commission's thinking about incentives seems to misunderstand the complex barriers faced by people on social assistance, such that even economists with great faith in market mechanisms believe that "increasing fiscal incentives to enter the labour market and restricting access to transfer income are unlikely to achieve much."²³ The emphasis on incentives is tied to the idea of a "welfare wall," where people are assumed to stay on social assistance as they are better off than in low-wage work. A more accurate representation is that of the "employment cliff," where efforts in the labour market involve clawing one's way towards security given fierce competition for scarce jobs, limited supports for dealing with barriers, complex rules around benefit clawbacks, and the uncertainty and instability of many entry-level jobs. Ignoring adequacy may

On the whole, the research results were encouraging to those who favour a GAI. The reduction in work effort was modest: about one percent for men, three percent for wives, and five percent for unmarried women.

See "A Guaranteed Annual Income? From Mincome to the Millennium" by Derek Hum and Wayne Simpson, Policy Options, January-February 2011, at p. 80

For a discussion of the difference between the Mincome experiment in Canada and some similar experiments in the US which found a more pronounced disincentive correlation (and of some of the methodological problems in the US approach), see:

"Working Paper No. 348: Income Guarantees and the Equity-Efficiency Tradeoff" by Steven Pressman, July 2005, Luxembourg Income Study Working Paper Series, at pp. 165-166

²¹ Electronic communication from Kerry Lubrick, Director, Employment and Income Supports, City of Hamilton, dated 22 February 2012.

²² A participant can be deferred and/or restricted from participating in employment activities. As an example a single parent may be deferred from participation if they have young pre-school children without daycare. If a person is unable to lift greater than 50 lbs, there is a restriction placed on the file to prevent referrals to employment opportunities that may cause harm to the individual. The number of **deferred participants for January 2012 was 2,866** and the number of **restrictions was 3,830**. These measures are unreliable as participants may be deferred from participation and still have a restriction placed on their file. In addition, approximately 1500 cases are currently ODSP pending.

See *supra* note 21

²³ John Richards, "Reducing Lone Parent Poverty," C.D. Howe Institute, Commentary, No. 305, June 2010, at p. 8. http://www.cdhowe.org/pdf/commentary_305.pdf

theoretically keep the welfare wall low, but only serves to raise the employment cliff by physically and mentally running down those on social assistance.²⁴

We also believe that person in receipt of provincial social assistance benefits should be able to retain 100% of their earnings until they reach the LICO poverty level, while persons with disabilities should be able to retain their earnings to some higher income amount that recognizes the additional expenses incurred by persons with disabilities.

Disability Benefits

We would suggest that persons living with disabilities will require a higher level of assistance in order to meet their basic needs. Therefore, we strongly support rates that reflect those additional expenses along with targeted benefits that address particular expenses (such as the special diet benefit, mandatory special necessities, etc.). The former Bill 235 “An Act to establish the Ontario Social Assistance Rates Board”, which the clinic helped draft and which we support, recommended that the Basic Needs Allowance analysis include:

Additional expenses that may be incurred by persons with disabilities in order for them to participate fully in society, including expenses relating to education, over the counter medical goods, entertainment and clothing...²⁵

We continue to believe that persons with disabilities should receive an increased level of benefits. However, as previously mentioned, we are skeptical of recommendations to increase the number of disability programs such as the suggestion of a disability supplement and a “basic income plan for people with severe disabilities”.

We are particularly concerned at the effects of more disability program eligibility determinations: Our experience is that the Disability Adjudication Unit regularly issues untenable denials of eligibility, of which some are appealed to the Social Benefits Tribunal, resulting in a very high overturn rate, and where the Ministry faces no adverse costs for having delayed the finding of eligibility. If an entirely new multiplicity of disability determinations were now required of this ministry we would expect to see analogous problems with adjudication and assessment, mirroring the experience of the United Kingdom where a high number of work capacity assessments are overturned on appeal.²⁶

²⁴ This paragraph is written by Dr. Peter Graefe, Associate Professor of Political Science at McMaster University, and draws on some of Peter’s own research as well as discussions with clinic Staff Lawyer Craig Foye regarding the metaphor of the “employment cliff”. It is identical to a paragraph in the submission of the Hamilton Roundtable for Poverty Reduction. Some of the submissions under this chapter and chapter 4 will be similar or identical to the Roundtable submissions in that regard given our clinic’s concurrent involvement in also drafting the Roundtable submissions.

²⁵ See subsection 7(2)(a)(vii) of Bill 235, “An Act to Establish the Ontario Social Assistance Rates Board”, Private Member’s Bill, Mr. Ted McMeekin (Ancaster, Dundas, Flamborough, Aldershot) (as he then was), 1st reading: June 4, 2007 (unfortunately the legislature was prorogued the following day in anticipation of an election) http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=1681&isCurrent=false&ParlSessionID=

²⁶ See “Up to 500,000 wrongly denied incapacity benefit, figures show”, by Allegra Stratton, The Guardian, 3 January 2011: <http://www.guardian.co.uk/politics/2011/jan/03/incapacity-benefit-compass-survey-dwp>

We would refer the Commission to our earlier submission for a discussion of problems with the Disability Adjudication Unit. The reality of these disability determinations which are adjudicated in a very conservative manner, is that disabled people regularly wait long periods of time before receiving benefits to which they are entitled, or do not receive those benefits at all if they fail to appeal an adverse eligibility determination.

The Complexity of Benefits

We support the merging of the shelter allowance and the basic needs allowance for the purpose of simplifying eligibility and compliance monitoring, and to provide more flexibility to recipients, as well as some guarantee that they will receive timely shelter benefits whether they have been able to provide a landlord letter or not. We also support the elimination of the category of dependant adult for analogous reasons.

We do not agree with the suggestion that the special diet program be replaced by a different program delivered by the Ministry of Health & Long Term Care if such a change in any way reduces the benefit or further limits eligibility. The provincial government originally suggested this change in response to a finding by the Human Rights Tribunal of Ontario that it had discriminated against persons with disabilities with regard to the program.²⁷ The human rights applications (of which the previously mentioned is the lead case) arose out a policy decision by the ministry a number of years ago to change the program resulting in drastically reduced special diet allowance benefits and the termination of special diet benefits for certain conditions. Many persons in Ontario currently rely on these benefits to purchase healthy food and the results could be disastrous for public health if those benefits were taken away.

Chapter 3: Easier to Understand

It seems that everyone agrees, from the recipient to the administrator, that the social assistance system is too complex. The hundreds of rules that recipients are required to follow, as well as the complexity of those rules, means that even the most sophisticated recipients will have trouble understanding and adhering to the many rules.

The experience of the Clinic has been of a social assistance system that is designed to repeatedly suspend and terminate benefits for recipients and to minimize benefit payments even when an obvious need is apparent. Our experience is of a system that employs inadequate and confusing computer-generated decision letters as a file management tool. That many of our clients, and even our caseworkers, often have trouble deciphering the reasons for these computer-generated decisions letters does not seem to matter. Too often we witness clients who have had their benefits terminated or have incurred a substantial overpayment (often many thousands of dollars) as a result of rules they did not understand, and the decision is communicated to them in a decision letter that lacks sufficient particulars and is confusing even to a seasoned lawyer or paralegal.

²⁷ See [D.A.] v. Ontario (Community and Social Services), 2010 HRTO 1377, 2010 HRTO 1377 (CanLII), File Nos. HR-1656-08 to HR-1692-08 (Wright)
<http://www.canlii.org/en/on/onhrt/doc/2010/2010hrto1377/2010hrto1377.html>

Given such a system it is almost inevitable that recipients would feel like cheaters, as is acknowledged by the Commission.²⁸

The Hamilton Community Legal Clinic is supportive of many of the suggestions for specific rule changes set out in the companion “What We Heard” document from the commission. These rule changes include:

- Employing the legal definition of spouse under the Family Law Act;
- Elimination of the dependant adult category;
- Child support payments as exempted income²⁹;
- Better coordination and integration between social assistance and RGI housing subsidies to reduce marginal effective tax rates;
- The exemption of Ontario Student Assistance Program loans as income;
- The hiring of peer mentors to help people apply for social assistance, who may have barriers that make it difficult for them to do so;
- Improved ODSP eligibility adjudication procedures at the Disability Adjudication Unit;
- Decision letters should contain full particulars and be in plain language (and available in different languages);
- Options to average fluctuating employment income over a period of time.

Some of these options are addressed by the Commission in the previous section with regard to dealing with the complexity of benefits, while the current section strangely appears to only consider the complexity of the system from an administrative perspective rather than the recipient perspective.

Surveillance vs. Audit Based Approach

It is very important that the social assistance system provides effective and transparent mechanisms for ensuring compliance and managing risk. Unfortunately, too often in the past we have seen provincial governments choose to slash benefits or rates in order to address public and media-based complaints of rampant non-compliance or fraud. Such an approach is wrongheaded as it does not address the problem but rather destroys the social safety net on which individuals and families across our Province rely. As has been pointed out in the past, it is somewhat akin to killing the doctor to cure a disease.

To that end, we are interested in the discussion concerning a move from the current surveillance approach to risk management toward a more audit-based approach as is seen in the tax system. That being said we would strongly caution the Commission that an audit-based system raises the prospect of larger average overpayments being ordered against recipients, since evidence of compliance will be requested and reviewed less often. We would recommend that strategies be in place, before an audit-based system is rolled out, that would seek to mitigate these problems, such as: plain language communications to clients in a variety of languages that clearly set out the client’s rights and obligations, regular check-ins by workers to ensure that client’s are

²⁸ *supra* note 19 at p. 23

²⁹ The clinic recognizes the need for a child support income threshold were this change implemented.

aware of their rights, and the removal or clarification of many of the rules that are unfair or complicated for recipients. Also, given the likelihood of an increased incidence of large overpayments being determined, recipients should be given a longer period of time to appeal such overpayments (perhaps 6 months), and a lenient policy on extension of time to ensure that a recipient has a right to dispute any overpayment at the Social Benefits Tribunal.

There is also a serious danger that the audit-system will be un navigable for many of the most vulnerable members of our society. Many people who will be audited will have serious trouble providing all of the documentation required by the audit and will need supports from the system to do so, along with additional time to do so (without their benefits being suspended or terminated in the interim). Even person who are able to provide the documentation will need some clear direction regarding how long they will be required to retain documentation.

Considerations of “risk tolerance” should always be weighed against the recipients’ needs regarding a system that is very responsive, easy to understand, and preserves ample appeal rights.

However, it should be pointed out that such a change does very little to address the complexity of the system. The Commission has clearly heard from stakeholders across the province regarding many of the rules with which they or their clients are dealing. Many of the rules are unreasonably intrusive and the system inquires regarding every penny received by the person, with the default position being that those monies will be deducted from the social assistance dollar for dollar, subject to any income exemptions. The discussion regarding risk management ignores the issue of the many complex and unfair rules in the system and thus, although an important topic for discussion, will not make the system easier to understand for our clients.

Treatment of Assets

The Clinic agrees with many stakeholders across the Province that the asset levels should be raised, particularly for those in receipt of Ontario Works benefits.

We believe that the asset levels for those on social assistance should be raised to the ODSP level to help facilitate someone becoming more financially resilient when making the transition back into the workforce.

We are strongly in support of Registered Retirement Savings Plans being exempted as assets up to \$250,000 so that individuals and families can retain some retirement savings while receiving social assistance. This will also reduce old age benefits required when the person turns 65.

Chapter 4: Viability Over the Long Term

Unfortunately, this chapter of the Discussion Paper fails to address much of the input from stakeholders across the province but rather concentrates on service delivery and structural options relating to the delivery of Ontario Works, the Ontario Disability

Support Program, Employment Ontario services, Assistance for Children with Severe Disabilities and Temporary Care Assistance.

The Clinic is unable to offer an opinion on the service delivery options as set out in the Discussion Paper given the extremely short timeline for these submissions to be provided to the Commission (approximately one month).

Many of the service delivery options set out by the Commission in the Chapter would involve substantial changes to the delivery of social assistance and employment services in Ontario. We can comment that any new service delivery system must increase responsiveness to recipient concerns and questions, must provide easier access to workers and to physical plant facilities, must remove barriers to recipients receiving services, and must improve real outcomes for recipients.

It is not entirely clear how these three options would address the viability of social assistance over the long term. Strangely, the Drummond report, released about a week after the Discussion Paper, also recommends that consideration be given to combining the programs at the municipal level in order to exploit service delivery efficiencies.³⁰

Explore the Possibilities

It should be noted that while Don Drummond is limited in his review of Ontario public services to the expense side of the equation, the Social Assistance Review should abide no such constraints. If one is to Review Social Assistance in any meaningful way then we must ask: what are the possibilities for social assistance in Ontario?

We know that increased social assistance rates will result in improved health outcomes for those on social assistance.³¹ In addition, we can also say that educational outcomes will improve for children who are no longer forced to change schools repeatedly due to the poverty of their family. We can also say that social assistance has many positive economic benefits for communities and for the Province of Ontario³².

Although some may protest that increased social assistance payments will have an adverse effect on the economy, the research does not bear this out.³³ A corollary to this

³⁰ Recommendation 8-5 of the Drummond Report reads:

The Commission for the Review of Social Assistance in Ontario should examine system design options that deliver a more efficient and higher-quality service to social assistance recipients. This examination should consider combining Ontario Works and the Ontario Disability Support Program, and having the combined program delivered at the local level. It should also address the further integration of employment services available through Employment Ontario.

Final Report of the Commission on the Reform of Ontario's Public Services, by Don Drummond, February 2012

³¹ A quick review of the submissions already received by the commission indicates that you have already received ample evidence of this fact. Indeed the improved health outcomes and expenses may be quite stark as is suggested by a recent analysis of the previous mentioned Mincome project (supra note 5). See:

<http://nipawinoasis.com/documents/37.3.forget.pdf>

³² See "The Economic Impact of Social Assistance in Hamilton" by Dr. Atif Kubursi, Econometric Research Limited, April 2011

³³ See "Working Paper No. 348: Income Guarantees and the Equity-Efficiency Tradeoff" by Steven Pressman, July 2005, Luxembourg Income Study Working Paper Series

argument is that the higher taxes that **may** be required to provide adequate benefits will adversely affect the economy, but in fact countries with relatively high rates of taxation (countries that incidentally also provide some of the most generous social programs) also outperform our country and most other lower-taxed countries with regard to economic performance.³⁴

We would therefore urge the Commission to explore the possibilities of a more robust social assistance program in Ontario, one that provides at least an adequate level of assistance to recipients. The benefits to health, education and equality are obvious, but we may also see substantial benefits to our economy. These best practices point the way to a system that will be viable over the long term and should be explored in the Commission's final report.

Chapter 5: An Integrated Ontario Position on Income Security

We commend the Commission for looking at the way social assistance interacts with other programs and issues in order to come to an integrated position. We share the Commission's concern regarding unreasonably low eligibility rates for employment insurance (particular among some groups such as female-led lone parent families), barriers faced by newcomers including recognition of foreign trained professional credentials, startling rises in income inequality, limited drug and dental coverage for low-wage earners, inadequate minimum wages, the absence of a robust federal earned income supplement, and the absence of a national housing strategy.

We also share the Commission's concern regarding the interaction between provincial social assistance and other programs. It is clear that there could be better coordination between the provincial social assistance system and other programs such as CPP(d) and EI. However, some of the biggest problems occur in the interaction between social assistance and provincial rent-geared-to-income subsidies. As has been pointed out, the interaction results in startlingly high marginal effective tax rates when RGI tenants who are in receipt of provincial social assistance start working.³⁵ These are both provincial programs and it is unclear why the government has allowed this situation to persist for so many years.

Ultimately, an integrated social assistance system can be provided through the Ontario Works and the Ontario Disability Program if those programs are re-designed to ensure responsiveness such that individuals and families receive an adequate amount every month – an adequate rate as determined by an arm's length expert panel that sets evidence-based rates.

³⁴ See "The Social Benefits and Economic Costs of Taxation: A Comparison of High and Low-Tax Countries" by Neil Brooks and Thaddeus Hwong, Canadian Centre for Policy Alternatives, December 2006.

³⁵ See "Why is it so tough to get ahead: How Our Tangled Social Programs Pathologize the Transition to Self Reliance" by John Stapleton, the Metcalf Foundation, November 2007
http://www.openpolicyontario.com/Publications/Metcalf_final-for_Dec5-07.pdf

Conclusion

We thank the Commission for the opportunity to comment on its second Discussion Paper and ask you to please accept our submissions and seriously consider the comments therein. We would urge the Commission to adopt an approach to social assistance reform that is consistent with the Province's international human rights obligations and that will ensure that recipients are treated in a dignified manner.

Regards,

Hugh Tye
Executive Director