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Welfare Warfare

the battle cry

The Harris government is waging another round of war on welfare. Ontario is poised to launch Bill 142 – the latest missile in its anti-welfare arsenal. Back in October 1995, the province slashed welfare benefits by an unprecedented 21.6 percent; only recipients with disabilities and seniors receiving benefits under the former Guaranteed Annual Income for the Disabled program were exempt from the cut. The (then) Minister of Community and Social Services offhandedly advised welfare recipients to cope with this unexpected bombshell by buying 69 cent tins of tuna to cut food costs.

Bill 142 does more than fundamentally change the face of welfare in the province. The impending legislation also sets out sweeping new powers for the Cabinet that will be exempt from legislative review, public input or appeal. [1]

To understand the true impact of this Bill, a distinction first must be made between an Act and regulations. An Act sets up a general framework for social or economic purposes and includes general rules to govern certain actions and behaviours. An Act originates within, and must be passed by, an elected legislature.

Regulations are enacted under the authority of an Act and provide details to articulate its general rules. Regulations are developed by the Lieutenant Governor in Council (i.e., the Cabinet) or the responsible Minister. Unlike an Act which must be scrutinized and passed by a legislature, regulations are subject to only the weakest of legislative scrutiny. Regulations are merely tabled in the legislature; while there may be an opportunity to raise questions, there is no debate or vote. In contrast to an Act, regulations are laws that governments can make and pass at any time without notice, consultation or public debate. Regulations can be challenged in court – but only if they fall outside the scope of the Act or if they conflict with the Canadian Charter of Rights and Freedoms.

Legislation can be as detailed or as skeletal as a government wishes. In the case of welfare reform, the Ontario government has chosen the bare-bones route – possibly because it

does not want public input or legislative debate. Virtually the entire design of the new welfare Act will be set out in regulation – far from the scrutiny of the Ontario legislature and from public debate.

Bill 142 gives Cabinet the power to make regulations concerning every minute detail of welfare provision in 48 designated areas. These include the determination of budgetary requirements, income and asset levels for eligibility; the determination of welfare benefits; the standards regarding employment assistance and community participation (described below); the process for securing and discharging a lien; and the procedures for conducting an internal review and for appeals.

While regulations for the new Act already have been drafted, they have not been made public. The government is effectively waging war on welfare – and is keeping secret the details of its battle plan. This secrecy stands in sharp contrast to government action with respect to business interests. It is common practice for governments to release in advance any regulations that affect a given industrial sector. The regulations are reviewed and discussed with any substantially affected parties before these regulations are considered ready to table in the legislature.

The Ontario government effectively will bring in its new welfare 'law' through regulation. Ironically, this same government has vowed to cut regulation; it set up a legislative red tape committee with a mandate to identify excessive regulation in the province – clearly a nuisance to business.

The new Act includes in its intended purpose the need to be "accountable to the taxpayers of Ontario" (implying that the Acts that they replaced were not?). Welfare reform is being justified on the grounds that the changes will make the new programs more accountable to taxpayers. In reality, welfare reform makes the programs accountable only to the Cabinet – to whom the Act affords vast powers with little recourse or protection for welfare applicants or recipients, or for the people who know them in any capacity.

the new weapon

Bill 142 replaces several pieces of existing welfare legislation with the Ontario Works Act and the Ontario Disability Support Program Act. The stated purpose of the Ontario Works Act is to establish a program that recognizes individual responsibility and promotes self-reliance through employment. The new program will provide temporary financial assistance to those most in need while they satisfy obligations to become and stay employed.

The Disability Support Program makes provision for income and employment supports for eligible persons with long-term and severe disabilities. Bill 142 states explicitly that government, communities, families and individuals share responsibility for providing such supports – in stark contrast to the self-reliance theme promoted by the Ontario Works Act.

Recipients of the former General Welfare Assistance (GWA) and single parents receiving financial aid under the Family Benefits Act (FBA) will be transferred to Ontario Works. Current recipients of Family Benefits will be 'grandfathered' under the Ontario Disability Support Program. However, new applicants will have to qualify for the latter program under the revised definition of disability which requires the presence of a severe and prolonged impairment.

While we have concerns with both programs, the primary focus of this paper is the Ontario Works Act – clearly the more insidious and questionable of the two pieces of legisla-

tion. The Act is a poor law in several key respects.[2] It forces compulsory participation in employment assistance – an approach whose results have been found negligible in jurisdictions where it has been tried. The program effectively could turn welfare recipients into a class of indentured workers with few occupational protections. The Ontario Works Act vests in the Cabinet a vast array of powers while seriously limiting the scope for legislative debate, public scrutiny and recipient appeals. Finally, there are questions as to the stability of the fiscal base supporting the proposed new arrangements, given the disentanglement fiasco currently under way.

the attack

i. eligibility

Under the former system, applicants had to qualify for assistance on the basis of a needs test. Their income and assets had to fall below certain levels and their needs had to exceed their available income. There still will be a needs test to establish eligibility although it is expected that the asset level requirements will change with the new arrangement.

Under the old system, administrators had some discretion regarding eligibility for assistance. Under Ontario Works, however, applicants will be required not only to produce certain information in order to qualify but also to provide *verification of this information*. Cabinet will have the power to prescribe the required information – which may or may not be easy, or even possible, to provide. The requirements will include personal identification information, financial information and "any other prescribed information."

These eligibility requirements raise serious concerns as to what information will be expected and whether, in fact, applicants will be able to obtain it. For example, the Act expressly allows administrators to require that applicants provide information about third parties, even though the former may have no legal right to demand this information.

An individual unable to produce the required information or unable to provide appropriate verification will be deemed ineligible for assistance. A verification of the past three years of bank records, for example, would cost several hundred dollars – expensive under the best of circumstances but prohibitive for someone with barely any income. The requirements to provide and verify certain information could pose dangers for women who have been victims of violence and must now seek information or verification from an abusive partner. People living on the streets often lose the pieces of identification they may require to establish eligibility for welfare.

Concerns also have been raised about the personal identification information to which the Act refers. This information will include photographs, signatures and fingerprinting. In fact, the extensive media coverage of the fingerprinting issue has resulted in several amendments to the legislation that build in some safeguards around the collection and use of 'encrypted biometric information.'

Welfare caseloads in Ontario likely will drop dramatically over the next few years. The decline will have little to do with the successful placement of recipients in paid employment. The new welfare system effectively will reduce its caseloads – simply by creating a wide range of barriers to eligibility.

ii. special assistance

The Ontario Works Act provides for two forms of assistance: financial assistance and

employment assistance. Financial assistance includes basic needs and shelter; benefits such as prescription drugs, eyeglasses and dental care; and emergency assistance.

In contrast to the former welfare system, the new Act makes no explicit reference to Supplementary Aid or special assistance. These forms of assistance used to be available at the discretion of individual municipalities. Supplementary Aid and special assistance helped offset the costs of extraordinary needs such as transportation to hospitals, dentures, special eyeglasses and care of a guide dog.

Neither the Ontario Works Act nor the Ontario Disability Support Program Act provides explicitly for these forms of assistance. Bill 142 defines benefits as "prescribed items, services or payments" but does not delimit their scope. In fact, the decision as to the "items, services and payments that may be included as benefits and determining who may be eligible for benefits" is now the purview of Cabinet and will be spelled out in the as-yet-unreleased regulations.

The province has indicated that it intends to introduce vision and dental care for children. This announcement is good news; it represents crucial assistance essential to the well-being of children, yet often prohibitive in terms of cost. However, there are questions as to the status of benefits for adults, most of which were provided on a discretionary basis. Municipalities were required only to make available the items designated as 'special necessities' – diabetic supplies, surgical supplies and dressings, and transportation reasonably required for medical treatment – whether or not they made available other forms of special assistance.

While most special items were provided on a discretionary basis, the province at least shared a designated percentage of municipal costs and the arrangement was open-ended. Under the new financing arrangement for welfare (discussed below), municipalities will be required to shoulder a far greater burden of the cost of items of special need. In fact, the province is expected to place a ceiling on the amount that it will contribute to these special items. The new financing likely will come with a strict cap – effectively creating serious limits to the provision of special assistance.

The dollar ceilings will place in jeopardy the benefits now made available in certain municipalities: vision and dental care for adults, wheelchair repairs, EPI pens for severe allergies, rental of hospital beds for those who receive health care at home, support hose for persons with severe diabetes and items required by persons undergoing chemotherapy (e.g., hairpieces). This health-related assistance is becomingly increasingly important, given the trend towards early release from hospital as well as out-patient and in-home care.

The new financing also could threaten the employment start-up benefit to help welfare recipients get back to work and the community start-up benefit to offset extraordinary moving expenses, such as leaving home because of family violence or moving from an institution into the community. The all-encompassing regulations will shed more light on the status of this work- and health-related assistance.

iii. mandatory participation

Employment assistance set out in the new legislation is intended to help welfare recipients find and keep a job. It includes community participation and other prescribed employment measures, such as job search and short-term skills training. The new program will require welfare recipients to take part in some form of commu-

nity service or engage in an employment-related activity while in receipt of welfare.

There is nothing wrong with trying to help welfare recipients acquire the knowledge and skills they need to move off this program of income support. Welfare is the worst of all income programs; it ranks lowest in terms of adequacy and highest on the scale of intrusiveness and humiliation. The intent to help people escape welfare is not at issue.

The problem with the proposed law arises from the way in which the province plans to provide access to the employment 'opportunities.' The mandatory nature of the program speaks volumes about the province's attitudes towards welfare recipients and the need to force them to improve their lives. The vast majority of welfare recipients would volunteer for work-related opportunities. There is no need for a policy that both feeds and reinforces the worst stereotypes about poor people.

While a small minority may choose not to participate in whatever new plan is introduced, it is wasteful and inappropriate to set up the entire program on a mandatory basis. Compulsory participation forces welfare workers to act as welfare police rather than as supportive employment counsellors. The little empirical data that exists on workfare finds that positive results follow from supportive investments which offer welfare recipients a range of options.[3]

Interestingly, the Ontario government appears to have no use for mandatory provisions when it comes to requiring certain behaviours of employers. The repeal of employment equity legislation is a case in point. Yet mandatory provisions appear to be entirely appropriate when applied to welfare recipients – who, in the government's view, clearly need the strong arm of the law to shape up.

The inordinate emphasis on enforcement means that monitoring will take priority over employment counselling and support. The current system likely will not be able to handle the volume of monitoring and enforcement that the new program will create, resulting in poor-quality service for all. Limited resources stretch only so far. Several jurisdictions in the United States have started to ease up on their enforcement provisions and to redirect scarce resources towards employment-related services.

The mandatory approach appears to be extending beyond welfare recipients. To facilitate the implementation of workfare by December 1997, Ontario had offered some transition funds to municipalities. But in August 1997, the province notified local governments that they *must* have their respective workfare programs in place by October 1997 – or risk losing all their transition monies. Prior to this time, there never had been any mention of penalty for late start-up. The heavy-handedness applies to far more than just welfare recipients.

iv. cheap labour

A key component of employment assistance is 'community participation' – defined vaguely and almost tautologically in the Act as "participation in community activities that contribute to the betterment of the community." Such participation can involve 'volunteer' work for municipalities or for nonprofit organizations that provide community service.

One could argue that, in theory, the government's brand of community service helps welfare recipients acquire work-related skills. In practice, though, the policy will be highly problematic.

The proposed placement of people in community service is an unfair burden to voluntary organizations struggling with reduced budgets, overworked staff and stressed-out volunteers. Most of these organizations are scrambling to cope with the fallout of government cuts. In many cases, the work carried out by volunteers requires training and supervision.

The community participation approach also can create a pool of poorly-paid, marginalized workers who can become a source of cheap labour. The province has been careful to caution local governments that jobs currently performed by paid workers cannot be converted into workfare placements. The concurrence of unions is required in developing these placements. But because these nondisplacement requirements have no legal weight, they are legally unenforceable.

Moreover, the Act states clearly that these participants are not considered employees and are not to be granted any of the benefits associated with paid work. Under Section 73 of the Ontario Works Act, "participation in a community participation activity or a prescribed activity under this Act is not employment for the purposes of any Act or regulation that has provisions regulating employment or employees, except as prescribed." Ironically, this section is now suspended in jurisdictional no-man's-land. Because of minor distractions during the legislative review of Bill 142, government members failed to pass this particular Section. It no doubt will be reintroduced as soon as legislatively possible.

Section 74 allows the Cabinet to make regulations regarding the conditions of eligibility for assistance including the obligation to satisfy requirements related to employment measures and community participation. But there is no provision that allows recipients to present reasonable grounds for nonparticipation. The wording effectively implies that there is no legal provision to protect recipients who cannot participate (e.g., because of illness or temporary disability) – or who object to participating on the grounds that the work may be dangerous or hazardous to health. And there are no appeals with respect to employment assistance if it does not affect eligibility for or the amount of income assistance.

v. loans and liens

The pitfalls of Ontario Works go well beyond its mandatory requirements. People who receive welfare only to tide them over until another income program kicks in could be required to repay their benefits. For some people, welfare may become a loan.

Administrators also will be required under "prescribed circumstances" to be determined by regulation to place a lien, or legal claim, against welfare recipients' property. Recent amendments to Bill 142 exempt the property of persons who qualify for benefits under the Ontario Disability Support Program.

Administrators will have the authority to deduct a portion of basic financial assistance to cover support payments or prescribed government debts. Presumably, the latter refer to outstanding child support, unpaid income taxes or student loans. The administrative power to deduct certain debts from an already meagre amount raises concerns about the adequacy of the remaining income benefits paid to many recipients. There potentially could be wide disparities between basic financial assistance and basic financial needs.

Finally, welfare payments may be directed to the recipient's guardian of property (e.g., land-

lord or utility), effectively by-passing the recipient. Welfare benefits also may be paid to a third party appointed by the administrator if the latter is not satisfied that the money will be used appropriately. Legislative amendments to the Bill will require third parties to account for the use of welfare benefits received on behalf of a welfare recipient.

Ironically, the provision for third-party payments directly contravenes the preamble to the Bill which "recognizes individual responsibility and promotes self-reliance." The purpose of this provision is supposedly to protect children whose parents 'prefer to drink, smoke or bingo away their welfare benefits' – reinforcing the stereotype that poor parents are poor parents.

In short, the law provides for a wide range of circumstances under which welfare recipients will be deemed incapable of handling money. Ironically, they could be required to repay money that they basically have earned through compulsory participation in employment services. The pay-back provisions are made worse by the serious limits imposed on the right of appeal.

vi. limited appeals

The Ontario Works Act requires administrators to give notice to the applicant or recipient of a decision that may be appealed and is required to advise the individual that he or she may request an internal review of that decision. In effect, internal review is the first step in the new appeals process. Evidence from other systems with two-stage appeal systems have found that relatively few people proceed to the more formal review stage – largely because of the associated stress and exhaustion. And because municipalities now will be required to foot the bill for internal review, they likely will want to discourage this form of appeal.

Only decisions regarding eligibility for or the amount of basic financial assistance or mandatory benefits may be appealed. Under the former system, items deemed to be special necessities, the community start-up benefit and the employment start-up allowance were all mandatory benefits and therefore subject to appeal. Under the new Act, the regulations will spell out those benefits considered to be mandatory.

The Ontario Works Act sets out the key decision areas that *cannot* be appealed. These include decisions regarding: employment assistance that does not affect eligibility for or the amount of income assistance; discretionary benefits; assistance in exceptional circumstances; payment of benefits directly to a landlord, utility company or other third party; a variation, refusal or cancellation of assistance caused by an amendment to the Act or regulations; and emergency assistance.

There is also no appeal of a "prescribed" decision (i.e., a decision prescribed by regulations which are not yet available). This last provision represents a sweeping power; it effectively means that the government could expand and restrict appeal rights by regulation.

Furthermore, the Act sets out no obligation to give notice of non-appealable decisions – such as the provision to pay money to a landlord. Neither is there any requirement that information about appeals be made available in various languages or multiple formats.

Bill 142 replaces the Social Assistance Review Board with a Social Benefits Tribunal. Unlike its predecessor, the Social Benefits Tribunal's power to interpret the law will be severely truncated. The new Act allows the Cabi-

net and Minister to change any part of the welfare system they wish – at any time.

A serious problem with respect to appeals arises around the issue of interim assistance. It is unclear whether interim assistance will be provided during the internal review stage of an appeal. An appellant cannot request interim assistance until an internal review is complete and the individual decides to appeal the case to the Social Benefits Tribunal. The lack of security during this interim period can be devastating – it could result in serious financial hardship or even the loss of a home pending a decision from an internal review.

Neither is there any assurance that interim assistance will be provided during the more formal appeals process. The Tribunal may direct an administrator to pay interim assistance to an applicant or recipient if the Tribunal is satisfied that the individual *will* suffer financial hardship during the period required for the tribunal to complete its review. By contrast, under the former system, the Social Assistance Review Board could order interim assistance if it were satisfied that such assistance *may be* required. In fact, the Social Assistance Review Board had set out clear criteria for determining financial hardship; these should continue to be used under the new appeals process.

The former Social Assistance Review Board was required to pay travel costs to ensure that appellants could attend their hearing. The provision of this assistance is now discretionary and is restricted to travel and living expenses. Equally important is the fact that the new Social Benefits Tribunal has the power to order written hearings and to conduct business electronically. There is no provision, however, to cover any of the appellant's costs that may be associated with the provision of information in writing.

Finally, there are a wide range of procedural concerns regarding the new appeals system. These concerns raise questions as to whether the appeals system will become an empty shell – which effectively affords no substantive protection on any front. A detailed analysis of procedural concerns can be found in a report prepared by the Steering Committee on Social Assistance entitled *Brief to the Standing Committee on Social Development on Bill 142*. [4]

vii. welfare police

Unfortunately, in this case, the term 'welfare police' is not simply a colourful expression. The Ontario Works Act will create sweeping new powers to conduct investigations and gather information on welfare recipients.

The Act allows the director or any delivery agent (defined as a municipality or district social services board) to establish a local fraud control unit. In fact, the Act creates a new position of 'eligibility review officer' who may examine not only current eligibility forms but also past information provided under earlier requests for assistance.

While the details will be spelled out in regulation, Bill 142 does set out certain powers that will be conferred upon eligibility review officers – including the right to apply for and act under a search warrant. The Act also creates an offense for "obstructing a person engaged in a welfare investigation" – which could be interpreted to mean that neighbours, employers or other parties may be required, under threat of fine or imprisonment, to provide information on a welfare recipient under investigation.

viii. privatization

Another major concern with Bill 142 is the fact that it allows for the wholesale privatization of the welfare system. The Act calls for welfare to be provided through a "delivery agent" for a geographic area; by regulation, the Minister may designate a municipality or district social service administration board as a delivery agent for each geographic area.

But Section 45 of the Ontario Works Act also allows delivery agents themselves to enter into an agreement with regard to any matter pertaining to the administration of the Act. It is not difficult to envisage the employment-related parts of the system being contracted out, in typical American-style welfare reform, to private companies. The concern arises around the appropriateness of work placements by organizations whose primary purpose is to make a profit for themselves. Municipalities will be expected to meet certain placement targets; failure to reach these targets within designated periods no doubt will see this component of the program extricated from their control. It is also possible that fraud investigations will be contracted out to private detectives whose activities are neither directly monitored nor supervised by a public authority.

ix. financing problems

The limited available evidence suggests that welfare-to-work efforts must be adequately resourced. Workfare works only when there is a substantial investment in human resources and when the economic health of the community is good. Workfare does not work when there are few available jobs and when investment in the program is minimal.

The fiscal health and sustainability of Ontario Works is questionable in light of associated changes recently introduced by the province. Ontario had embarked upon a so-called disentanglement exercise to set out a more clear division of responsibility and financing between the province and municipalities for designated areas of service.

Under the old system, the province was responsible for programs which paid benefits to individuals and households likely to be unemployed over an extended period. These programs included Family Benefits generally paid to single parents and the Guaranteed Annual Income System for the Disabled. Municipalities were responsible for the administration and delivery of benefits under the General Welfare Assistance Act intended for persons considered employable – i.e., those currently out of work and deemed likely to find a job in the short term.

In what was billed as a *quid pro quo* deal, Ontario announced in January 1997 that the province would assume responsibility for education and child welfare. Municipalities, in turn, were to pick up more of the tab for welfare (50 percent of all welfare benefits and administrative costs), child care and home care, and the costs of public health (except for immunization and communicable disease control), social housing, public transit (including parallel transit for the disabled), additional kilometres of highway and land ambulance services. An amended plan introduced by the province in May 1997 turned even more of the fiscal burden over to local governments. The plan called for municipalities to pay 50 percent of education costs but only 20 percent of welfare costs (although municipalities still would be required to pay half the administration).

The province's announcement of the new division of powers ignored most of the recommendations of its own disentanglement commission (commonly known as the 'Who Does What' panel). The panel clearly was opposed to the devolution of additional welfare costs to municipalities. Local governments must rely on a property tax base that is relatively limited in scope, compared to the provincial income tax base and other revenue sources, such as the provincial sales tax. Moreover, a property tax base is regressive. Because it is constant across income levels and not linked directly to ability to pay, it creates a higher burden on lower-income households.

The province backed down somewhat on the welfare issue and agreed to share the new programs by making municipalities responsible for the delivery of Ontario Works and the provincial government responsible for the Ontario Disability Support Program. But municipalities will be required to pay for 20 percent of Ontario Works and the Ontario Disability Support Program (even though the latter will be run by the province) as well as 50 percent of all administrative costs for both new welfare streams.

Most municipal governments will not have the money to invest in employment-related programs as well as provide benefits for income assistance. Ontario Works likely will be chronically underfunded – making it difficult, if not impossible, to achieve positive outcomes. The result will be further reductions in benefits, exclusion of people from the program, cutbacks in staff and privatization of the program.

Despite cutbacks and the chronic shortage of funding for welfare, the Ontario government did manage to find $900,000 to publicize why Ontario Works is a good thing for the province. This money could have been far better spent on direct welfare benefits, skills development or support services for recipients. Moreover, if the program is "fair" and is "working" as the near-full-page ads claim, there would be no need to convince Ontario readers (read 'voters') of this fact.

Good laws don't need an advertising budget.

Sherri Torjman

The author gratefully acknowledges the contribution of Ian Morrison, a Toronto lawyer specializing in social welfare law and policy, and Co-Chair of the Ontario Social Safety NetWork that prepared a series of Backgrounders on Bill 142.

Endnotes

1. For an extensive review and analysis of Bill 142 and its potential impact, see the Backgrounders produced by the Ontario Social Safety NetWork and available at the following website: http://wchat.on.ca/public/tab/1spc.htm. For a discussion of the impact of the proposed legislation upon persons with disabilities, see Browne, A. (1997). "Social Assistance Reform Act, 1997: Analysis Respecting Persons with Disabilities." Solutions Management Group, P.O. Box 24099, Main Station, St. Catharine's, Ontario, L2R 7P7, (905) 688-5598.

2. The English Poor Law Report of 1834 put forward the idea of the 'workhouse test' to separate the deserving from the undeserving poor. Those who sought relief would have to prove their need by voluntarily committing themselves and their families into central workhouses as a condition of receiving assistance. See Struthers, J. (1996). *Can Workfare Work? Reflections from History*. Ottawa: Caledon Institute of Social Policy, February.

3. See Torjman, S. (1996). *Workfare: A Poor Law*. Ottawa: Caledon Institute of Social Policy, February.

4. Steering Committee on Social Assistance. (1997). *Brief to the Standing Committee on Social Development on Bill 142: Social Assistance Reform Act 1997*. Toronto: Clinic Resource Office, Ontario Legal Aid Plan.