Ontario Human Rights Commission
Submission regarding

Interim Reports of the Commission for the Review of Social Assistance in Ontario

March 2012
1. Overview

In February 2012, the Commission for the Review of Social Assistance in Ontario (CRSAO) released two papers: What We Heard: A Summary of Discussion on Social Assistance, and Approaches for Reform. The Ontario Human Rights Commission (OHRC) commends the CRSAO for its efforts to report concisely on what are very complex issues. We look forward to reviewing the CRSAO’s final report and recommendations to improve social assistance anticipated later this year.

The review of social assistance has far-reaching implications for historically disadvantaged and marginalized individuals and groups in Ontario. The CRSAO interim findings and proposals raise human rights issues that affect First Nations and Aboriginal people living off reserve, other racialized groups, women, families and persons with disabilities, among others.

A number of individuals and organizations have commented on the CRSAO’s work this past year from a human rights perspective including submissions from the Law Commission of Ontario, the Wellesley Institute, the Income Security Advocacy Centre, Colour of Poverty, Colour of Change and the ARCH Disability Law Centre. The OHRC supports many of the concerns raised by these groups who have significant expertise in the areas of social assistance and human rights.

The OHRC will focus its comments on the issues and barriers identified in the CRSAO’s reports that connect to the OHRC’s current priority initiatives dealing with racism experienced by Aboriginal people and other groups as well as disability, especially mental health discrimination.

2. Social assistance is about human rights

Social assistance is a human rights matter recognized under domestic and international law.

Part 1 of the Ontario Human Rights Code sets out that every person has a right to equal treatment without discrimination in the social areas of services, occupancy of accommodation, employment, contracts and vocational associations.

Discrimination is prohibited on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability, receipt of public assistance (accommodation) and record of offences (employment). Discrimination can include differential treatment, harassment and failure to accommodate Code-related needs.

Section 9 of the Code says that no person shall do anything directly or indirectly that infringes a right under Part 1. This recognizes that something done in one social area, like services, may impact rights under other social areas, like employment and housing.
Social assistance is a “service” within the meaning of the Code and the components of its legislation, funding and programs link to other social areas of the Code including employment, housing and contracts (e.g. community service agreements) and potentially other services. This means the government’s goals, legislative design and program provisions for social assistance must have regard for the Human Rights Code which generally has primacy over all other Ontario law.

Moreover, governments at all levels in Canada must have regard for national law, like the Charter of Rights and Freedoms, and international law, like the UN Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of Persons with Disabilities. These laws recognize the interdependent nature of rights between adequate income, housing, education, work and equality.

Article 9 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to social security, including social insurance. Article 11 recognizes the right to an adequate standard of living (food, clothing and housing). Article 6 recognizes the right to work and training supports. Article 13 recognizes the right to education. Article 2 recognizes these rights are to be enjoyed without discrimination.

Article 28 of the Convention on the Rights of Persons with Disabilities also sets out the right to an adequate standard of living (including food, clothing and housing) and social protection for persons with disabilities and their families living in poverty (including assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care). The Convention also recognizes the rights to education, work and training.

Similarly, Ontario law and policy are beginning to recognize the intersection between socio-economic rights and equality rights of the type set out in Ontario’s Human Rights Code. Section 2(2)3 of the Poverty Reduction Act, 2009 states, “That not all groups of people share the same level of risk of poverty. The poverty reduction strategy must recognize the heightened risk among groups such as immigrants, women, single mothers, people with disabilities, Aboriginal peoples and racialized groups.”

The Ontario Ministry of Municipal Affairs and Housing also recognizes poverty reduction, simplified delivery of income assistance and protection from human rights discrimination as important elements of its Affordable Housing Strategy. The Ministry’s Affordable Housing Program also permits priority selection to improve equality for Aboriginal people, recent immigrants, persons with disabilities, low-income seniors, persons with mental illness, victims of domestic violence, people on social assistance and the working poor.

The connection between membership in a group identified under the Code and the likelihood of having low income has been recognized by the Human Rights Tribunal of Ontario in several decisions, as well as by the Courts.2

Taken together, provincial, national and international human rights law and policy should guide the government’s redesign and delivery of social assistance in Ontario. Social
assistance legislation, policy and programs must recognize and account for the historical and ongoing disadvantage, social marginalization, discrimination, and heightened risk that face individuals and groups protected by the Ontario Human Rights Code.

Through its public consultation function, the OHRC has heard much over the past few years about human rights barriers experienced by people accessing social assistance including Ontario Works (OW) and the Ontario Disability Support Program (ODSP). The OHRC has reported publicly on these issues summarized below.

3. OHRC consultations

   a. Mental health discrimination

   People with mental health related disabilities are particularly at heightened risk of poverty. Unpublished data obtained by the OHRC from Statistics Canada’s 2006 Participation and Activity Limitation Survey indicates that 27% percent of people in Ontario with mental health-related disabilities live with low income compared to 11% of the population without disabilities.

   In 2011, the OHRC concluded extensive public consultation on discrimination faced by people with mental health and addiction disabilities. We are currently preparing a report on our findings and will then be developing a new policy on mental health discrimination.

   People’s experiences with poverty formed a major part of what we heard during the consultation. One person from North Bay said, “On the low income provided by social assistance you can't get proper food. Proper nutrition is especially important for people dealing with mental health challenges.”

   Another stated that social assistance, “is an unkind system that makes clients feel that once they are “on disability” that that is it - that is their life, their life of perpetual poverty and uselessness. How is that economically sound practice? How is underutilizing human resources smart business or remotely good for the overall prosperity of our province or country?”

   People with mental health, addiction or “psychosocial” disabilities, and their advocates identified unemployment, underemployment, lack of affordable housing, as well as discrimination in housing, education, and employment, as major factors contributing to poverty.

   They also said correlations or “intersections” exist between poverty, mental health and addiction, and other Code grounds. People with mental illness and addictions who are particularly at risk for low income and the negative health effects associated with it include single parents (most frequently mothers); recent immigrants; persons with a work-limiting disability; Aboriginal people; women; people who do not complete high school and racialized group members. One person stated, “I would never tell a potential landlord that I was a single, middle-aged woman on disability: the kiss of death.”
The OHRC heard from numerous people about the systemic problems with social assistance that pose significant barriers to transitioning people to paid work. One of the biggest concerns is that ODSP payments are reduced by half the amount of net earnings from work, making it difficult for people to financially benefit from paid employment, particularly if paid employment is only part-time or in entry level jobs.

People said that rent-geared-to-income rules under the Housing Services Act do not make it worthwhile to work part-time. The rules permit social housing providers to raise people’s rent to account for increases in non-benefit income such as from employment that exceed the amounts specified in regulation. The Metcalf Foundation describes how these rules keep people in poverty.

A significant number of people believed they were consistently denied rental housing in the private housing market because their income was from Ontario Works or ODSP. They said that having ODSP as a source of income automatically marks people as having a disability. They contend landlords act on stereotypes about people who receive social assistance; that they cannot live independently, are receiving benefits fraudulently, or are unreliable tenants.

We heard that when people with mental health disabilities do enter the workforce they are often relegated to low-wage jobs that result in cycling back and forth between social assistance and unstable work.

The OHRC heard concerns that Canada and Ontario are not meeting their international obligations to protect the right to an adequate standard of living under the International Covenant on Economic, Social and Cultural Rights. In particular, the UN Committee that oversees this Covenant identified concerns about the high rates of poverty for marginalized people in Canada, including people with disabilities.

Submissions called for more housing subsidies and increases in social assistance to open the door to more affordable housing for people with mental health and addiction-related disabilities.

b. Housing discrimination

In 2008, the OHRC reported publicly on its consultation on discrimination in rental housing and in 2009 released a new Policy on Human Rights and Rental Housing.

During the consultation, we heard that social assistance and minimum wage rates are not sufficient to allow tenants who rely on these forms of income equal access to housing opportunities. A number of people said that social assistance recipients are worse off today because rate increases have not kept pace with inflation and rent increases over the years.

We heard that people identified by Code grounds such as disability (including mental illness and addiction), race and race-related grounds (including people who are
Aboriginal) and family status are more likely than others to experience homelessness. One of the factors identified for homelessness is having an income too low to stay housed.

It was pointed out that the vast majority of people on social assistance rent housing in the private rental market, but they are unable to compete for quality housing at average rents because of insufficient income.

Once housed, the lack of sufficient income creates difficulties for tenants in keeping housing and in paying for other important costs of living like food and clothing. Where rents are above the shelter allowance allocated by OW and ODSP, individuals on social assistance have to dip into their basic needs allowance to pay their monthly rent or are forced to look at other forms of housing, such as motels or “couch-surfing.”

These households use a significant portion of their food money to pay rent and often use food banks to feed their families. Young parents are forced into market-rent housing that may be unsuitable, unsafe, unhealthy and unaffordable – leaving them little money to meet their families’ other needs. One tenant on ODSP said she has had great difficulties keeping her apartment as the rental costs are higher than what she can realistically afford.

People said other government programs and requirements perpetuate poverty. For example, the monthly allowance permitted under the Extended Care and Maintenance for Crown Wards is too low for youth leaving care to find housing in a safe and supportive environment. Another problem arises for people discharged from prison who are more likely to be homeless because social assistance is not reinstated right away.

The OHRC also heard about the impact of claw backs on social assistance recipients and their families. For example, when a child reaches age 18, this results in a loss of income for his or her family and can affect the family’s ability to stay in social housing. This young adult would likely face barriers and discrimination in accessing suitable housing in the rental market, and is at risk of homelessness or being under-housed. They recommended authorities should work together to develop a transition planning system to enable eligible young adults to stabilize their own income and that of their families.

Some people commented positively on progress made under other programs such as the Strong Communities Rent Supplement Program (SCRSP) and the Provincial Rent Bank Program which provides assistance to cover up to two months’ rent arrears. Households assisted under the SCRSP are provided with a rent supplement that reduces the amount of rent paid to 30% of their household income. The Rental Opportunity for Ontario Families provides a $100 per month benefit. However, people receiving social assistance are not necessarily eligible for these programs.

A number of people linked the risk of homelessness to the growing gap between social assistance or wages earned in minimum wage jobs and the poverty line.
People expressed concern that the current minimum wage is not a living wage and that a person working at minimum wage full-time for an entire year will not earn enough to escape poverty.

It was pointed out that women comprise a large portion of people who are working part-time, in many cases because of care-giving responsibilities. They are in great need of access to a decent living wage as well as other employment benefits such as health and long term disability insurance. However, in Ontario, there is no legislation requiring employers to provide benefits to part-time employees on a pro-rated basis and the practice of employers is mixed. The result is that many workers and their families are denied any protection from sudden loss of income due to disability, placing them at a much higher risk of needing social assistance or becoming homeless.

A number of people suggested raising social assistance rates and the minimum wage to levels that would allow families to secure proper housing even in the private market. Others recommended improving mechanisms to help social assistance recipients transition from receipt of benefits to employment, or to reduce the deductions from the income received by people on social assistance.

People noted that increases in the shelter allowance may help some people secure housing, but that a more proactive approach to addressing the needs of all low-income people is necessary. There was wide consensus among both housing providers and tenant groups for providing portable housing allowances directly to low income tenants to enable them to compete equally in the rental market.

Some argued portable housing allowances target people in the greatest need. They can provide immediate assistance to tenants and help avoid long waiting lists for social housing. They also allow tenants to choose where they live, and encourage mixed-income neighbourhoods. Housing allowances can be provided directly to the tenant, maintaining the tenant’s privacy and autonomy over their income and help avoid stigma about source of income and living in social housing. They can be used in rural areas and small towns where there are few subsidized units.

The OHRC was told that such programs can be administered at low cost compared to the costs of building new social housing, and allow flexibility in program design to respond to different regional needs and provincial budgets.

At the same time, the OHRC heard that there is still a need for new social housing options. Social housing provides access to affordable housing to groups protected by the Code. It fills the gap for low-income people by providing supportive housing, government-funded subsidies and rent-geared-to-income housing that would not necessarily be available to tenants in the private sector. But, the scarcity of social housing poses a challenge for managing eligibility requirements and waiting lists. The end result is that many people end up paying more than 50% of their income on rent while waiting.
Generally, people who were consulted called for government to recognize housing as a fundamental human right and to take a multifaceted approach that provides for adequate income levels, services and higher quality housing.

4. Human rights litigation

Any reform of social assistance must be mindful of human rights case law. The OHRC has been involved in a number of cases over the years that have had a significant impact on social assistance legislation, policy and practice.

a. Diet allowance program

In 2008, the OHRC referred almost 200 individual complaints against the Ontario Government’s Special Diet Allowance Program to the Human Rights Tribunal. The program is part of Ontario’s social assistance system. It was designed to help people incurring extra costs for therapeutic diets prescribed by their healthcare professionals.

The Tribunal considered three “lead” complaints and in February 2010 found the program’s eligibility criteria violated the Human Rights Code because it excluded certain medical conditions or provided relatively unequal amounts for other conditions.

The OHRC, together with community legal clinics, continues with these legal proceedings at the Tribunal to enforce the Tribunal’s order to ensure people with certain medical conditions, including people with alcohol dependency and people with schizophrenia who are taking second generation medication, receive extra support.

Whether the diet allowance program continues in its current form under social assistance, or is replaced by another program, as one of the CRSAO’s proposals suggests, either way, it must address the needs of those it serves in an equal or superior manner, in accordance with the Tribunal’s earlier decision.

b. Disability includes addiction

The OHRC intervened at the Ontario Court of Appeal in the case of Tranchemontagne v. the Ministry of Community and Social Services. The Court upheld the Divisional Court’s earlier decision that found denying ODSP benefits to people who were disabled solely because of an alcohol or substance addiction is discriminatory. The rulings rejected the government’s argument that denying disability benefits was in the best interests of people with a substance abuse problem.

Whatever new forms Ontario’s social assistance system might take, it must treat all people with dignity and respect and ensure eligibility criteria and other requirements do not stereotype, devalue and treat people adversely because of disabilities involving addiction.
c. Shelter component & utilities

The OHRC litigated the case of Iness v. Caroline Co-operative Homes Inc. involving a co-op rule adversely affecting social assistance recipients. The co-op expected Ms. Iness to pay the full shelter component of her social assistance as rent to her co-operative, instead of paying 25% of her income as rent, which she had done previously like other low-income tenants. As a result, she was no longer able to pay her insurance and hydro costs out of the shelter portion of her benefit, resulting in her having to cover these out of her basic living costs.

The Human Rights Tribunal of Ontario found that Ms. Iness was treated differently from other low-income tenants who were not in receipt of social assistance. The Tribunal ordered the co-op to treat the source of income of members in receipt of social assistance in the same way they would if their income came from paid employment. The Tribunal also ordered the co-op to stop any unauthorized dealings with social benefits’ authorities.

Housing co-operatives must treat the income of all members in the same way, whether it is from public assistance or employment. Co-op members who receive a rental subsidy should also be treated in the same way, no matter what the source of their subsidy.

Government as well as those responsible for delivering government programs must ensure that rules and practices do not discriminate and that they do not condone or facilitate the discriminatory practices of third parties dealing with their clients or otherwise involved in their programs.

d. Co-residency / spouse-in-the-house rules

In the case of Falkiner v. Ontario (Ministry of Community and Social Services, Income Maintenance Branch), the Ontario Divisional Court found a ‘spouse-in-the-house’ rule, which deemed cohabiting persons of the opposite-sex to be spouses, whether or not a true spousal relationship existed, discriminated on the basis of sex and the analogous ground of ‘sole support mothers on social assistance’.

Social assistance legislation and program requirements should be reviewed to ensure that definitions and terms and conditions for spouses and other family and non-family members are consistent with human rights law.

e. Rent-to-income ratios

In the case of Kearney v. Bramalea Ltd. et al., the Human Rights Tribunal and higher courts ruled that landlords’ use of minimum income criteria or rent-to-income ratios when assessing applications for tenancy was discriminatory. These rules were having a disproportional impact on individuals based on their sex, race, marital status, family status, citizenship, place of origin, age and the receipt of public assistance. The case sets a very important precedent because it recognizes the intersection between social and economic status and grounds that are protected under the Human Rights Code.
There is a need to consider how social assistance and related programs that rely on rent-to-income ratios and other income rules may directly or adversely impact groups identified under the Human Rights Code.

5. CRSAO’s findings and human rights

The CRSAO’s findings are clear; people report that social assistance programs are failing to meet needs because of inadequate benefits and employment supports, as well as lack of other supports like education and training, childcare, attendant care, addiction services, supports for women escaping domestic violence, and transportation, as well as requirements inappropriate to cultural and regional differences. Built-in barriers, especially negative stereotypes and stigma, perpetuate discrimination and other forms of exclusion and compound the situation for Aboriginal people, women, newcomers and people with disabilities, especially youth and people with mental health disabilities, who now account for a significant part of the growing caseload.

The CRSAO’s findings mirror many of the human rights issues the OHRC heard about during our own public consultations and litigation:

- Many immigrants face challenges such as language barriers, lack of Canadian experience, and not having their credentials recognized. As a result, they may find themselves turning to social assistance for support
- Meeting social assistance program requirements may be impaired by ongoing social barriers including stigma and discrimination in education and employment
- There is a lack of data and other information to assess effectiveness of services and address barriers faced by racialized and ethnocultural communities, sole-support mothers, newcomers, persons with disabilities and Aboriginal peoples
- Need for social assistance represents in part a failure to address conditions that cause poverty
- Surveys show many recipients do not have money left over, after paying for shelter, to buy healthy foods
- That many First Nations need social assistance is in part the result of failures in the many policy frameworks affecting their people and communities
- Rising income inequality is disproportionately impacting historically disadvantaged groups protected by the Human Rights Code
- Program requirements need to account for the stigma and discrimination that people with mental illness face in recruitment, hiring and on the job accommodation
- One-size requirements do not fit all; diverse approaches are needed to meet individual circumstances and promote autonomy and dignity; people with disabilities need specialized supports, especially for mental health and other more episodic disabilities
- Early intervention is particularly important for persons with mental health illness
- Approaches that segregate social assistance recipients from others promote stigma
- Benefit structures don’t account for different forms of family, including traditional living practices of First Nations people, as well as unclear definitions of “spouse”
- Benefit structures should more closely reflect cost of living, including nutritious food, secure housing and community participation
Effective affordable housing plans need to support disadvantaged individuals and groups, including people receiving social assistance.

Transition to employment is impaired by the risk of leaving social assistance and losing prescription drug, dental and vision care benefits.

Rent-geared-to-income housing rules as well as claw-back requirements adversely interact with other social benefit programs.

There must be a shift away from the erroneous assumption that many persons with disabilities are unable or unwilling to work. Instead, shift towards supporting their aspirations and abilities, while recognizing social barriers as well as individual and legislative limits; support participation in employment to a maximum of their abilities.

Complex program, accountability and surveillance requirements stereotype, create accessibility barriers, don’t integrate well with other needed programs, intrude and overburden recipients.

The OHRC has identified stigma, discrimination and other human rights concerns related to social assistance in our reports including on housing and mental health discrimination discussed above, as well as in our submission to the Ministry of Municipal Affairs and Housing's long-term affordable housing strategy. Some of our recommendations in those reports are relevant for social assistance reform:

- Design social assistance programs so they are inclusive of persons with disabilities and other historically marginalized groups, recognizing that sometimes different approaches are needed to bring about equality.
- Review and improve benefits to ensure people can afford the necessities of life, such as adequate shelter, food and other needs.
- Link social assistance, including shelter allowances, to the real cost of rental housing with a view to complying with international obligations and substantively addressing criticisms of Canada’s compliance with them.
- Ensure minimum wages and benefits allow a full-time earner to live above the poverty line.
- Ensure more social housing options as well as subsidy alternatives, such as a portable housing allowance, to open up opportunities for people with low incomes in the private rental housing market and to permit greater flexibility in terms of where one may live.
- Ensure social assistance policies and practices do not have an adverse impact on people identified by Human Rights Code grounds.
- Collect aggregate data to measure the socio-economic status of Code protected groups and whether they have equitable access to social assistance and supports that lead to meaningful employment that matches abilities.

Addressing the stigma and stereotypes that surround social assistance and the people who need it to survive is fundamental to an effective system. This is because stigma and stereotyping are the route of systemic discrimination. People who receive social assistance face discrimination day in and day out because of their race, ethnicity, creed, disability, gender, family and marital status, among other grounds. If society as well as those involved in the social assistance system cannot treat people with dignity and
respect, then much needed employment, housing and other supports will not be so effective to help people survive and transition and transform their lives.

Dignity and respect are ultimately about self-determination. The Preamble of the Ontario Human Rights Code emphasizes the importance of creating a climate of understanding and mutual respect for the dignity and worth of each person, so that each person can contribute fully to the development and well-being of the community. This should be a key goal of social assistance as well.

6. Human rights principles for guiding reform

The OHRC supports the approach taken by the Law Commission of Ontario in its August 2011 submission which identifies key human rights principles for guiding reform of Ontario’s social assistance system:

- Respecting the dignity and worth of all individuals receiving social assistance, and avoiding stereotypes
- Responding to diversity of abilities and experiences that intersect across disability, racialization, sexual orientation, place of residence, age, gender and other grounds under the Human Rights Code
- Fostering autonomy and independence including empowering Aboriginal people and persons with disabilities, with supports if necessary, to enable to them to make decisions, to do things and choose for themselves
- Promoting social inclusion and participation including barrier removal to active community involvement
- Facilitating the right to live in safety, without fear, abuse or exploitation
- Recognizing reciprocal rights and obligations of living in a broader community

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1 http://www.socialassistancereview.ca/home
3 http://www.ohrc.on.ca/en/issues/mental_health
4 See Housing Services Act, 2011. Ontario Regulation 298/01 (formerly under Social Housing Reform Act, 2000). Section 48(5&6) states that if monthly non-benefit income exceeds $440 per month, the monthly rent can exceed the amount stipulated.
6 Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, E/C. 12/CAN/CO/5/ (2006) at paras 11(c), (f), 18, 20, 23 and 28
7 http://www.ohrc.on.ca/en/resources/discussion_consultation/housingconsultationreport
8 Supported housing bridges the gap between housing, support services and health care, by providing various programs, including assisted living, long-term care, and/or other services to tenants.
9 Ontario (Disability Support Program) v. Tranchemontagne, 2010 ONCA 593
11 See Kearney, supra, note 2
12 Supra, note 6