Ontario Works: A Preliminary Assessment

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ONTARIO WORKS: A PRELIMINARY ASSESSMENT

IAN MORRISON*

A. INTRODUCTION
Welfare reform is not a new item on the Ontario public agenda, but the Progressive Conservative government elected in 1995 is the first in modern Ontario history actually to succeed in changing the legislative framework for social assistance. On November 27, 1997, Bill 142, the Social Assistance Reform Act ("SARA") received Royal Assent, the first significant overhaul of Ontario social assistance legislation since the 1960s. SARA replaces the two main Acts that have governed social assistance administration in Ontario for thirty years, the General Welfare Assistance Act ("GWA") and the Family Benefits Act ("FBA"), with the Ontario Works Act ("OWA") and the Ontario Disability Support Plan Act ("ODSPA"). SARA changes the social assistance landscape in Ontario to no small degree. People with disabilities who meet a stringent

Anyone in Ontario with the courage to say the words "welfare reform" in public has the attention of most taxpayers.

—Mike Harris1

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1. M. Harris, "Welfare should offer a hand up, not a hand-out" (May 1995) Policy Options 33.

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test will receive benefits and additional supports under the ODSPA.\(^3\) All others in need will have to look to "Ontario Works" for assistance.\(^4\)

This article is a preliminary examination of issues and concerns arising from the Ontario Works Act, which is scheduled for proclamation sometime in the spring or summer of 1998.\(^5\) In all likelihood this Act will form the legislative framework for social assistance delivery for many years. It deserves careful scrutiny by anyone concerned about the future of social policy in Ontario.

### B. The Reform Momentum

Tired of your job? Sick of working 40 hours or more each week to feed your family? Would you like to relax all day and still have all the benefits of a full time job? If you answered "yes" to any of these questions then you should consider moving to Ontario "The Welfare State".

—Anonymous\(^6\)

The modern history of social assistance legislation in Canada begins in 1966 with the enactment of the federal Canada Assistance Plan,\(^7\) the program under which the government of Canada undertook to share the costs of provincial social assistance on a dollar for dollar basis. With its emphasis on the provision of adequate assistance to all persons in need in the context of a overarching social goal of eliminating the conditions giving rise to poverty, its prohibition of residency requirements and workfare and its insistence on the creation of a formal appeals process in social assistance legislation, CAP signalled a major shift in the Canadian welfare state towards an "entitlement" model of social assistance. Ontario moved shortly thereafter to entrench the basic CAP requirements in provincial legislation and signed a cost-sharing agreement with the federal government to take advantage of this.\(^8\)

The "entitlement" model of social assistance was strongly reaffirmed in Ontario, at least in public and political discourse, with the influential 1988 Transitions Report,\(^9\) the final report of the Social Assistance Review Committee, which was established

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4. In this article "OWA" will refer to the Act itself; I use the term "Ontario Works" more generally to refer to the new welfare program under the Act, including regulations, policies and administration.

5. At the time of writing the projected proclamation date for the OWA is May 1, 1998 (but this has already been pushed back several times.) The ODSPA is not expected to be proclaimed until sometime later.

6. Extract from anti-welfare material in common circulation in the 1990s.


after the 1985 provincial election and which held extensive and highly publicized hearings into the social assistance system throughout Ontario in the mid-1980s. While Transitions did recommend strengthening the connection between employability enhancement and the right to income support, it did so in the context of a basic principle of a right to assistance on the basis of need and an assumption that social assistance programming should be part of a broader anti-poverty strategy. It also accepted the (at the time) largely uncontroversial proposition that welfare rates were inadequate and argued strongly for enriching benefits as a way of enabling social participation by recipients.

Although never fully implemented, Transitions was one of the most influential policy pieces in modern social assistance history. Based on Transitions and other recommendations of the Social Assistance Review Committee both the Liberal and, after 1990, the NDP provincial governments made a number of significant program changes, including substantial rate increases, based on the Transitions vision, if not always on its explicit recommendations. These included extending eligibility to many working poor families, broadening eligibility criteria (such as the 1987 changes which allowed unmarried recipients to cohabit for three years before being considered a family unit for benefit purposes) and a comprehensive overhaul of the patronage-ridden and discredited appeals system. However, neither government actually succeeded in enacting new legislation to consolidate these changes.

Progressive welfare reform of any kind foundered in the 1990s recession, in the face of the most dramatic caseload increases since the Depression. The percentage of the Ontario population receiving social assistance rose from about 4.5% in 1985 to a peak of 12.2%—about 1.3 million people—in 1994.10 Altogether, social assistance expenditures rose by 37.2% in 1990/91, by 42.5% in 1991/92 and by 20.7% in 1992/93. By 1995, these expenditures exceeded $6 billion annually in Ontario. The financial burden was exacerbated by the federal government's unilateral decision to cap social assistance transfer payments to Ontario under the CAP cost-sharing agreement.11 Although the NDP government continued to talk about welfare reform, any realistic possibility of expansionary reform was dead by 1992.

With one in nine Ontarians on the welfare rolls, the increased visibility of the program fuelled increasing resentment of both the system and the people who used it. By the mid-1990s, a public backlash against welfare—always the least popular social welfare

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10. Note: All statistical references to caseload and financial data in this article are from information generated by the Statistics and Analysis Unit of the Ontario Ministry of Community and Social Services, unless specifically indicated otherwise. Most of this information is unpublished and much has been taken from documents released in the course of litigation.

11. The federal government announced in 1990 that it was unilaterally capping its cost-sharing contributions to Ontario, Alberta and British Columbia. In 1995 it announced that CAP would be repealed effective April 1, 1996, to be replaced by the Canada Health and Social Transfer, a block fund which did away with targetted social assistance funding and removed all but one of the CAP conditions for social assistance programs: Budget Implementation Act, 1995, S.C. 1995 c.17, Part V. The "cap on CAP", coming when it did, cost Ontario billions of dollars in foregone transfer payments.
program in Canada—was becoming increasingly apparent. Welfare became even more of a flashpoint for a complicated set of public fears, anxieties and anger towards racial minorities, immigrants, “criminals”, teens, single mothers and so on. The NDP government made some attempt to appease these sentiments, announcing “anti-fraud” initiatives and imposing selective cuts and eligibility restrictions, but its measures mostly just succeeded in causing hardship for some recipients without garnering any further electoral support. The Progressive Conservatives, then the third place opposition party, capitalized brilliantly on this backlash, constantly attacking the NDP government both inside and outside the Legislature over supposed welfare “waste” and “abuse”. In the 1995 election campaign, the Harris Tories made welfare reform a central plank in their platform, the “Common Sense Revolution”. They promised to slash “cadillac” welfare rates, to make all “able-bodied” recipients including single mothers work for their welfare, and to root out “fraud and abuse”. As James Struthers observes, the 1995 Ontario election campaign “was the first provincial contest in Ontario since the Great Depression in which welfare was a core issue, indeed perhaps the core issue”.

After its June 1995 election victory, the Harris government moved quickly on this agenda. Allowances were cut by 21.6% to all classes of recipients except FB disability recipients. Rule changes resulted in the disqualification of tens of thousands of peoples. The ‘anti-fraud’ program included a provincial welfare “hotline” to

12. Federal government polling for the 1994 social policy review, for example, showed support for individual programs ranging from 94% for the disabled and 90% for seniors, to 50% for welfare, and further found that “support at the bottom end [i.e., for welfare programs] is significantly lower when the public has to make choices”: Social Security Reform Communications (March 21, 1994) [Internal document, not released; marked confidential].


17. These included rule changes that disqualified post-secondary students from welfare; changes to the definition of “spouse” which resulted in more than 10,000 recipients being disqualified; and further
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report alleged welfare cheats, increased information demands from recipients, more intensive eligibility investigations and increased information sharing with other provincial ministries, agencies and other governments. At the same time, government funding of a wide range of community services and supports which assist low income and vulnerable individuals was slashed. Life for social assistance recipients—and for the growing numbers of people in Ontario who have fallen through the social safety net altogether, has grown increasingly harsh. The incidence and depth of poverty at the lowest income levels—and the social, health and other consequences of this—have grown increasingly alarming, even as the provincial economy is booming in other respects. This is the real life context in which any analysis of Ontario Works must be situated.

C. Ontario Works

1. The Act

Perhaps the most notable feature of the Ontario Works Act is not what it contains, but what it does not. Despite its length—80 sections compared to the 16 sections of the GWA—the OWA remains skeletal legislation. The heart of the Act lies in its extraordinarily sweeping regulation-making powers. One subsection alone of s.74, the principle regulation-making power, has 49 subparagraphs—some of which themselves contain multiple regulation-making powers. This choice of legislative vehicles has extremely important implications both for the role of “law” in relation to the future of the program and for the whole political future of social assistance policy in Ontario.

The skeletal nature of the legislation has some important consequences for the future of the Ontario Works program which are worth noting at the outset of an analysis of the program. For most practical purposes, traditional legal advocacy will have even less capacity to have an impact on the welfare system than it did under previous legislation. First, as I will discuss more fully below, the Act contains no entitlements or program standards of any kind that cannot be limited, restricted or abrogated by regulation. Except for any constraints imposed by the common law and the Charter of Rights—modest constraints on any realistic scenario—legal advocates will have few if any useful external levers with which to influence the system. Furthermore, as restrictions on teen welfare eligibility.


19. The role of the Charter of Rights in relation to social assistance programs is beyond the scope of this article and will not be discussed further here. It is sufficient to note for present purposes that apart from the many doctrinal problems and issues in this area, the practical and logistical problems of mounting Charter challenges in this area are particularly serious.
discussed below, the statutory appeals system under the OWA has been so truncated that it is unlikely to play any significant role in supervising or controlling the welfare system even in routine matter.

Even more importantly, regulations and policies can be (and in the case of social assistance almost invariably are) promulgated without notice, consultation or debate. Under the OWA, the government of the day will be free to make even the most radical changes to the social assistance system without submitting them to the legislative process. Thus, social assistance policy authority has been removed almost entirely from the formal political process. Proposed changes need not be submitted to the legislature nor subjected to any prior scrutiny. Moreover, there is little or no chance, at least under the current government, that those affected by these changes will have any input into the policy making process before new regulations are promulgated. Where government action affects powerful or politically influential constituencies, the policy making process is generally open to some degree of public influence, even where the action is outside the formal legislative process. The poor and disadvantaged, on the other hand, are usually excluded from such input. In the case of welfare policy at least, this exclusion is deliberate.20

For all its length and complexity, the OWA is a shell. Welfare policy and programming remain more firmly than ever entrenched in the Executive branch and welfare bureaucracy.

2. Welfare Reform In Demographic Context
In December 1997 the combined FB and GW caseload was 548,857 cases or 1,098,659 beneficiaries, about 9.6% of the provincial population and two fifths of all social assistance recipients in Canada.21 Welfare caseloads are very fluid with many people entering and leaving the system every month; thus, far more people use social assistance in the course of a year than “snapshot” statistics indicate.22 In this section

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20. The Harris government refuses to meet or consult with welfare recipients or their advocates on any issues of social assistance policy. A ministerial advisory council of social assistance recipients established by the NDP government was disbanded immediately after the election. One of the first policy changes made at the Ministry of Community and Social Services (“MCSS”) after the election was a direction that opinions would only be sought from “taxpayers”, not “special interest groups” (i.e., recipients and their advocates): see Patricia Spindel, “The Strategic Ministry Initiatives Demystified”, in “COMSOC Officials Learn Tory Language”, Ontario Social Safety NetWork, Social Safety News (June 1996). As I discuss further below, the distinction between “taxpayers” and “dependents” is now formally entrenched in the OWA.

21. Social assistance is provided to single persons or to “heads of household”. A “case” is a benefit unit, which may include more than one “beneficiary” (e.g., spouses and dependent children). In December 1997, there were 165,490 FB disability cases (275,515 beneficiaries); 153,978 GW and FB sole support parent cases (450,799 beneficiaries); 141,671 GW “employables” (270,816 beneficiaries); and 31,015 GW “ill health” cases (48,038 beneficiaries), plus a small number of people in other categories.

22. There appear to be no readily available statistics on these figures for Ontario. An Alberta study found that the number of unique cases (i.e., individuals actually receiving assistance) was twice the average
I will briefly review the demographic context of welfare use, the changes that will result from the implementation of SARA and the factors affecting caseload trends in Ontario.

a. **Ontario Works caseload composition**

Ontario Works replaces municipal “general welfare”. The largest group of municipal welfare recipients has traditionally been the so-called “employable” category. This group included both single adults without dependants and couples with or without children, but historically single men predominated in the “employable” class. This pattern has already changed markedly since 1995, as the number of single recipients has declined and the proportionate share of families has increased. Ontario Works will cause even more notable demographic changes.

The most immediately obvious changes will result from the transfer of sole support parents from the FB caseload to Ontario Works. SARA marks the end of “Mothers Allowance”, the first state operated social assistance program ever enacted in Ontario. Over the course of 1998, approximately 100,000 sole support parents (over 90% of whom are women) will be shifted to the Ontario Works caseloads. However, there will also be more gradual changes to the demographics of the welfare caseload. As of January 1, 1998, the “near-aged” (people between 60 and 64 years old) lose FB eligibility and must apply for municipal welfare. Even more important in numerical terms is the treatment of the “near-disabled”. The ODSPA definition of disability will exclude many people who would have qualified for FB benefits as “permanently unemployable” (“PUE”), who make up roughly half the current FB disability benefits caseload. Current PUE recipients are to be grandparented under ODSPA, but

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23. Approximately three quarters of sole support parents on social assistance in Ontario receive FB; the remaining one quarter are already on municipal welfare.


25. About 9000 people received FB benefits in this category in 1995. People on FB in this category as of January 1, 1998 have been grandparented, but all new applicants after that date must apply to Ontario Works: SARA, Sched. D. s.1. (About 8000 people over age 65 also receive FB and will probably be left on ODSPA.).

26. O.Reg. 366 s.1(5). These are typically people who do not have a severe disability but whose medical conditions in combination with age, work history, educational level or other barriers make them “unable to engage in remunerative employment”.

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it seems that eventually thousands of people who would formerly have qualified for disability benefits will be forced onto Ontario Works, where they will be subject to workfare requirements.

These shifts have important implications for program administration. Over the last several years average lengths of stay on assistance have increased notably. This trend will probably increase as Ontario Works caseloads absorb sole support mothers and the “near-disabled”. In other words, welfare caseloads will increasingly be made up of people who for whatever reason have significant barriers to labour force participation. It is not yet clear how the employment component of Ontario Works will respond to this, but there is no question that these shifts will impose new pressures on employment programs. I will discuss these issues further below when I return to look in more detail at employment issues under Ontario Works.

b. Ontario Works caseload trends
Social assistance caseloads have dropped sharply since 1995, although they remain high by historical standards. The reasons for the decline are not entirely clear. Increased employment and earnings are part of the answer but not the full story. Some people have moved to other income maintenance programs; some are doubling up with friends and families; many have become homeless and are either provided for in shelters (where they do not appear in welfare caseload figures) or not at all; some have decided to remain in or return to abusive living situations rather than seek or remain on welfare; some have left the province. How many people have left welfare for good and how many may be forced to reapply as they exhaust alternatives is also unknown, as there is little or no reliable current information on welfare re-entry rates. Most studies of caseload changes only look at people leaving the system, but it seems that the decline (at least for municipal programs) was due more to declining applications than to increased rates of exit (except for mass disentitlements because of rule changes), the reasons for which can mostly only be speculated on.

27. The average length of time on assistance for GW employables went from 7.6 months in 1998 to 14.6 months in 1995 to 18 months in December 1997.

28. The average stay of sole support parents on FB in December 1997 was 57.8 months and for disabled persons was 87.1 months.

29. The Ontario government claims that 60% or more of those who have left welfare in Ontario have found work, based on The Levy-Coughlin Partnership, A Survey of People Who Have Left Social Assistance (October 1996). This claim is not supported by most other studies, which suggest that employment accounts for more like 40–45% of welfare exits; see Metropolitan Toronto, Commissioner of Social Services, Survey of ClientsExiting General Welfare Assistance: Key Findings and Implications, Report to Human Services Committee (February 1997); D. Jaffray & W. Kowalski, Leaving Welfare in the Winter of 1995–96 (Hamilton: Social Planning Council of Hamilton-Wentworth, October 1996); Ottawa-Carleton Social Services Planning and Review Division, Reason for Termination Study (April 1996). See also Canada West Foundation, Where Are They Now: Assessing the Impact of Welfare Reform on Former Recipients (Calgary: September 1997), which made similar findings.

30. This was true for Metropolitan Toronto at any rate; Metropolitan Toronto, Commissioner of Social Services, Impacts of General Welfare Assistance Rate Reductions (27 May 1996); Personal com-
At the time of writing the decline in welfare caseloads has slowed. Caseloads have even shown small increases for a few months but so many variables affect this trend that predictions are almost impossible. Obviously, what happens to this trend is very important for the future of Ontario Works. Unemployment was not the only cause of increased caseloads in the 1990s. There were, and are, many other pressures: these include the restructuring of the labour market; massive cuts to other federal and provincial income maintenance programs; long term deinstitutionalization of disabled people; the increased incidence of sole support parent families, etc. My analysis of caseload demographic changes suggests that Ontario Works caseloads will become increasingly less responsive to labour market improvements. Moreover, any serious economic downturn would mean a flood of new “employable” applicants. In short, it would not take much for welfare demand to start to grow sharply again.

Of course caseloads are not solely governed by external demand. Governments have many ways to reduce caseloads when the market refuses to work its miracles. The most dramatic strategies can already be seen in operation in the U.S., where welfare “reform” has included large scale categorical disentitlements (many states now provide no general assistance to single “employable” recipients) and lifetime limits on welfare receipt. Such measures have not yet been openly proposed in Ontario but more subtle forms of bureaucratic disentitlement are common enough. The OWA greatly expands the opportunities for this, as discussed below.

3. **Ontario Works Delivery and Administration**

Ontario Works is part of a massive reorganization of provincial-municipal relations. For social assistance administration, this includes new cost-sharing arrangements, delivery site amalgamation, a new technological infrastructure and many other changes. Some aspects of these changes have important implications for program design and delivery.

a. **The Delivery Framework**

Ontario is one of the few remaining provinces to retain a two-tier social assistance delivery system. Prior to Bill 142, general welfare was administered by over 300 municipal welfare delivery sites, ranging from Metropolitan Toronto, the largest delivery site in the province, to tiny unconsolidated municipalities. The two-tier system is retained under SARA. Disability benefits will still be administered by the province. Ontario Works will be delivered municipally, but will be consolidated from the current patchwork to about 50 delivery sites for welfare, social housing and child

31. For example, an internal Alberta government report on falling welfare caseloads in 1993/94 attributed success in large part to frontline workers who employed a “conscious and vigorous deflection strategy” which included the “sometimes undesirable task to advise applicants that welfare was a last resort not a convenience”: [Alberta] *Welfare Reforms 1993: Caseload Impacts* (October 1994). For a different perspective on what this “conscious deflection strategy” meant to people seeking assistance in Alberta, see J. Murphy, “Alberta and the Workfare Myth”, E.Schragge ed., *Workfare: Ideology for a New Under-Class* (Toronto: Garamond Press, 1997).
care. Generally the upper tier municipality in regional municipalities will be responsible for these services. In counties with separated municipalities a single municipality will be responsible for all social services, and counties and municipalities of less than 50,000 will be required to combine delivery.\(^{32}\)

The province has also decided to transfer more social assistance costs to the municipal tax base, rather than take over social assistance funding (contrary to the recommendations of every study that has ever examined the question, including its own “Who Does What” panel).\(^{33}\) Municipalities formerly paid 20% of general welfare benefits (plus 50% of welfare administration costs and the costs of some discretionary benefits). The province paid 100% of FB costs. Now, municipalities will pay 80% of all benefits plus 50% of all administrative costs (including ODSPA). The exercise leaves municipalities in a highly vulnerable position. Social assistance costs are unpredictable compared to the costs that have been removed from municipal control. Municipalities now face far greater exposure to economic downturns or other caseload pressures in the future. It is also by no means clear that this is the last word on funding arrangements. At the time of writing it is rumoured that the province intends to establish population-based caseload targets for municipalities (a practice now in some U.S. states); municipalities will be financially penalized for failing to meet caseload targets (and presumably rewarded for exceeding them).

Municipal delivery will also continue to exacerbate tensions and irritation between municipalities. The complicated municipal cost-sharing arrangements introduced by Ontario to placate Toronto reactions to downloading will keep the opportunities for resentment high.\(^{34}\) but the issues do not stop there. There have always been accusations of municipal “dumping” of welfare cases onto each other. These took a particularly ugly turn in 1997 when Toronto began offering families living in shelters assistance to relocate to other municipalities where vacancy rates were higher and shelter costs lower, while mental health agencies in other regions admitted giving homeless mentally ill clients one-way bus tickets to Toronto.\(^{35}\)

b. Program Authority In Ontario Works

Policy authority in welfare programs has always been a contentious issue, as municipalities had to deliver and partly fund a program for which the province made the rules. Under the GWA, the Director of Income Maintenance was required to

35. E.g., see J. Harder, “Exporting the Dole: Smaller centres get welfare cases” Toronto Sun (20 December 1997); J. Wallace, “Ticket to nowhere? Towns dump mentally ill on Toronto” Toronto Sun (4 February 1998).
“exercise general supervision” over administration of the Act and to “advise” administrators “as to the manner in which their duties should be carried out”. Appointment of a welfare administrator required the “approval of the Minister”, although the administrator was a municipal employee. The scope of the Director’s supervisory powers was never really settled and it seems that neither province nor municipalities were too anxious to test this issue. More regional variation in delivery standards existed than could ever be gleaned from a simple reading of regulations and policies.

While municipalities will be responsible for delivering Ontario Works, the province will continue to set the rules. The OWA sets out provincial powers in much more detail than previous legislation, both directly and through the regulation making powers. The province also holds a powerful lever over municipal behaviour through the Ontario Works cost-sharing mechanisms. However, while the province clearly has the legal authority to micromanage Ontario Works, it is not clear just how far this power will be exercised. Social assistance is a complex and volatile political subject. Municipalities are fully aware that they may be blamed for program failures—especially workfare—and that they face a serious crisis if economic circumstances change; consequently, municipalities have demanded more say in welfare policy. One internal document suggests that the Ministry anticipates regional variation due to political pressures, noting that “demands from taxpayers, politicians, clients and employees may vary significantly from jurisdiction to jurisdiction across Ontario, creating pressure for flexible delivery solutions”.

c. Program Administration and the “Business Transformation Project”

The bottom line of today’s reform efforts is for government to focus on giving people a hand up, not a hand out.

Not, as might be thought, a quote from an Ontario politician, this statement is from a 1996 press release by American giant Andersen Consulting, the world’s largest management consulting firm and a key player in the redesign of Ontario’s social assistance system. In February 1997, the province announced that it had contracted with Andersen for its “Business Transformation Project” (“BTP”) to involve “the

36. GWA s.3.
37. But see the 1993/94 stand-off between Lambton County and MCSS over a proposal to have a municipal politician review a list of all the welfare recipients in the County: see R. Ellsworth et al, “Poverty Law in Ontario: The Year in Review” (1994), 10 J.L. & Social Pol’y 1 at 13.
38. See generally OWA Part III; and s.74. An important new power in the OWA is the Minister’s power to issue policy statements with the force of regulation determining how the Act and regulations are to be interpreted: s.74(2)3.


redesign of both technology and business processes".41 In return for a massive overhaul of service delivery, Andersen is to receive a percentage of the “savings” it can generate, anticipated to be up to $180 million over the course of the contract. The new computer system is intended not only to replace the seriously outdated FB system but also to link all OWA sites into one province-wide system.42

The BPT is much more than a computer system update, though. It is also clearly linked to the goal of ‘reforming’ the roughly 3800 caseworkers, who are themselves identified as possible barriers to reform. Thus, an internal BPT document insists that the “level of advocacy/ handholding [i.e., by welfare workers] will decrease” and suggests that reorientation of caseworkers “requires a significant culture shift (shared values and beliefs) centered around client self-sufficiency and focus on performance outcomes and measures [sic]”.43 A comprehensive review of the implications of the BTP is not possible here but it would be hard to overstate its importance. Political welfare reform rhetoric is often unrecognizable by the time it has been translated through bureaucratic structures to the front-line worker level at which programs are actually delivered.44 Social assistance program administration involves huge areas of de facto discretion which often has little to do with formal rules and policies. In modern office environments, what is allowed and not allowed by computer programs is often a more important determinant of worker behaviour than legal rules.

d. The future of welfare administration: “Welfare Inc.”?

Welfare as we know it is coming to an end. It’s being privatized. Within a few years, welfare will be a multi-billion dollar industry, tightly regulated by government, but run in many states by high-tech giants such as Lockheed Martin IMS, Andersen Consulting, EDS, Unisys and IBM.45

Potentially, the most radical administrative changes under Ontario Works lie in the possibility of privatizing welfare services. The OWA contains sweeping powers to contract out delivery and administration. In contrast to the ODSPA, which reserves responsibility for income support to the province (although it allows for privatization of employment services), the OWA allows for contracting out of virtually every aspect of service delivery.46 Private sector involvement is already either explicitly or implicit-

42. Currently, MCSS has one computer system, the “CIMS” system, linked to some but not all municipal welfare offices. Metro Toronto has a separate system, the “MAIN” system. Some municipalities have no computer links.
43. *Blueprint*, supra n.39 at 14, 16.
45. D. Jones, “Private firms eye $28 billion welfare prize”, *USA Today* (21 October 1996) 1A.
46. See OWA s. 45 (delivery agent may “enter into an agreement for any matter relating to the administration of this Act or the provision of assistance”); s. 48(2) (Director may “enter into an agree-
ly envisaged in parts of the Ontario Works program. For example, under current policies aspects of employment services must be tendered to the private sector; while new technologies such as fingerscanning will clearly depend on the private sector. This does not mean that a sell-off of welfare programs will happen soon or at all. The issue is obviously a delicate one and the province has already moved to rein in some municipal initiatives: a recent MCSS directive reminds welfare administrators that welfare staff must carry out core income maintenance functions and that “services must not be externally delivered to a point where this does not occur”. Major short term changes are unlikely in any event due to the sheer size and inertia of the system. Initial Ontario Works Business Plans involve a three year funding schedule and assume municipal delivery. While the province could unilaterally alter these arrangements, this would be politically difficult.

The longer term is harder to predict. Welfare privatization is a major issue in the U.S., pursued aggressively by large corporations. To date, most privatization has been in peripheral services or technological support, not core income support, but pressures on core programs are increasing: Texas, for example, has proposed to contract out its entire welfare system. The privatization momentum is rapidly increasing as the federal government loosens control over state programs and shifts to block funding take place. Even if the outcomes cannot be predicted, it must be assumed that the issue is a serious one for Ontario. This is a huge topic that cannot be fully debated here. However, some obvious concerns can be identified, particularly from the U.S. experience. There have been many scandals involving incompetent performance, allegations of conflict of interest, massive cost over-runs and other problems. A study


\[49.\] L. Griffin, “State awaits word on welfare overhaul; Plans to privatize programs worrying some” *The Dallas Morning News* (22 July 1996) 15A. The Texas plan has been stalled because the federal government has so far refused to give necessary waivers to allow food stamps eligibility to be determined by non-state employees: *CLASP Update* (Washington: Centre for Law and Social Policy: 21 May 1997). Texas has not abandoned its plan, however, and at the time of writing Florida has made a similar proposal.


\[51.\] Service Employees International Union, *Contracting Human Services: Recurring Scandals and Bad Performance* (May 1997); Service Employees International Union, *Big Bucks Bonanza – Welfare*
by the U.S. General Accounting Office raised other concerns: the lack of qualified bidders to create real competition and thus monopolistic trends (a situation likely to worsen if a few large companies come to dominate this area); lack of local government experience in developing contracts that specified outcomes in ways that would effectively hold contractors accountable; and weaknesses in monitoring which made it difficult to ensure that all intended beneficiaries had access to services. Obviously all of these could be serious issues in Ontario.

For now, the most important point may just be that welfare privatization has entered political discourse. Privatization as an idea may be enough to influence the future development of the welfare system. In the U.S., local government deliverers have been forced to bid for service delivery ‘contracts’ or to meet arbitrary caseload reduction goals in order to retain the delivery function. Even before the OWA became law, similar threats were floated in Ontario against municipal reluctance to implement workfare.

4. Benefits Under The OWA

a. Eligibility and entitlement

The OWA says little specifically about eligibility and entitlement. Anyone in need who cannot meet the ODSPA disability definition will have to apply for OWA benefits. However, the Act contains no general principle of entitlement; indeed, it specifically provides that in addition to all other eligibility and entitlement conditions the Lieutenant Governor in Council may make regulations excluding any defined “class of persons” from eligibility. The only specific provisions having to do with eligibility and entitlement are for exceptional categories. Thus, the Act retains a purely discretionary power to grant benefits by order in council in “exceptional circumstances” to otherwise ineligible persons. This power has been used in the past where the technical application of rules rendered a person ineligible despite extreme need, but has been little used in recent years. “Foster child” allowance under the FB and GW programs are replaced by a “child in temporary care” allowance. The specific conditions of eligibility under this new program are mostly left to regulation and no details of the program are yet

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52. Similar criticisms have been made in Canada. For example, the New Brunswick Provincial Auditor strongly criticized a N.B. Human Resources Development contract with Andersen Consulting: New Brunswick, Report of the Auditor General: Fiscal Year Ended 31 March 1995, 9–12.

53. Social Service Privatization, supra, n.50.

54. The “Who Does What” panel explicitly recommended that while delivery responsibilities should remain with municipalities, “the authority to contract out if provincial requirements are not met, would encourage more efficient and cost-effective services”; see Recommendations of the Social Services Sub-panel, supra, n.33.

55. OWA s. 74(1) 11.

56. OWA s. 11.

57. OWA s. 10.
available. Eligibility conditions for teenagers, already extremely restrictive, have been made even more so. (Teens are of course a favourite political target of the Tories, who have consistently exploited moral panic over teenage behaviour on issues from welfare to “boot camps” for young offenders, and teen welfare has for years been a political flashpoint.\textsuperscript{58}) No one under eighteen may receive benefits except through an adult third party; nor can the appointment of a “guardian” be appealed.\textsuperscript{59} Whether the exclusion would survive constitutional challenge remains to be seen.\textsuperscript{60}

The Act is also silent on benefit unit issues (the meaning of “spouse”, the meaning of “dependent child”, etc.). Some of these were dealt with in previous legislation, although some of the most important issues in this area, such as the definition of “spouse”, have never been in legislation and have always been dealt with by regulation. One definition that was formerly in legislation, that of “dependent child”, will be removed, allowing the government to overturn SARB and Divisional Court decisions which held that more than one person could be the parent of a single “dependent child” in joint custody situations, a result that the Ministry never accepted.\textsuperscript{61}

\textbf{b. Benefit payment and recovery}

The \textit{OWA} also says little about benefits. The overall benefit structure will remain similar to the previous system. There will be additional benefits, some in the nature of employment supports and others to replace the special assistance and supplementary aid programs under the \textit{GWA}.\textsuperscript{62} The details of these benefits will depend on the regulations. All details of financial testing also remain in the regulations, although the


\textsuperscript{59} \textit{OWA} s.17(2); 26(2)5. Despite the hysterical tenor of much public discussion of this issue, few people under eighteen receive welfare in Ontario. At the peak of the recession there were only about 8000 16 & 17 year olds on welfare in the province. By 1995 the numbers had dropped to about 4000. Severe eligibility restrictions were introduced in 1995 (O.Reg. 420/95) and numbers appear to have dropped further since then, although current statistics are not available.

\textsuperscript{60} A much less restrictive rule was found by the SARB to violate s.15 of the \textit{Charter of Rights}: SARB L-09-21-43B (27 May 1996).

\textsuperscript{61} See \textit{Director of Income Maintenance (Ont.) v Laurin} (1995), 129 D.L.R. (4th) 439 (Div.Ct). MCSS field workers were nevertheless instructed in unpublished policy directives that only one parent could ever be the custodial parent of a dependent child unless directly ordered otherwise by the SARB. The Ministry has already announced that under the \textit{OWA} only one parent will be considered the “custodial” parent of a given child, thus continuing the policy of giving no official recognition to shared custody arrangements.

\textsuperscript{62} The \textit{GWA} authorized (but did not require) municipalities to provide a broad range of additional discretionary benefits, including dental care, eyeglasses, funeral costs, surgical supplies and dressings and so on, to welfare recipients (special assistance), and to FB and OAS recipients (supplementary aid): \textit{GWA} ss.7(2), 13. A limited number of such benefits were made mandatory in 1991, including diabetic supplies, surgical dressings and necessary medical transportation; see O.Reg. 546/91 ("special necessities").
budgetary deficit test of need is entrenched in the legislation. Where the OWA does differ in important ways from the previous regime is in how benefits will be paid, and how and when benefits will be recovered.

i) Third party payments
The OWA expands powers to deprive recipients of control over their allowances, described in one document (in an especially Orwellian piece of doublespeak) as "supports for achieving client self-sufficiency and discourage dependency [sic]." Under s.17, an administrator may appoint a person "to act for" a recipient if the administrator is "satisfied that the recipient is using or is likely to use his or her assistance in a way that is not for the benefit of a member of the benefit unit." Under s.18, "a portion of basic financial assistance may be provided directly to a third party on behalf of a recipient if an amount is payable by a member of the benefit unit to the third party for costs relating to basic needs or shelter, as prescribed." The decision to appoint an informal trustee under s.17 is appealable but section 18 decisions are not. Of these powers, the s.18 power to pay directly to service providers is likely to be most important under Ontario Works. Unlike the s.17 powers, there are no statutory conditions for the exercise of this power and no statutory safeguards. A limited direct payment power existed under previous legislation, but its scope was unclear and perhaps for that reason does not appear to have been much used, despite lobbying by landlords. Government statements around Bill 142 suggest strongly that s.18 will be used much more extensively (although there may not actually be much need for this: the fact that workers have the power to make direct payment may be a sufficient threat to control recipients' behaviour).

ii) Reimbursement and recovery
The OWA contains several powers to recover assistance paid out. Some of these powers existed in previous legislation: these include the power to require an assignment of

63. OWA s.7(3)(b).
64. Blueprint, supra n.39 at 16.
65. Appointment of an informal "trustee" was originally not to be appealable. However, the right to appeal, along with a power to require "trustees" to account for monies received, were added to Bill 142 before third reading.
66. The only clear authority for direct payment previously was in FBA s.5(2), which allowed for direct payment of rent only in respect of tenants in prescribed public housing. There was no specific authority to pay rent or other utilities under the GWA but MCSS claimed that such a power was conferred by O.Reg 537 s.12(1), which refers to payments made to or "on behalf of" applicants or recipients.
67. In 1994, as a result of a vigorous landlord lobby, a resolution sponsored by an NDP back-bencher was passed in the Legislature calling on the government to provide for direct payment of rent; see Ontario, Legislative Assembly, Official Report of Debates (Hansard) (hereafter "Hansard") (21 April 1994). There were similar pressures on many municipal councils during this period, although at no time in any of debates of which I am aware was there any evidence that social assistance recipients defaulted on rental payments more than the general tenant population.
expected income or an agreement to reimburse assistance; and subrogation rights. Others are new and mark sharp departures from past practices.

The Act allows liens to be placed on the homes of recipients for the first time. In debate on Bill 142 this provision was justified on the grounds that, “when assistance ... increases the value of the home over an extended period of time through the payment of mortgage payments or emergency repairs, it makes sense to provide for recovery”. In another striking departure from tradition, welfare allowances will be garnishable in some situations. The current popular political fixation with “deadbeat” dads is reflected in a new power to deduct from allowances amounts for family law support orders against a member of the benefit unit. Child support obligations under new federal and provincial child support guidelines begin at income levels under which the allowance of a larger family unit would be high enough to be subject to deductions. A special irony here is that where payor and payee are both receiving social assistance, the deductions are a pure windfall for the province, which deducts support payments dollar for dollar from the payee’s allowance as well. Finally, while allowances are theoretically otherwise immune from private garnishment, administrators will be able to deduct from an allowance the “prescribed government debts owed by a member of the benefit unit”.

68. OWA s. 13. This is similar to current regulatory assignment provisions: O.Reg. 537 s. 5. Bill 142 initially contained an open-ended power to demand reimbursement, but this was amended before third reading. Unlike the GW provisions, however, an administrator can demand reimbursement from “a prescribed person” in addition to an applicant, recipient or dependant.

69. OWA s. 70. This is similar although not identical to the subrogation power currently found in s.8 of the Ministry of Community and Social Services Act. Subrogation potentially gives rise to many legal and policy issues; see Ontario Legal Clinic Steering Committee on Social Assistance, Submission to the Standing Committee on Social Development, Brief on Bill 142 (Clinic Resource Office, 1997) (SCSA Brief) at 40-42, but I have been unable to find any instances in which the existing subrogation powers have ever been used.

70. OWA s. 12. Property used as a principal residence has always been exempt from inclusion in countable assets in Ontario. Principal residences remain exempt for disabled recipients: ODSPA s. 7(3). According to the most recently available statistics (1994), about 6% of the caseload owned their own homes. Anecdotal reports suggest that owners are most likely to be women who have retained a matrimonial home after separation, older people and rural residents.

71. Ontario, Legislative Assembly, Hansard (2 September 1997), Debate on Bill 142, Frank Klees, MPP. The fact that social assistance payments transfer at least a billion dollars annually to the mortgages of private sector landlords apparently gives rise to no corresponding responsibilities.

72. OWA s.23(2). Although nominally protected from attachment or garnishment, GW and FB allowances were de facto garnished for child support where the recipient had income from another source which was subject to child support deductions: see Wedekind v. Director of Income Maintenance (1994), 21 O.R.(3d) 289 (C.A.); Moschella v. Peel (1996), 90 O.A.C. 174 (Div.Ct); Heyliger v. Toronto (7 June 1996), #415/94 (Div.Ct).


74. OWA s. 23(2)(b). Private garnishment or attachment of benefits is still prohibited; see s.23(1).
iii) Overpayment recovery

The OWA contains new powers to recover overpayments, although it is silent on the very important question of which overpayments will be recovered. Overpayments will still be recovered by deductions from the allowances of recipients, but administrators may now also serve former recipients with a notice of overpayment which, unless appealed, will be enforceable as a court order. (The power to sue to recover overpayments remains but is unlikely to be used often in light of the notice power.)

A troubling aspect of the new overpayment recovery provisions is the power to recover overpayments from a "dependent spouse". A spouse can be served with a notice of overpayment, enforceable like a regular overpayment notice. In practice, this will primarily affect women. Although the definition of "head of household" is gender neutral, administration of the definition is anything but; men are almost always assumed to be the "head of household" for welfare purposes. Without regulations or policies it is not known whether spousal recovery will be prohibited where the woman did not know of, or had no control over, the creation of the overpayment. Moreover, a woman who has left an abusive relationship could be exposed to physical danger if she tries to exercise her appeal rights under this scheme.

iv) Pursuing other resources

A general principle of social assistance administration is that claimants must avail themselves of all other financial resources. While this covers many potential situations, by far the most important in program terms is child and spousal support. Child and spousal support are of course very high profile issues on the social policy agenda. Social assistance usually gets little attention in this context except insofar as public costs of unpaid support are almost always included as arguments for increased support enforcement. The assumption that all women have an equal interest in getting the

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75. As matter of policy, the FB and GW programs do not collect "administrative error" overpayments, but this policy has never been given explicit legislative status. It has been suggested informally that this policy will be abolished under the OWA, but no formal announcement has been made. As the power to recover overpayments is still framed in discretionary language in the OWA, the legal authority for an administrative error policy will still exist.

76. If the recipient appeals the overpayment, the spouse must join the appeal as a party and cannot appeal independently; see OWA s. 21.

77. OWA s.19(3); s. 21 (4),(5); s. 28(6),(7).

78. Men are recorded as "head of household" in the great majority of couples receiving assistance; see M. Ornstein, A Profile of Social Assistance Recipients In Ontario (Toronto: York University, Institute for Social Research, 1995) 10. That welfare workers assume that men are the "heads" of families applying for assistance is also affirmed by advocates with long experience with the system. The Ontario Ombudsman has also criticized this practice, but MCSS has consistently defended it; see Ontario, Standing Committee on the Ombudsman, Hansard (4 December 1996) B-53 to B-63.

79. Social assistance authorities often demand overpayment recovery from women incurred in situations of abuse and violence. Fraud charges have been laid in situations of unreported cohabitation even though caseworkers were aware of the abuse: e.g., see R. v. Lalonde (1995), 22 O.R.(3d) 275 (Gen.Div.). There does not appear to be a consistent provincial policy on such cases.
maximum support possible is rarely questioned. However, the support regime has an important impact on recipient’s lives as a site of moral scrutiny and regulation. Because support income is deducted dollar for dollar from allowances, women receive no immediate financial benefit from any support obtained, while the personal, emotional, financial and often personal safety cost of support pursuit may be substantial and many are reluctant to pursue support. Thus, while many recipients do not object to pursuing support, the support regime is an inherently coercive one, aimed at ensuring that women seek the maximum support possible regardless of their own wishes.

The OWA says little directly about support, but several provisions will affect the support regime. The Act establishes the “family support worker” (FSW) as a statutory position for the first time. FSWs will have powers prescribed by regulation, including powers to collect and disclose personal information in support proceedings and in the enforcement of support orders. In a change which could have serious consequences in this context, it will be an offence to obstruct or give false information to an FSW. In other provisions, applicants and recipients may now also be obliged to provide information about third parties as a condition of eligibility, a power presumably also intended for use in this context.

5. Workfare

We should prepare welfare recipients to return to the workforce by requiring all able-bodied recipients—with the exception of single parents with young children—either to work, or to be retrained in return for their benefits. [Emphasis in original]

The Common Sense Revolution

“Workfare” was perhaps the single most important plank in the Tory welfare platform during the 1995 election campaign. Even the name of the new legislation is taken from the name adopted for the “new” workfare program, Ontario Works. Although the Act itself has relatively little to say about workfare (or employment programs generally), there is little doubt that workfare will be a centre of political, social policy and legal controversy for a long time.

a. Ontario Works early implementation

“Workfare” implementation started in the GW program well before enactment of the OWA. In June 1996 the province announced “Ontario Works” pilot projects in twenty

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80. Some scholars are more critical of government’s interests in support enforcement, noting that “deadbeat dad” campaigns are simply another commitment to the enforcement of private male responsibility within the model of the patriarchal nuclear family; e.g., see J. Pulkingham, “Investigating the Financial Circumstances of Separated and Divorced Parents: Implications for Family Law Reform” (1995), 31 Can. Public Policy 1.


82. OWA s.59.

83. See section 6.a.iii of this article, below.

84. See section 6.d of this article, below.
municipalities. GW Regulations were amended in September 1996 to provide a legal framework for the new program. Although no regulations or policies have been released under the OWA, the existing programs will be continued under the OWA, presumably with only minor variations at first, and thus offer some basis for comment at this point.

Ontario Works implementation has been far from smooth. None of the initial pilot sites made the original deadline for start-up. By the end of 1996, only half the pilot sites were operating. Even at the time of writing full implementation of the initial phase is not complete. The program as finally introduced does not much resemble the Common Sense Revolution promise. Ontario Works programs must have three components: Employment Support, Employment Placement and Community Participation. Only the latter, Community Placement, involves "workfare" in the common public understanding of unpaid work in return for welfare. Employment Support is not a program stream but a collection of financial supports and activities which can include "basic education and job specific skills training" but which will primarily provide supports to job search activities. Employment Placement is the program component aimed at placing "job ready" recipients in unsubsidized private sector jobs.

Most of these activities and program components are not in fact new. When examined from the perspective of what people will actually be doing under Ontario Works, the new program differs much less than might be thought from the former system. "Employable" welfare recipients have always been required to look for employment and to take any employment of which they are physically capable; it is clear that this is what most people will still be doing under Ontario Works. Most municipalities in the past have offered various kinds of assistance with job searching to some recipients; this assistance will now be funded under Ontario Works but it is not clear that there will be more real assistance than there was before. Education and training options have actually been substantially restricted under Ontario Works; welfare support for post-secondary education was abolished in 1996 and any education and training approved under Ontario Works must be short term and directed only at the fastest possible entry to the labour market. Despite the Common Sense Revolution election promise, education and training are not mandatory activities under Ontario Works rules (a moot point in any event, given that the system cannot meet even a fraction of the demand for training spots now). Even Employment Placement is not really a new idea. Most municipalities in the past had a "job developer" function; the main difference under

87. O.Reg. 537 s.4.1 provides that an applicant, recipient or dependent adult must make "reasonable efforts" to procure "any full-time, part-time or casual employment for which he or she is physically capable".
Ontario Works is that this function must be tendered outside the social service administration on a fee-for-placement basis. The only part of the program that is truly "new" is Community Participation. As currently envisaged, Community Participation involves requiring recipients to take placements either in municipal works projects or in the voluntary (not-for-profit) sector for up to seventy hours per month. The positions are unpaid and although the program is defended in part as offering recipients training and work experience, Community Participation is distinct from skills training and education programs which are offered as "Employment Supports". Ironically, given the enormous controversy that workfare has stimulated, it seems likely that only a small percentage of the caseload will ever actually be involved in traditional workfare.

Ontario Works does purport to change the orientation of employment activities. All activities must be directed at the fastest possible route to labour market entry or reentry. Applicants will be exhorted from the first contact with the system to take responsibility for becoming self-reliant. Employment plans are to be reflected in a contract, the "participation agreement", a sort of exercise in confession and penance between worker and applicant. The role of the worker will be "to communicate belief in the ability of participants to be responsible and self-reliant; and high expectations and optimism about participants' potential to work and become independent". Where moral exhortation fails, severe sanctions for non-compliance apply. This then is the state of the program as the OWA comes into force.

88. *Business Plan Guidelines* 25, 37-43. Early reports from Ontario Works pilot sites suggest that this program is in serious trouble, as few agencies are willing or able to take on the tremendous risk of employment placement where they will only be remunerated upon successful placement.

89. Some municipalities did offer voluntary unpaid work experience programs before Ontario Works. The most ambitious of these was the Metropolitan Toronto "Job Incentive Program", a voluntary work-experience program which placed recipients in the not-for-profit sector and offered certain financial supports. While the program did have critics, it was very popular and ended up with twice as many people as originally anticipated, reflecting strong interest on the part of recipients: see Metropolitan Toronto, Commissioner of Social Services, *Job Incentive Project Final Report* (11 December 1995).

90. A review of available Ontario Works Business Plans suggests that most municipalities project that 10% to 15% of their caseloads will take part in Community Participation. Some municipalities tried for purely notional participation (Metro Toronto's initial goal being about 2% of the caseload) but had to raise their goals at the insistence of the province. As discussed below, many municipalities are not even meeting these targets. Many municipalities hope to achieve their community participation goals by allowing recipients to count volunteer positions they have located themselves (a permissible option under current policies).

91. *Program Guidelines* 4-6, 14-15.

92. *Business Plan Guidelines* at 32.

93. Current sanctions are three months disentitlement for the first act of non-compliance and six months for a second or subsequent offence: O.Reg.537 s.4.3(7).
b. Workfare under the OWA

The program described above will continue under the OWA. While there may some changes, the overall program design has been written into the Act so radical change is unlikely in the immediate future. However, while the program components may not change, other changes to the welfare system do have very important implications for employment programs. As I have already discussed, the Ontario Works caseload will increasingly be made up of single mothers, older people and people with medical conditions and other problems that fall short of officially recognized disability. As the most readily employable people leave the system, the people left subject to participation requirements will increasingly be those with multiple barriers to employment who require costly and labour intensive supports and interventions to have any realistic hope of entering the job market. A strong case can also be made that the other changes that have been made to the welfare system, which have greatly increased the insecurity, health status and social isolation of thousands of recipients, will decrease rather than increase employability.

This has implications throughout the program: it will affect the numbers of people seeking exemptions, deferrals and activity restrictions; it will mean increased demands for employment supports; and so on. Whether the government will recognize and fund this or whether it will simply put intense pressures on delivery agents to keep reducing caseloads at all costs remains to be seen. Unfortunately, to date all evidence suggest the latter response. Ontario Works is poorly funded and there has been no suggestion yet that savings from reduced caseloads will be put into program supports.

As with much else, the Act is more notable for what it does not say about employment programs and workfare than what it does. There are a number of enabling and definitional provisions dealing with the components of the program but only one section dealing directly with obligations, s. 7(4):

A recipient and any prescribed dependants may be required as a condition of eligibility for basic financial assistance to,

(a) satisfy community participation requirements;
(b) participate in employment measures;

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94. Although, as discussed above, a serious economic downturn could send large numbers of more employable back into the welfare system and change this dynamic again.

95. I. Morrison, *Ontario's Welfare Rate Cuts: An Anniversary Report*, supra n.18. Many of the consequences of the rate cuts can seriously affect the ability to participate in employment measures. These include the sharp increases in homelessness or near-homelessness, sharp increases reported in the numbers of recipients who no longer have telephones, the worsening health situation of many recipients because of inadequate diets and cuts to related services such as dental care, all of which mean increasing social isolation for many recipients.

(c) accept and undertake basic education and job specific skills training; and
(d) accept and maintain employment.

While the Act may say little, however, the legal and policy issues raised are complex.

i) Participation standards
A major concern with the Act is the lack of legislated standards against which a refusal or failure to comply with the program can be measured. The government refused to consider including in the Act a “reasonable cause” standard for failure or refusal to comply with an employment requirement.\(^9\) Issues of exemptions, participation restrictions and so on are important under any circumstances but will become increasingly so in this scenario. Some participation standards will be set out in regulation and policy: current Ontario Works policies do in fact make extensive provision for exemptions, participation restrictions and excuses for non-compliance, as must any program of this sort,\(^8\) but these can be abrogated at any time without remedy in the absence of a legislated standard.

There is also cause for concern about how any standards, legislated or otherwise, will be applied in practice. Miscommunications, cultural misunderstandings, undiagnosed or disbelieved medical or psychological conditions, language or perceptual barriers and simple bureaucratic bungling can never be entirely avoided in welfare administration. Evidence from U.S. workfare programs show that error rates in sanctions can be very high.\(^9\) These problems have always existed in the Ontario welfare system, as they do in all welfare systems. They may well become worse under Ontario Works, due both to the fact that the conditionality rules have become much more complicated, and to the characteristics of the caseload to whom the rules will apply.\(^10\) These concerns raise the further issue of how well the OWA review and appeals processes can be expected to deal with such cases, a concern I address separately below.

ii) Participation supports
The Act contemplates the provision of “employment assistance” (defined to include community participation, job search support, education and job specific skills training and employment placement), but imposes no obligation to provide any supports.\(^1\)

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98. *Program Guidelines*, Chapters VI, VIII.
99. See *CLASP Update* (Washington: Centre for Law and Social Policy, 25 November 1997) at 7–13, “Sanctions and Appeals”. In a comparison of several jurisdictions, the reversal rates upon appeal for sanctions range from 44% to 98%. Clients’ participation barriers often went unnoticed or were misinterpreted; an internal caseload review in one jurisdiction estimated that 50% of those sanctioned should not have been.
100. In the first appeal decision under the GWA Ontario Works program, the SARB found that the welfare office in the case had ignored every one of the procedural safeguards supposedly assured under the program and had in fact even tried to sanction the appellant for something that was not sanctionable under the rules; see SARB Q-09-02-40 (1997; McKean).
101. OWA ss. 3, 4, 6.
Refusal to provide needed supports—child care, transportation, essential equipment, etc.—is not appealable. The initial funding levels for employment supports are very low, which means that problems are likely to arise in this regard. However, even if employment assistance is both generous and appropriate, the increasing trend towards targeting assistance to people on the basis of their status as welfare recipients rather than need is worrisome. In the U.S., one effect of intensive concentration of subsidized child care, training priorities and transportation subsidies on welfare recipients is a growing resentment by the working poor competing for the same low wage and entry level jobs. The same can be expected under Ontario Works; for example, to the extent that single mothers in workfare get priority access to existing child care spaces or separate child care funding, they may be seen as getting special treatment by thousands of other low income parents on waiting lists for subsidized child care spaces.

iii) Workplace rights
Another important issue is the degree to which Community Participation participants will be treated as “workers”. The status of “workfare participant”—neither “employees” nor “volunteers” in the usual sense—is a novel one in Canadian law. Inevitably, some day a workfare participant will be seriously injured or will injure someone else, will be harassed or will harass someone else. When this happens, a host of new and difficult questions will emerge. In the U.S., the assignment of untrained and unequipped welfare recipients to dangerous and unsanitary work has become one of the most important legal issues in respect of workfare programs and has led to a growing number of litigation challenges.

A section excluding Community Participation participants from “any Act or regulation that has provisions regulating employment or employees, except as prescribed” was dropped from Bill 142 due to an embarrassing bungle during Committee hearings. However, the government has already stated that the OWA will be amended to restore this section as soon as possible. The government’s stated intention is that Community Participation participants will be entitled to workers compensation benefits (now the Workplace Safety and Insurance Act, 1997) and are partially covered by the

102. It may be possible to appeal the lack of necessary supports indirectly. This could happen if a recipient refuses to participate in a particular activity without supports she considers necessary, is sanctioned and appeals the sanction. In such a case the lack of supports might provide a defence to the sanction, but it seems clear so far that the appeals tribunal under the OWA will not have the power to order the supports to be provided. However, this issue will not be clear until regulations are made with respect to the obligation to provide supports and clarifying the appeals provisions.

103. E.g, see M. Healy, “Reform is Pitting Working Poor Against Welfare Poor” Los Angeles Times (19 February 1998) [from AP line feed].

104. See S. McCrossin, “Workfare or Workhouse? Occupational Health and Safety and ‘Ontario Works’” (1997), 12 J. L. & Social Pol’y 140 for a review of some of these issues under the GWA (the legal situation may change somewhat when the OWA comes into effect).

105. Pending proclamation of the OWA, a similar provision of the GWA, s.15.1, governs workfare placements. Regulations under that section came into effect January 1, 1998: O.Reg. 537 s.32, as amended by O.Reg 487/87.
Occupational Health and Safety Act, but will be excluded from the Employment Standards Act.\textsuperscript{106} There is some question as to whether participants are protected under the Ontario Human Rights Code, although it does not seem to have been the government's intention to exclude them.\textsuperscript{107}

text

\textit{iv) Women and workfare}

One of the most fundamental social policy shifts in Ontario Works is the redefining of women with children as "workers" rather than "mothers".\textsuperscript{108} For the first time, mothers of children of "school age" will be subject to mandatory employment requirements.\textsuperscript{109} However, some of the most important policy issues flowing from this shift are strikingly absent from both public discussion and the program itself. The issue of childcare has of course been a focal point of criticism of the workfare proposal from the outset, but this is only one of many concerns about the inclusion of single mothers in mandatory employment programs.

The issue of domestic violence in particular should be noted. There has been almost no discussion of this issue in relation to Ontario Works. Evidence from U.S. workfare programs suggests a high incidence of domestic violence, either past or current, amongst participants,\textsuperscript{110} with consequences that include serious mental health problems relating to post-traumatic stress disorder, mental health and behavioural problems in dependent children exposed to abuse, stalking and threats from former partners, and participation problems stemming from current abuse. Indeed, it is probable that the high rates of depression and other mental health problems commonly found amongst single parents on social assistance are related to similar experiences of domestic violence.\textsuperscript{111}

\textsuperscript{106.} Ibid.

\textsuperscript{107.} The Code affords "employees" protections against discrimination, including sexual and other harassment: Human Rights Code R.S.O 1990 c.H-19, s.5. If this is interpreted as being legislation "regulating employment or employees", it might be argued that GWA s.15.1 and any successor amendments to the OWA exclude it. However, this appears to have been an oversight. The Ontario Works policy guidelines seem to assume that the Code will apply to Community Participation.

\textsuperscript{108.} See above n.24.

\textsuperscript{109.} The OWA does not specify when these requirements will commence. At the time of writing, it appears that the government intends to impose mandatory requirements on all sole support parents whose youngest child is old enough to attend full-time school. However, in some jurisdictions the age for commencement of mandatory requirements is much younger, and the relevant age could be changed by regulation in the future.


\textsuperscript{111.} Ornstein's large scale 1995 study of social assistance recipients concluded that the psychological
All evidence suggests that most single parents make extensive and sustained efforts to leave social assistance, as do the great majority of all welfare recipients. However, single parents face particularly severe barriers to sustained independence through paid employment. By reducing access to training and higher education and by insisting that the dominant goal for all recipients is immediate labour market entry no matter how poorly paid or precarious the employment, Ontario Works employment programs will do little to address these problems. Moreover, Ontario Works will almost certainly dramatically increase the time needed by single parents to negotiate the bureaucratic demands of the system, not just for participation in mandatory activities but to comply with ever increasing eligibility verification requirements. Since almost all of the strategies for surviving on welfare level incomes demand time (visiting food banks, bargain hunting, seeking occasional cash employment) in addition to that required by parenting alone, the stresses on single parents will continue to increase. In short, Ontario Works might succeed in forcing some single parents off the welfare rolls; but there seems little chance that it will improve the economic status of very many.

c. Future directions
Few Tory welfare promises seemed to make more "common sense" than that people who receive welfare should work for their benefits. The proposition was vague enough to serve both as a focal point for hostility towards recipients and as a promise of a "hand up", depending on how it was presented. Indeed, many recipients themselves "voted for workfare". However, the generality of the promise obscured the fact that the Tories had no clear idea of how they would carry it out. As then-candidate Harris said in the spring of 1995, "government is trying to 'overthink' the problem [of work-to-welfare]. The solution may be much more community-based than previously thought, with much less bureaucracy and far lower costs". In fact, it seems that the government rather seriously "underthought" its promises and continues to confront problems with them.

The central problem in the government's workfare program is, not surprisingly, workfare itself, or Community Participation. The simplistic promise of mandatory workfare which led to such political success has become the major barrier to Ontario Works. The initial idea that the non-profit voluntary sector would become a placement site for large numbers of workfare placements has been a major failure; in general, the situation of social assistance recipients was "dramatically worse" than that of the general population; see Ornstein, supra, n.78 at 89. One Ontario study of single mothers on social assistance found that 45% of the study group suffered from a depressive condition severe enough to seriously interfere with any training or work program if not treated; see C. Byrne et al., 12 month prevalence rates of depression in sole support parents receiving social assistance; prevalence rates of depression in their children Paper 96-3, Interim Report for When the Bough Breaks and Benefiting the Beneficiaries of Social Assistance (Hamilton: McMaster University, 1996).

113. "Welfare should be a hand-up", supra n.1.
Ontario Works: A Preliminary Assessment

voluntary sector has been very hesitant to become involved in workfare.\textsuperscript{114} Many municipalities (including Toronto) strongly resisted mandatory workfare from the outset and came to participate only reluctantly and under threat of serious financial sanctions. Many municipalities have not met their Community Participation targets and are becoming increasingly critical of the program. Toronto has openly criticized Community Participation as counterproductive; arguing that it is actually preventing the municipality from directing resources towards more successful welfare-to-work measures.\textsuperscript{115} First Nations, who deliver welfare separately on reserves, are also in a confrontational situation over workfare in areas of Band administration.\textsuperscript{116}

This has left the government with a surprisingly difficult problem. Public support for workfare is high but uninformed and generally diffuse. Opposition is much more limited, but concentrated amongst people and organizational structures, like municipal social service administrations and the voluntary sector, whose participation is politically important. The government’s own shaky political rationale for off-loading social responsibilities to municipalities and to private charity rests in part on the claim that “expertise” resides in sites closest to those in need. Resistance from these sites therefore poses a serious dilemma, especially as the government either will not, or politically cannot, back off from its insistence on the “mandatory” nature of workfare.

The problems may well get worse as full-scale implementation proceeds. As discussed above, Ontario Works programs are likely to be dealing increasingly with a hard-to-serve caseload as time goes by. There is little chance that the province will ever be able to make a case that Ontario Works “works”, at least not one that would withstand careful scrutiny. The fundamental problem is that most programs like Ontario Works show no demonstrable benefits to recipients at all: they do not significantly improve earnings, reduce welfare rolls or usage or reduce poverty. Some actually leave participants worse off than comparable control groups. The few programs that do show positive outcomes for recipients involve conditions that do not pertain in Ontario: intensive and expensive investment in “human capital”, very low unemployment, or both. Often, the only savings from mandatory employment activities come from sanctions.\textsuperscript{117} To date, no plans for any methodologically rigorous evaluations of

\textsuperscript{114} There are many reasons for this: many agencies and organizations are strongly opposed on principle to workfare: some refuse to cooperate with a government that they perceive as deliberately brutalizing the poor; some have probably been deterred by threats from organized labour to retaliate against major funders such as the United Way if they cooperate with workfare; many would happily take part in a voluntary program but are not willing to be responsible for sanctioning; while for many the bureaucratic demands of the program simply make it not worthwhile for them. While the picture varies around the province, most municipalities report little interest from the voluntary sector when approached about participation.

\textsuperscript{115} See M. Philp, “Workfare quotas penalize success, civic officials say”, supra n.96.


\textsuperscript{117} Welfare-to-work programs have been extensively studied in the U.S. in situations where program participation outcomes have been measured against control groups to allow for reasonably accurate assessments of what results can actually be attributed to the program; see A. Mitchell, Workfare:
Ontario Works have been announced. The government specifically refused to include in the OWA provisions requiring evaluation or assessment, although such provisions do exist in other social welfare legislation. Instead, it has relied on public relations strategies ranging from obfuscation of the actual extent of the program to a $900,000 “information” campaign, launched in October 1997, extolling OntarioWorks. Nevertheless, there is a real political risk in the program.

For these reasons, the future directions of the program are very unclear. The government has essentially three options. The first is to leave Community Participation as a more or less token activity within Ontario Works but continue an aggressive public relations campaign to obscure this. The second is to greatly expand placements into the public sector, following a pattern in the U.S., where tens of thousands of municipal employees have been displaced by workfare placements. The third option—now being discussed openly—is to expand the program into the private sector using welfare as a wage subsidy to private sector employers. Obviously the direction that is chosen will have profound implications for the future employment programming and experiences under Ontario Works.

6. Eligibility Verification And Fraud Control

Every penny that is paid to the wrong person through mistake or fraud is food taken from the needy. Fraud and overpayments must be stopped.

In North America, workfare does not proceed in isolation, but exists as part of a wider campaign of suspicion and punitive administrative practices directed against those on welfare including cutbacks in benefits, the creation of fraud squads and frequent home visiting to detect concealed income. In practice, workfare’s implementation is part of the cultivation of a wider climate of suspicion and stigmatization of welfare clients.

“Getting tough on fraud” is the stock in trade of welfare politics. Claims of rampant fraud and abuse against alleged NDP mismanagement of the social assistance system were frequently made by the Tories in opposition. A drive towards tightening eligibility requirements and verification has been evident in the Ontario welfare system for several years, beginning with the “enhanced verification” initiative in 1992–93. Eligibility investigations intensified sharply in FB and welfare offices immediately

What We Know, supra n.96.

118. For example, s.3 of the Employment Insurance Act S.C. 1996, c.23, provides that the Employment Commission must monitor and assess the effectiveness and impact of the Act and report to Parliament regularly.


121. Common Sense Revolution, 10.

after the 1995 election. The themes of stricter eligibility controls and aggressive pursuit of fraud run throughout the OWA, from information demands, to “fraud units”, to expanded information sharing practices to new offence provisions.

The concern that welfare might go to someone other than the “truly needy” has dominated social assistance programs for as long as they have existed. It is important to note that the debate here is about far more than welfare “fraud” in any technical legal sense. Fraud rhetoric in public and political discourse is only loosely related to legality; rather, the phrase “fraud and abuse” encompasses a continuum from actual criminal behaviour to activities which are legal but morally disapproved for whatever reason. The value of the rhetoric in conservative anti-welfare campaigns is obvious; fraud discourse subverts claims of need not by confronting or denying them directly, but by side-stepping them. “Fraud talk” helps construct a generalized atmosphere of oppression and fear which constitutes much of the lived experience of poverty. It fragments and mutes opposition even amongst those who are oppressed by it.

Invoking the “truly needy” patently has nothing to do with need in any meaningful sense. In the vast majority of instances in which people violate technical rules, knowingly or otherwise, they remain very poor. Very few such cases involve significant amounts of money. Rather, the use of the phrase is a further code that allows for the stigmatization of those who “break the rules” while the near-impossibility of keeping the rules means that justifications for further disciplinary actions against recipients will always reinvent themselves. There is very little evidence of serious criminal activity solely for gain in welfare programs; on the other hand, many, probably most, recipients rely on additional cash and other supports. Whether the strategies they use to supplement welfare incomes are “legal” depends on a mass of vague and constantly changing rules and as often as not, the whims of caseworkers (nor do all rule violations, deliberate or otherwise, necessarily mean any economic loss to the welfare system). As Hartley Dean and Margaret Melrose argue:

Benefit fraud ... does not necessarily represent a failure of the social security system. It could also represent a manageable kind of discord; a symbolically significant component to the strategic orchestration of discipline in an increasingly polarized society.

The OWA provisions dealing with eligibility verification and investigations constitute an enormous extension of the system’s powers over all individuals. Welfare administration under the OWA may or may not uncover or deter significant hitherto undiscovered levels of illegal conduct (while the government will almost certainly

123. One recent U.S. study discovered that almost all AFDC single mothers interviewed depended on unreported income or support in kind. They were, nevertheless, poor—the additional income was a survival strategy: K.Edin & L.Lein, Making Ends Meet: How Single Mothers Survive Welfare and Low-Wage Work (New York: Russell-Sage Foundation, 1997).

make these claims it is almost as certain that any such claims will be unverifiable), but it will certainly confer new powers to refuse, delay or terminate assistance on bureaucratic grounds and to maintain an even greater degree of surveillance and scrutiny over applicants and recipients.

a. Information Demands and Eligibility Verification

The complexity of welfare programs means that there is a virtually endless list of matters about which information demands can be made. This has long been a source of complaint. Caseworkers’ discretion over information demands can be used to delay applications or to harass unpopular clients. The legislative basis for increasing information demands from applicants and recipients is arguably one of the most important areas of change in the OWA.

Section 7(3) provides that no person is eligible for assistance unless the person (and any prescribed dependants) provide “the information and the verification of information required to determine eligibility”. Regulations will prescribe what information is to be provided, when and how it is to be provided and when “home visits” are required.125 People may be required to provide information “including encrypted biometric information” and “personal information about a third party that is relevant to determining the person’s eligibility”.126

i) Information and verification

There is a crucial difference between the power to demand information necessary to determine eligibility (the former rule) and the new power to prescribe what is acceptable “verification”. Some forms of information which are commonly demanded are far beyond recipients’ financial capacity to obtain.127 People without housing or in dangerous or insecure housing often lose important documentation or have it stolen. Formerly, administrators could waive requirements or accept alternative forms of proof. If they did not, the refusal could be appealed to the SARB. Under the OWA, not only can specific documentation be prescribed as necessary to complete an application or maintain eligibility, but administrators no longer have any statutory discretion to waive or modify requirements. Obviously much will depend here on what the regulations actually say, but there are no reasons to suppose that these powers will not be used to further exclude and deter people in genuine need. The province has already announced new information demands to be imposed under Ontario Works which will result in people being denied assistance.128

125. OWA s. 74(1).9 (ii).
126. OWA s. 74(3).
127. For example, welfare workers often demand bank records to “prove” that people are in fact destitute and the power to examine financial transactions can extend backwards to three years before the application for assistance. Production of these records often requires hours of bank time and most banks charge an hourly rate for the service; e.g., see SARB N-06-22-21 (12 June 1995); SARB Q-11-25-10 (1997); SARB S-04-03-17 (1997/98).
128. MCSS has already announced that under Ontario Works homeless people will only qualify for shelter allowances if they can produce receipts for shelter already paid for. Most people who work with
ii) “Biometric identification”
In practice, the power to require “biometric identifiers” means electronically encoded fingerprints. Although technically different from the physical fingerprinting used in the criminal justice system, the distinction has generally been rejected by opponents, who see fingerimaging as a further step in the “criminalization” of the poor (although there is less evidence of widespread opposition amongst recipients generally). Criticism of the original Bill 142 proposals was so severe that the bill was amended by third reading to impose stringent controls on the collection, storage and use of any kind of biometric identification. The debate over safeguards, however, obscures the more fundamental question of whether any business case can actually be made for the practice. Exorbitant claims are often made about “biometric identification” systems but these are hard to verify. Fingerscanning can only detect or deter ‘double-dipping’, but there is no evidence that this is a major problem in welfare programs. The claim that fingerscanning “deters” fraud is difficult to test, to say the least. Independent studies of some programs have found no savings whatever in light of the costs of the technology. Nevertheless, there is little doubt that the homeless have already denounced these measures as imposing an impossible burden, apparently established only to drive one of the most vulnerable groups of recipients further into poverty.

129. Other forms of biometric identification (e.g., face imaging, retinal scanning) are sometimes proposed but are almost always rejected as more difficult than fingerscanning. During the 1995 election campaign the Tories promised a welfare photo-ID card, but this issue seems to have been long since dropped.


131. Not surprising, welfare recipients often share dominant attitudes and beliefs about fraud. Some studies have found surprisingly strong recipient approval (or at least non-rejection) of fingerscanning (although the accuracy of studies carried out by welfare administrations might be suspect); e.g., see N.Y. State Department of Social Services, Office of Quality Assurance and Audit, Assessment Report of the Automated Finger Imaging System Demonstration Project (1994); Texas Department of Human Services, Programs Office, Process Evaluation of the Texas Lone Star Image System (1997) (interestingly, this study found that caseworkers object to fingerscanning more than recipients); Metropolitan Toronto, Commissioner of Social Services, Client Identification and Benefits System Contract (24 April 1997), 9.

132. OWA ss. 75, 76. Most of the amendments were directed at deflecting criticism that fingerprints would not be securely stored and would be shared without controls. The amendments require that fingerprints be encrypted forthwith, that original information be destroyed, that only basic identifying information be linked to the encryption and that the information must be stored in a manner from which an original cannot be reconstructed.

133. The results of all other conventional detection mechanisms suggest that unreported income and unreported cohabitation are by far the most important causes of payments to ineligible persons. That these findings are fairly accurate is suggested by the fact that in most places where fingerimaging has been introduced, few people are caught double-dipping.

134. Vendors of the technology often cite caseload terminations of people who do not turn up to be fingerprinted. However, unless the numerous alternative possible explanations for this phenomenon are investigated and discounted (failure to receive notice, incomprehension, illness, incapacity or other personal crisis, lack of transportation, personal objection, inability to compel other required participants to attend) these claims remain suspect.

135. Texas Department of Human Services, Programs Office, Lone Star Image System Evaluation: Final
techno-fix allure of fingerimaging will at least initially prove irresistible and will probably even expand into other government programs.\textsuperscript{136}

\textit{iii) Third party information requirements}

The power to demand information about third parties is also troubling. It would presumably be used to demand information about people from whom support might be owing, such as from a former spouse or immigrant sponsor. This power would not be needed for information already within the knowledge or control of an applicant or recipient, so it must be assumed that it is intended to allow demands for information that the person does not possess. Thus, s. 74(3)(b) seems to contemplate disqualification for failure to provide information which the person may have no ability to produce, or where even seeking the information might be dangerous, if there is a history of abuse between the person and the third party.

\textbf{b. Fraud units and snitch lines}

The \textit{OWA} authorizes the creation of “fraud control units” to investigate the eligibility of past and present applicants and recipients.\textsuperscript{137} Concerns about eligibility investigations practices and new offence provisions are discussed separately below. However, the most visible public face of the new fraud units will likely be the province’s welfare “Hotline”. The Hotline was one of the first Tory welfare initiatives, instituted on October 2, 1995 (ironically, just as some local welfare snitch lines were being closed around Ontario\textsuperscript{138}). By October 2, 1997, MCSS was claiming that the snitch line had saved almost $15 million over two years at a cost of approximately $348,000.\textsuperscript{139} This claim is probably greatly exaggerated.\textsuperscript{140} Much more striking is that the vast majority of calls to the Hotline involve no wrongdoing or error (in fact, many people reported to welfare snitch lines are not even on welfare\textsuperscript{141}). After two years, only 7.9% of calls

\begin{itemize}
\item \textit{Report} (1997), 34.
\item A January 1997 federal government report on immigration proposed that refugees and some other immigrants might be required to carry cards with encrypted fingerprints, which one reporter mused “could also be tied in to welfare and medicare systems to prevent double-dipping and fraud”: A Thompson, “High-tech tracking system proposed” \textit{The Toronto Star} (7 January 1998).
\item \textit{OWA} s.57.
\item E.g., see M. Reitsma-Street & J. Keck, “The Abolition of a Welfare Snitch Line” (1996) 64 The Social Worker 35.
\item Ontario, MCSS, \textit{Social Assistance Fraud Control Report} (13 November 1997).
\item There are several reasons for this. First, it is not clear how many cases were actually investigated as a result of Hotline tips; apparently allegations from all sources are included in the Hotline figures; see Social Assistance and Employment Opportunities Branch Memorandum: \textit{Welfare Fraud Control Database}, SAPB 9616 (9 October 1996) 2. We do not know, for example, how many such additional referrals (which presumably would have occurred without the Hotline) are included in the Hotline report; nor do we know whether they are generally more accurate than telephone reports. Second, the “cost” figures for the line apparently exclude the costs and lost opportunity time of staff investigations. Finally, the $15 figure assumes that everyone found to be wrongfully receiving benefits would have continued to do so and would not have been identified without the snitch line; see M. Murray, “Ecker questioned on amount saved from fraud line” \textit{The Globe And Mail} (18 December 1997) A10.
\item In Metro Toronto, typically about a quarter to a third of people reported to its fraud line annually are
\end{itemize}
had resulted in any action. Only a miniscule percentage was referred to police; the number prosecuted was even less.\textsuperscript{142} On this standard, the Hotline would seem to be an inefficient strategy, far less effective than most programs involving public reports of alleged crimes.\textsuperscript{143} This is of little importance, though, if the main function of snitch lines is understood to be ideological rather than as a serious crime control measure. Snitch lines help to construct and maintain the image of the dependent poor as “Other” and to reinforce recipients’ understanding of themselves as objects of constant surveillance and public scrutiny.\textsuperscript{144} The fact that only a tiny percentage of all calls reveal serious criminal activities is irrelevant to this end. What is more important is that all callers to snitch lines believe that they have revealed wrongdoing—\textsuperscript{145} a belief which they presumably share within their social communities, thus perpetuating the environment in which “fraud talk” can be politically manipulated.

c. Investigatory powers

The OWA entrenches in legislation for the first time the position of “eligibility review officer” or “ERO”.\textsuperscript{146} EROs will be vested with “prescribed powers including the authority to apply for and act under a search warrant”. A crucially important question is what these powers will be and how they will be used. A 1994 Tory private member’s bill, introduced in opposition and modelled on the powers of the notorious Quebec welfare police,\textsuperscript{147} would have given welfare investigators the power to examine any

\textsuperscript{142} Of 26,214 allegations over two years, 136 or 0.5\% were referred to police for further investigation and 36 were actually prosecuted. These figures are consistent with the outcomes of anti-fraud measures in various programs across the years; fraud crackdowns virtually never result in significant numbers of prosecutions despite governmental spins on the outcomes: I. Morrison, \textit{Welfare Reform and Welfare Fraud: The Real Issues}, Ontario Social Safety NetWork Backgrounder (Toronto: Ontario Social Safety Network, 1997).

\textsuperscript{143} By way of comparison, in the eleven months from January 1997 to November 1997, the “Crime Stoppers” phone lines in York Region, Metro Toronto and Peel Region received 2453 calls. These led to 363 arrests, closure of 421 police files and 1001 charges laid. These figures do not include social welfare offence investigations, which are referred to the appropriate hotlines. (Information provided by Constable Wayne Snooks, Coordinator of the York Region Crime Stoppers program: telephone interview, December 1997.)

\textsuperscript{144} As one recipient put it: “I live in a place with a dreaded ‘snitch line’. If you are on assistance you know too well what ‘line’ I am referring to. The harmful, devastating outcome of a false report by a neighbour is a fear I constantly live with”; \textit{Reality Cheque: Telling Our Stories of Life on Welfare in Ontario} (Toronto: Ontario Social Safety Network, 1996) 17.

\textsuperscript{145} Callers are not told (and cannot be told due to protection of privacy legislation) whether the people they report are on welfare, let alone whether their reported “offences” are real ones.

\textsuperscript{146} \textit{OWA} s. 58.

\textsuperscript{147} The Quebec government has often boasted of the “savings” through fraud detection and prevention. However, a 1993 review of the practices of the “bou bou macoutes” at the University of Montreal concluded that the government’s claims were grossly exaggerated and full of distortions and misrepresentations; in short, that the highly publicized anti-fraud initiatives were for political ends only:
person under oath, the power to require the production of documents or other things and contempt powers against any person who refused to answer; it also would have exempted any informant from confidentiality or privilege rules and would have effectively barred civil suits against an informant for giving false or misleading information.\(^{148}\)

That EROs might be given such extraordinary powers without any clearly demonstrated need is problematical. Recipient and advocate complaints about abuses of powers by EROs and other enforcement officials within the social assistance system are ubiquitous but even harder to prove conclusively than complaints about abuses of police powers. Some of the types of allegations constantly repeated include harassment and intimidation of people, including psychologically vulnerable and developmentally delayed recipients, deliberately lying or threatening fraud prosecutions to elicit "confessions" about wrongdoing, wearing police insignia on clothing during investigations, failing to advise people under investigation of their appeal rights and suppressing exculpatory information during appeal proceedings.\(^{149}\) To the extent that this behaviour exists, it would strain credibility to suppose that it will receive less tacit encouragement under Ontario Works than under previous legislation.

d. **Offences and prosecutions**

Both the *FBA* and *GWA* made it an offence to "knowingly obtain or receive assistance" to which a person is not entitled.\(^{150}\) The *OWA* retains this offence, punishable by a maximum $5000 fine or six months imprisonment, and creates a new offence of obstructing or knowingly giving false information to an ERO or Family Support Worker.\(^{151}\) Assistance will be denied to anyone convicted of an offence "in relation to social assistance".\(^{152}\)

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\(^{148}\) See J.L. Gow et al., "Choc des valeurs dans l'aide sociale au Quebec? Pertinence et signification des visites a domicile" (Department de science politique: U. de Montreal, 1993).


\(^{150}\) These are all common allegations made by advocates familiar with the social assistance system. A few have been the subject of formal written complaints. Some examples are taken from decisions of the Social Assistance Review Board: e.g. SARB M-12-25-25 (1996) (ERO acknowledged that she had no evidence against appellant, but testified that "when people are told there is proof of an allegation, they will sometimes admit it."); SARB L-08-09-46 (1996) (workers' notes missing from files or subsequently altered); SARB G-11-03-13 (reasons for termination were "excuses invented by a welfare worker" after main issue resolved). See also M. Little, "Manhunts and Bingo Blabs", supra n.81; Ontario, Standing Committee on Social Development, Hearings into Bill 142, Hansard (20 October 1997), presentation on behalf of Muskoka Legal Clinic.

\(^{151}\) GWA s.16, FBA s.19.

\(^{152}\) OWA s. 79(3). Again, a common complaint against EROs has been that they frequently threaten recipients, relatives and others with "fraud" if they do not cooperate with investigations. The ability to threaten both recipients and third parties with "obstruction" will be a powerful incentive to expand this practice.

\(^{152}\) OWA s.74(6). No ineligibility period is prescribed in the Act. The government has said that the
The *FBA* and *GWA* offence sections were rarely if ever used in practice. Serious allegations were referred to police and laid as fraud charges under the *Criminal Code* if the evidence warranted. Other cases were treated as overpayments and recovered from ongoing benefits or pursued through civil action. Without doubt, serious cases will still be charged criminally. The question is what will happen with the many cases that would formerly have been resolved administratively or civilly. Clearly there will be strong political and financial incentives to lay more provincial charges under the *OWA*. If the number of prosecutions does not increase, the government's fraud rhetoric will look at best mistaken and at worst deliberately inflammatory. The fact that a conviction will render a person ineligible for assistance will create a strong financial incentive to lay charges. Provincial charges can be laid by EROs without police involvement or screening. This is important because police are not under the direction of MCSS or municipal welfare administrators, unlike EROs, who are also less trained and have a greater personal stake in the outcome of investigations. Given that few people charged under these provisions will be represented (and so will almost certainly be convicted) the offence provisions are a potential bonanza for the system.153

e. **Freedom of information and protection of privacy**

The identity of social assistance recipients is protected by legislation in Ontario,154 but these protections mean little in practice. All applicants must sign a consent to release information form which effectively authorizes disclosure of personal information to any party at any time.155 The *OWA* also now provides expressly for a broad spectrum of information sharing agreements within Ontario and between Ontario and other governments without consent156 (and the province has already negotiated several such agreements). As a practical matter, recipients have few meaningful privacy rights in law. Although confidentiality is often identified by recipients as extremely important to them, almost any eligibility investigation will immediately reveal a recipient's identity to neighbours, landlords, friends, merchants or employers. The administration of workfare will further erode confidentiality.

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153. Under the current rules of the Ontario legal aid system, it is very hard to get legal aid for a provincial offence. Unrepresented accused are particularly likely to plead guilty from intimidation or despair, or to be convicted despite a possible defence. These problems are compounded when dealing with a complex and poorly understood program with which few criminal lawyers have much experience.

154. Information about receipt of public benefits is defined as “personal information” under both the *Freedom of Information and Protection of Privacy Act* RSO 1990 c.F.31 (“FIPPA”) and the *Municipal Freedom of Information and Protection and Privacy Act* RSO 1990 c.M.56 (“MFIPPA”). Disclosure of this information is deemed to be an unjustified invasion of personal privacy under both Acts unless released for a purpose authorized therein.

155. Form 3 (a mandatory requirement in a social assistance application) authorizes disclosure “to any party personal information about me, my spouse … or any of my dependents or my foster children for the purpose of determining or verifying my initial or ongoing eligibility for social assistance or administering my social assistance”.

156. *OWA* ss.71, 72.
Conversely, the province has already made it far more difficult for recipients (or advocates) to get access to information about themselves, and the OWA will raise further barriers. Recent amendments to Ontario’s freedom of information legislation have imposed new fees and administrative barriers for people seeking information about their own files, and some social assistance delivery sites have become more and more aggressive about resisting disclosure of files even during litigation. The OWA now provides that any ERO engaged in an eligibility investigation (regardless of whether there are grounds to believe that an offence has occurred) or anyone conducting a “fraud” investigation shall be deemed to be engaged in “law enforcement” for the purposes of freedom of information legislation, which means that recipients can be refused access to their own files.

7. Decision Making and Due Process

a. From SARB to SOBET

[The Social Assistance Review Board] is not accountable to the public in reaching decisions that inspire the public’s confidence; it is not accountable for the funds issued; and it has no directive to protect the public interest. For the Board to function as an autonomous body without a mandate to protect the public interest has resulted in disastrous rulings, irresponsible policies, and promiscuous expenditures.

The OWA “reforms” to the appeals system confirm the strength of these sentiments within social assistance administrations leading up to the introduction of Bill 142. To understand the degree to which the OWA has changed the nature of the appeals system, it is necessary to briefly review the history of the former appeals system, the Social Assistance Review Board and why there has been such a vehement backlash against it.

The appeals system is not new to controversy. In fact, it was only with some reluctance that Ontario even implemented an appeals system at all, despite the legal obligation to establish an independent appeals body imposed by the CAP cost sharing agreement signed in 1967. Ontario had been opposed to this aspect of CAP and even after legislation was passed to implement it, the province dragged its feet on the creation of an appeals board until political pressure forced the government of the day to act. Nor did Ontario attempt to do more than meet its minimum obligations in this area; once established, the Social Assistance Review Board quickly became a repository of patronage appointments and was of low profile and little significance.

157. Under 1996 amendments, people seeking access to information under provincial legislation must pay a fee with each request and can be required to pay production and photocopy costs for all information provided: SO 1996 c.1, Sch.K, amending MFIPPA.

158. OWA s. 57(4); MFIPPA s. 8, 32(f), (g).


160. See J. Struthers, The Limits of Affluence, supra n.8 at 246–247.
By the late 1970s, however, the conduct of the Board began to emerge as a legal and political issue, as the growth of legal aid services meant increased external scrutiny of the Board's conduct. Pressure on the appeals system mounted when the Divisional Court, hearing statutory appeals from SARB, began to issue pointed criticisms of the poor quality of the Board’s decisions.161 By the time of the Social Assistance Review, the momentum for change had become overwhelming. Tribunal reform based on a classic due process model began even before the SARC issued its final report. A new Chair was appointed and the entire membership was replaced within one or two years. Open hiring competitions and a rigorous selection process were introduced for the first time in the Board’s history.162 Board members were put through a lengthy training process, new hearings policies were established and an in-house legal department was created to advise members and (in practice) to review all decisions of the board.

The “new” SARB brought a radical change in approach to the appeals system. Many of the new members were lawyers, paralegals or community advocates of other kinds who had worked on behalf of recipients prior to appointment and brought sympathy for clients and reformist sentiments to their new jobs. With increased legal knowledge and resources, the “new” SARB decided that their institutional role required them to interpret social assistance legislation and regulations independently of provincial or municipal operating policies. The practical results were striking. The percentage of appeals granted went from a fairly steady rate of just over 15% in the early 1980s to a high of about 48% in 1989 and remained fairly high thereafter.163 Because these rates included appeals where the appellant did not turn up and therefore lost automatically, the effective “grant” rates for contested appeals were actually much higher.164

Not surprisingly, just as the “old” SARB had been the object of hostility by advocates for applicants and recipients, the “new” SARB soon began to be a target of resentment by at least some people within social assistance administrations.165 In part this was directed at the high reversal rates. Some people within social assistance administrations accused SARB of trying to effect law reform on its own behalf.166 "Interim assistance" was another major problem area. Appellants were entitled to request

161. See Re Pitts and Director of Family Benefits (1985), 51 O.R.(2d) 302 (Div.Ct.).
164. There were arguably other reasons for the high reversal rates at SARB. During the early 1990s there were a myriad of regulation and policy changes in social assistance programs (often with little or no warning to caseworkers or training) at the same time that worker/client ratios were deteriorating due to caseload increases. This obviously affected the accuracy of front-line decision making, but the Board reforms were still clearly the most important factor here.
165. Sabatini, supra n.159.
166. Ibid. This concern was also expressed to me as a member of the Legal Issues Project Team of the New Legislation Development Project during the NDP administration in the early 1990s.
interim assistance pending appeals, which was in theory to be awarded solely on the basis of financial need. The power to provide interim assistance led to an inescapable dilemma. Many issues were effectively rendered moot because an appellant might receive several months of interim assistance when only one month's entitlement was at issue, a situation which gave rise to so much resentment on the part of some administrators that by the mid-1990s some delivery sites were openly ignoring interim assistance orders. The problem was exacerbated by chronic backlogs throughout the 1990s which meant that it often took the Board up to, and sometimes more than, a year to render a decision in a case.

The delivery system's dissatisfaction with SARB was picked up by the Harris Conservatives in opposition. Their attacks on NDP social assistance policy often included attacks on the role of the Board in allowing people to "get around" the rules and especially on the role of interim assistance. After the 1995 election, the Harris government moved against the SARB almost immediately. In 1995 the government announced that four expiring appointments would not be renewed for budgetary reasons, then appointed four new members—three of whom had run for office as Conservatives and lost and one of whom was particularly known as an anti-welfare crusader—without prior notice to the Chair. The Premier and Cabinet Ministers defended the appointments on the ground that "we wanted individuals who would take a tough stand on welfare and welfare fraud" (despite the fact the Board has no role to play with respect to welfare fraud). Since then, the government has openly abandoned the practice which had developed under previous governments of a public hiring and appointments process and has continued to appoint members to the SARB based on party affiliation. By the time the OWA appeals system comes into effect, it appears that all members appointed by previous governments will be gone from the Board.

b. Appeals under the OWA

The OWA makes potentially dramatic changes to the appeals system. Even where a right to appeal exists (and many important decisions are not appealable at all), the

167. **FBA s.14(2).** According to SARB policies for granting interim assistance, it did not consider the merits of the appellant's case in assessing an order, so as not to "prejudge" the issue under appeal.

168. Obviously, denial of assistance could be equally determinative; few people could survive without income for months or years waiting for a decision by the Board.


170. See Ontario, Standing Committee on Government Agencies, Intended Appointments (Evelyn Dodds) *Hansard* (13 December 1995), where the issue of many of Dodds pre-appointment comments on welfare and welfare recipients was raised. Dodds had earlier caused another stir with a statement to a Legislative Committee that "if you depend on the government to support you, you give up your right to privacy because the taxpayers' right not to have their money abused is greater": Ontario, Standing Committee on the Legislative Assembly, *Hansard* (19 January 1994) M-204.

171. Ellis, "Dramatic Departures in Appointments Policies", *supra* n.162.

172. **Ibid.**

173. Subsection 26(1) provides that any decision affecting eligibility for a benefit or the amount of a
effectiveness of the appeals system as an independent check on social assistance administration and as a arbiter of legality in any meaningful form has been greatly truncated. This is not so much the result of any single change as the cumulative effect of many small changes to the Tribunal, its powers, the appeals procedures and the circumstances within which it will operate.

i) Internal reviews
An appealable decision under the OWA must now proceed first through a mandatory "internal review."\(^{174}\) This is a new process: previous legislation contemplated a possible review before a decision was made final, but in practice this requirement was largely ignored.\(^{175}\) Proposals for an "internal" appeals system are not new. An informal internal review prior to appeal was recommended by the Transitions Report and most subsequent reviews of the welfare system. Delivery agents (and recipients) have tended to support an informal method of dispute resolution, and an internal review process arguably has many benefits. Unfortunately, the OWA is effectively silent about the process except to say that reviews will not be governed by the Statutory Powers Procedure Act.\(^{176}\) The Act permits regulations with respect to internal reviews, but most procedural details will probably be left to delivery agents and experience suggests wide local variation.\(^{177}\)

Whether internal reviews in practice will adequately safeguard those involved remains to be seen, but there are many grounds for concern. Any form of internal review will be heavily weighted towards the delivery system's perspective. Clients can be subject to pressures to "admit" wrongdoing or to abandon claims. Many people proceeding through the internal review will be vulnerable to abuse and intimidation or to more subtle pressures (and it is not clear whether benefits will be continued pending review).\(^{178}\) It is not known whether advocates will be permitted and, if so, whether

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\(^{174}\) OWA s.27.

\(^{175}\) In theory under the old system, a person had 10 days in which to make written representations to the Director after notice of a proposed decision to refuse, cancel or suspend benefits: FBA ss.13(1), (2), (3); GWA s. 10(3); O.Reg.537 s.17.1 (as amended by O.Reg.386/96). In practice, these requirements were commonly ignored, although many offices did have an informal post-decision review process, as discussed below.

\(^{176}\) OWA s. 27(4).

\(^{177}\) Many local offices do have post-decision informal review procedures. Advocates' reports on these procedures vary. In some parts of the province pre-appeal screening reportedly has been able to resolve most issues; in others, however, internal review is said simply to intimidate clients. While some internal review procedures involve a new party for the review, some simply contemplate a further "discussion" with the caseworker who has already sanctioned the client. It is not known whether OWA regulations will require changes in any of the existing procedures.

\(^{178}\) Many of the specific concerns about internal review are very similar to those often raised about
clients will be advised of this right. The Ministry has historically been hostile to the idea of counsel at internal reviews and there is certainly nothing in the current political climate to suggest a shift in this position. Finally, even if there are no procedural problems with the process, the addition of another mandatory step before getting access to the formal appeals process will inevitably deter some people from pursuing possibly valid claims.

ii) Appeals to the Social Benefits Tribunal

Disputes which cannot be resolved through the internal review process may be appealed to a new appeals body, the Social Benefits Tribunal. While the Tribunal looks superficially like the Social Assistance Review Board, a close reading of the Act shows a number of changes which will significantly reduce the independence of the Tribunal and keep it under much closer government control. It has reserved broad ranging regulation making powers in respect of the appeals system, while the Tribunal itself has no explicit rulemaking powers. A detailed review of the problems in the restructuring of the appeals system is not possible here, but several issues may identified.

First, it will be much harder to get to the Tribunal at all. The OWA raises the threshold for granting interim assistance and, more importantly, makes interim assistance a recoverable overpayment if the appellant is unsuccessful; in practice, this is likely to deter many people from appealing at all. The Act also now imposes numerous pre-hearing requirements which will pose barriers to access. These include the obligation to specify the reasons for appeal at the time of appeal, a power to dismiss "frivolous and vexatious" appeals and, most importantly, a new power to demand pre-hearing disclosure from appellants. Probably none of these powers will serious-
ly impede access for represented appellants, but historically only about a quarter of all appellants to the SARB have had a legal representative.  

Even if an appellant manages to get to the Tribunal, its powers to act are greatly restricted. The Tribunal will have little scope for independent interpretation of the Act and regulations. In a move obviously intended to quash once and for all the problem of an appeals body that did not consider itself bound by Ministry interpretations and policy, under the OWA Ministerial policies will have the force of regulations and will thus bind the Tribunal (and presumably any further appellate court).

Finally, whatever the scope of the Tribunal’s powers, how it will be staffed must be a cause for concern. Apart from the return to openly patronage appointments already evident, institutional independence is seriously compromised under the OWA. Tribunal members will no longer be appointed for fixed terms and appointments may be “subject to conditions set out in the order” of appointment. Even if the SARB membership reflected a pro-appellant bias that needed correction as charged by the critics, the response has been wildly out of proportion. These problems extend beyond the social assistance system: the Harris government has wiped out years of work towards a merit-based appointments process for all Ontario tribunals—an achievement that was precarious enough under previous governments. Indeed, some observers are openly arguing that “if the current crisis of confidence amongst the administrative law community is not addressed, there will be negative consequences that will impact on the legitimacy, effectiveness and quality of administrative justice in Ontario”.

D. POVERTY, DESERT AND THE STATE

Welfare “reform” in Ontario is not an isolated phenomenon. Social welfare programs are under intense pressure in most industrialized countries, especially in the English speaking countries which have traditionally had the weakest commitments to universal social citizenship. There are broad similarities in most of the reform prescriptions.

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184. In 1995–96, almost half of all appellants were entirely unrepresented, while another 24% were represented only by a family member or friend; see Ontario, MCSS, Social Assistance Review Board: 1995–96 Annual Report at 33, Table 13.

185. Pursuant to OWA s.74(2)3 the Minister may make regulations “prescribing policy statements which shall be applied in the interpretation and application of this Act.” The Tribunal is also barred from considering Charter issues, although this is of much less practical importance; see s.67(2)(a). Indeed, given that SARB often took years to decide Charter cases brought before it, it was not a particularly convenient or expeditious alternative to the Courts.

186. OWA s.61(1).

They generally involve reductions in benefit levels either through active cuts or through passive erosion, cutting back on or ending universal income transfers in favour of “targetted” programs, increased conditionality of transfers on various forms of labour market participation or active employability enhancement, the offloading of state responsibility for meeting needs to the voluntary sector and to families (i.e., women) and so on. Within these similarities, though, there are substantial differences, depending on the starting points for restructuring, the main political influences on the decision makers and many other factors. In North America, where heavy reliance is placed on means-tested social assistance for income maintenance, “workfare” is particularly important; a policy usually pursued in conjunction with a general attack on the deservedness of recipients couched in “a discourse on fraud and abuse that denigrates people on welfare”.188

Commenting on the cyclical nature of public support for the welfare transfer, Andrew Armitage writes,

> The paradox of social welfare transfers is that, de facto, they tend to destroy [the consciousness of sharing a common fate with one’s fellow citizens]. The effect of stigma on public support is to divide citizens into two separate social classes, the “givers” and the “receivers”. The givers are identified with industry, self-support and beneficence, while the receivers are identified with laziness, dependence and self-interest. The welfare transfer thus creates alienation and undercuts the basis of its own public support. The transfer based on a shared citizenship is debased by the dynamic into a transfer based on the principle that those who are the givers are justified in expecting that the recipients conduct themselves on terms dictated to them.189

The Harris government’s welfare policy is deeply rooted in this dichotomy and depends for ongoing support on maintaining the image of welfare recipients as “other”. This welfare policy has been explicitly premised on an understanding of poverty as personal shortcoming, encapsulated in the most important code word of modern social policy, “dependency”. One would be hard pressed to find a public utterance on welfare in Ontario in which the word “welfare” is not linked with the word “dependency”.190 “Workfare” is intended to give people “opportunities to break the cycle of dependency on welfare”.191 In its politer moments, dependency is linked to the supposed lack of

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190. For an analysis of the evolution of the modern usages of “dependency” in social welfare debates and the way in which the word has come to code personal failing in the U.S.m see N. Fraser and L. Gordon, “A Geneology of Dependency: Tracing a Keyword of the U.S. Welfare State” (Winter 1994) Signs 309. While their analysis cannot be applied to Canada without consideration of the different race and gender connotations in the two countries, it is nevertheless a valuable unpacking of the function of this concept in supporting the newly dominant neoliberal ideology of poverty.

191. This phrase was used repeatedly by Janet Ecker, Minister of Community and Social Services, and other Tory politicians during introduction and debate on Bill 142. The “cycle of dependency” (with its strong and deliberate connotations of a transmitted “welfare culture”) is perhaps the bedrock stereotype of con-
skills or training of a large portion of the population, but it easily slips into images of laziness and moral degradation. The OWA reflects a kind of "tough love" paternalism. Welfare dependents, like children, cannot expect to be treated as full citizens. To ensure that they behave responsibly, their benefits can be paid to third parties; because they cannot be trusted to be properly motivated to escape the “welfare trap”, they must be compelled to participate in employment measures decided for them under threat of sanction; and their presumed tendency to cheat means that they must be kept under constant scrutiny not only by state officials but by public volunteers.

At the symbolic level at least, Ontario Works does represent a “revolution” of sorts. If social assistance under the Canada Assistance Plan can be seen as the high point of “entitlement” ideology in Canadian welfare systems (whether or not this vision was ever actually recognized in practice), the pendulum has gone a long way in the opposite direction with the OWA. Section one of the Act states:

The purpose of this Act is to establish a program that,
(a) recognizes individual responsibility and promotes self reliance through employment;
(b) provides temporary financial assistance to those most in need while they satisfy obligations to become and stay employed;
(c) effectively serves people needing assistance; and
(d) is accountable to the taxpayers of Ontario.

Thus the implicit distinction between “citizen/taxpayer” and “welfare/dependent” is embedded in the Act from the outset. Several related themes emerge from looking at this section in the context of the rest of the Act and the larger program issues. At least in theory, CAP-era social assistance programs had as an ultimate goal “the provision of adequate assistance to and in respect of persons in need and the prevention and removal of the causes of poverty”. The related concepts of poverty and adequacy have disappeared from the new welfare reform rhetoric; indeed, an important and highly successful element of neoconservative attacks on welfare provision for the last decade has been the attack on “poverty” as a coherent or measurable concept.

.servative welfare mythology, although there is no evidence that such a phenomenon exists.

192. The metaphor of government as “parent” is drawn explicitly by many supporters of the Harris government’s social policy directions. For example, Christopher Sarlo, whose “poverty lines” are frequently used to justify claims that welfare rates are “too generous”, argues that “[a] wise parent will allow her children independence appropriate to their age.... The task of providing assistance to people in need is analogous to the dilemma of the wise parent”; Fraser Institute, “Poverty in Canada-1994” Fraser Forum (February 1994) at 53.

193. CAP, supra n.7, Preamble.

194. Social policy discourse around poverty until the 1990s used a number of different “poverty” measures, but there was a substantial consensus that for social policy purposes what was important was relative deprivation. Although never explicitly promulgated as such, the Statistics Canada Low Income Cut-Offs (LICOs), a purely relative measure, were used almost universally as a proxy for problematical poverty: for a discussion and comparison of different poverty measures, see generally D. Ross, E.R. Shillington, C. Lochhead, The Canadian Fact Book on Poverty (Ottawa: Canadian...
At a program level, the disappearance of "adequacy" as a social policy goal has led to a particularly perverse inversion of the concept of equity in social provision. Once, social assistance was assumed to reflect a "social minimum" below which no one would be allowed to fall. Now, social assistance is more and more explicitly a social maximum for anyone who does not prove his or her worth to society through labour. In the OWA itself, the fact that social assistance allowances are now effectively seen as a fund garnishable by the government to recover unrelated debts illustrates the degree to which the "social minimum" ideal has eroded. Certainly, the old truism that welfare rates are inadequate and that those on welfare live in poverty has lost much of its rhetorical force and capacity to found moral claims on the state. The dominant standard of appropriate assistance is no longer whether it allows people to purchase basic necessities, or maintain a level of integration in society, but whether allowances exceed those in other jurisdictions.195

Under the OWA, people without the means of subsistence no longer approach the state as "persons in need" (to use the CAP phrase) with a "right" to a basic social minimum; they approach as supplicants for a form of state organized largesse, dispensed grudgingly and suspiciously. Now, the sole purpose of assistance to the "able-bodied"—a phrase used throughout Tory welfare discourse in preference to the "unemployed" undoubtedly because of its strong connotations of wilful idleness—is to ensure that they take work of any kind as quickly as possible. The principle that all work, any work, is better than "dependency" has become an unassailable mantra; so much so that the Ontario "Children's Minister" can say publicly that cutting welfare allowances to poor families by 22% is good for children because "stay at home" welfare moms are such a bad role model.196

Even for those willing to prove their moral worth by demonstrating their efforts to become employed, however, the neoconservative vision of the Harris government is

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195. The invariable answer of the Ontario government to arguments of hardship caused by welfare rate cuts and the inadequacy of allowances to provide shelter and basic need, is that Ontario's rates are still 10% above the national average. As welfare rates are falling in almost all Canadian jurisdictions, this simply establishes a moving target which is used to rationalize further pressures for rate reductions; see Canadian Council on Social Development, Percentage Change in Welfare Benefits in Canada, by Province/Territory, Between 1986 and 1996 (Ottawa: CCSD, 1997). While the authors of a recent U.S. study on the effects of welfare rate changes on neighbouring states stop short of using the phrase "race to the bottom", they found that "state responses to neighbour benefit decreases tend to be at least twice as large as their responses to neighbour benefit increases"; see D.Figlio, V.Kolpin & W. Reid, "Asymmetric Policy Interaction among Subnational Governments: Do States Play Welfare Games", Institute for Research on Poverty Discussion Paper no. 1154-98 (January 1998).

too grudging to permit direct acknowledgement of a corresponding state responsibility. Indeed, the drafters of the OWA have gone to great length to avoid this. For the disabled, the only presumptively deserving poor, the government will “recognize[ze] that government, communities, families and individuals share responsibility for providing ... supports”. Government and community are conspicuously absent from the OWA at this symbolic level; on a more practical level, as discussed above, no individual has a statutory right under the OWA to any form of assistance that cannot be restricted or eliminated altogether by politicians or bureaucrats acting outside direct political scrutiny.

E. CONCLUSIONS

If the past is any guide, dramatic changes will probably not occur in welfare. Throughout history, welfare policy has always been largely symbolic. Myths and stereotypes gain prominence; drastic reforms are enacted, but actual policy is usually decoupled from administration. There are many reasons, but usually the policies, as enacted, are too draconian and more importantly, too costly in the end.\textsuperscript{198}

—Joel Handler

We cannot know at this point what welfare will look in Ontario in ten, five or perhaps even two or three years. Ontario Works represents a sharp break from the traditions of welfare in Ontario since 1967, as discussed at several points throughout this article. Recent U.S. experience shows how far truncations of welfare entitlements can go in one “reform” flurry: life time limits on welfare receipt; the abolition of all assistance to single employable people in some places; denial of benefits for children born to mothers receiving welfare; denial of benefits to anyone convicted of drug felonies; virtual workfare armies displacing thousands of former government jobs; denial of social benefits to immigrants; wholesale privatization of welfare services; and so on.\textsuperscript{199} Any or all of these measures could be instituted by Executive fiat under the OWA without even the need for further legislative activity (and according to political sources, some are at least under discussion within government). Whether in fact Ontario will go further in this direction, though, remains an open question. Most historians and students of social assistance would agree with Handler’s comments that attempts at radical welfare reform almost always falter during implementation. This may be what happens in Ontario too; as discussed above, for example, the sweeping workfare promises of the Common Sense Revolution have not amounted to much in practice.

\textsuperscript{197} ODSPA s.1(b).


Whether or not the most extreme "reform" options ever see the light of day, however, there is no question that the Harris government's welfare agenda has hit hard upon hundreds of thousands of Ontario citizens. Some time before Bill 142 was introduced into the Legislature, I argued with respect to earlier welfare changes that, "[i]f massive cuts to social programs and social services signal a determined effort to undo the welfare state at one level, the truncation of legal entitlement is a corollary strategy at the level of the citizen. ... The creation of a 'two-tiered' citizenship in reality, within the liberal legal mythology of equal citizenship, is advancing quickly in Tory Ontario." The Social Assistance Reform Act, 1997 is one step further in the dismantling of the "social citizenship" vision in Canada.