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WELFARE: WOMEN, POVERTY AND THE CHARTER

Lois Lowenberger, Cindy Wilkie & Erika Abner*

The Family Benefits Act and the General Welfare Assistance Act are not statutes of general application. In order to qualify for benefits an applicant must be a member of a certain statutory category and must have an income below certain regulated amounts. A significant number of these categories are gender specific - only women are eligible for benefits - and we therefore confront special problems in the application of equality theory. As well, certain office policies and regulations have a greater impact on female recipients than on male, simply by virtue of the larger number of female recipients. We examine in this report these policies and regulations in an attempt to assess whether they operate so as to perpetuate and reinforce stereotypes or past inequalities. We focus in this report on the most serious problems. The following is not to be considered a comprehensive list of discrimination issues in the area of Family Benefits and General Welfare Assistance.

The Programmes

The Family Benefits (FB) programme is jointly funded by the federal government and the province and is usually administered by the province. It is considered to be long term financial support for (roughly) the following groups: single mothers, the disabled and permanently unemployed, and elderly single women. The FBA came into effect in 1967, replacing a number of previous special purpose statutes.

General Welfare Assistance is funded by the federal government, the provincial government and the municipal government and is administered by the municipalities. The municipal contribution to benefits ranges from 0 to 50%, with an average of 20%. General Welfare Assistance (GWA) is considered to be "short term" temporary or interim assistance, either as a prelude to a beneficiary receiving FBA, or to maintain an otherwise employable person through a period of unemployment.

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The percentage of the Ontario population receiving social assistance in the form of GWA and FBA has ranged from 2.7% in 1961 to a high of 4.9% in 1971 and 1982 and 1983. Between 1973 and 1981 the proportion of recipients to the general population remained quite stable at about 4.3%.¹

The case compositions of FBA and GWA differs because of the somewhat different target groups. 1982 statistics are as follows:

GWA

1. Single parent families	17.4%
2. Illness/Disability	29.1%
3. Unemployment (persons classed as unemployable)	46.4%
4. Other	7.1%

FBA & GAINS-D

1. Single parent families	41.7%
2. Illness/Disability	52.7%
3. Other	5.6% ²

Children as a group comprise 38.7% of GWA beneficiaries and 44.8% of FBA and GAINS-D beneficiaries.³

There are about 48,000 women receiving Family Benefits as single parents.⁴ Factors such as child care responsibilities, fewer employment opportunities, lower wages, few support systems (particularly good quality affordable day care and adequate housing) perpetuate this poverty.

Category of Recipient

The FBA contains numerous examples of gender specific language, reflecting a desire for intentional differentiation. Many of these provisions have been rectified by regulation. We would, however, recommend that the Act be re-drafted to reflect these changes.

1. ...And the Poor Get Poorer (Ontario Social Development Council and the Social Planning Council of Metropolitan Toronto, Toronto, 1983), at 62-63.
2. Id. at 58-59.
3. Id. at 60.
4. People First (Opseu Memo, Toronto, 1983), at 3.

Regulations are too easy to change and are less subject to public scrutiny. In addition, there may be some question as to whether it is appropriate or even legal to extend assistance to new groups which are not entitled under the Act. Some examples of such groups are:

1. Disabled wives of employable husbands now receive the same benefits as disabled husbands of employable wives;⁵
2. Single fathers can receive benefits,⁶ and
3. The entitlement of single women has been broadened to include separation.⁷

Certain policies have significantly greater impact on women simply because of the large number of women recipients. We focus on three that seem to be the most important, all of which affect the category of single mothers.

First we note the requirement that a spouse who is deserted, separated or divorced must seek support from his/her spouse. This is mandated by a regulation⁸ which requires the recipient to make reasonable efforts to obtain compensation or realize a financial resource. Although dependent husbands or single fathers with dependent children would also be subject to this requirement, the FBA policy manual clearly focuses on women. This focus is a reflection of the disparate impact which this requirement has upon women. The vast majority of spouses who find themselves without spousal and/or child support and in need of welfare assistance are women. To require these women to engage in lengthy and ongoing court proceedings in an often futile attempt to obtain support from their spouses imposes an unwarranted and undue hardship on these women.

This policy poses a very real hardship to women. Often they have separated from a spouse who has beaten or threatened them and are thus afraid to inflame the situation further by going to court. They may be forced to go through the court proceedings even though the end result (known to everyone from the beginning) will be a dry order. Finally, they may receive a few dollars from a spouse pursuant to a court order, for a period of several months,

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5. O.Reg. 424/82.
 6. Id., s. 2(8).
 7. O.Reg. 352/79, s. 2(7)(d).
 8. O.Reg. 285/79 s. 8.

only to find that the FB office continues to deduct this amount long after the spouse has stopped the payments. This policy clearly has a far greater impact on female than on male recipients.

Regulation s.8 has a disparate impact upon women, imposing upon women a burden and hardship imposed upon very few men. Where an alternative approach would attain the goals of the Regulation without such a disparate impact, such an alternative approach should be adopted.

The second policy to be examined is the requirement that certain kinds of recipients be "living as a single person." These include women between the ages of 60-64, single mothers and single fathers.⁹

The policy manual indicates that a worker is to look to whether the two persons live together "as husband and wife" and directs the worker's attention to an array of indicia which point to such a relationship. Welfare workers are instructed to report and/or investigate any suspicions, allegations, written or oral complaints which might indicate a "common law" relationship. The effects of this policy can be devastating. Not only must women sustain intrusions on their privacy, but they may find their total means of support cut off on the flimsiest of evidence. Little, if any, effort is made to determine if the man is actually contributing to the household.

Again, the huge percentage of single mothers (as compared to single fathers) in receipt of benefits means that this provision has a disparate impact upon women. Female welfare recipients are subjected to an invasion of privacy and a basis for disqualification not generally applied to men.

The rule is based upon the assumption that a man living in a household should and will assume responsibility for the support of the woman and her children. Where the man is, in fact, supporting the woman and her children, they should no longer be eligible for assistance. However, short of actual proof of support, no benefits should be discontinued on the basis of assumed support. We do not assume parental or friend support; it is discriminatory to assume "man in the house" support.

Not only is this regulation arguably a breach of section 15, based on a disparate impact analysis, but it is also arguably a breach of

9. O.Reg. 424/82, s. 5(b), 715/73, s. 1(1)(c) contains the definition of single person.

the section 7 right to security of the person, guaranteed equally to male and female persons by section 28. The invasion of privacy incurred in the "man in the house" investigation and the threat of withdrawal of welfare benefits based upon supposition rather than proof of support may constitute breaches of the right to security of the person and, in the context of this particular rule, a breach to which women are subjected far more frequently than men.

Finally we are concerned by the announced government intention to transfer all "able-bodied" recipients, including single parents to municipal administration. This is combined with certain work incentive programmes designed to assist and encourage recipients to find employment. The concern is that single mothers will be forced to seek work and will be penalized if they resist or are unable to do so.

Government assurances that they will receive continuing quality support services are tepid, at best.

This is a kind of superficial equality, equal treatment of "able-bodied recipients", which in effect constitutes unequal treatment because it fails to accommodate the reality and needs of many women in their role as primary child-rearer. Due to the disproportionate number of single mothers in receipt of family benefits, a rule which penalizes single parents who are unable or unwilling to seek paid employment has a disparate impact upon women. The inequity of the rule lies in its failure to recognize that these single parents are engaged in full time child care and that this is a valuable and socially meaningful occupation. We already recognize that it is inappropriate to require certain classes of welfare recipients (for example, disabled recipients) to seek employment. We should similarly continue to recognize that it is inappropriate to require single parents to seek employment. It is and should be recognized as perfectly legitimate for a single parent to choose to look after his/her children on a full-time basis. Where the non-custodial parent cannot or will not provide financially for the care of the children, the state must accept financial responsibility, as it does, for example, in the case of permanently unemployable individuals. It must also be recognized that the availability and economics of day care are such that a single parent may not be able to afford to seek employment. If the concept of equality is not broad enough to encompass what have traditionally been considered women's roles, then the concept has little meaning or substance for most women and will only reinforce and perpetuate their second class status.

A final issue relating to benefit recipients which has a disparate

impact upon women is that of the eligibility of sponsored immigrants for welfare benefits. This issue is discussed fully in the Immigration Chapter of the Statute Audit. We simply point to it here as a matter of concern.

Benefit Levels

a) Disparate Impact: Section 15

There are a number of respects in which the benefit levels and other financial criteria attached to family benefits are discriminatory toward women. All of these relate to the different standard applied to single parent recipients compared to the other categories of FB recipients - aged, disabled, and permanently unemployable (PUE):

1. All recipients are allowed to have a certain amount of "liquid assets", i.e. savings. However, a disabled, PUE or aged recipient with one dependent can have \$5,500 in assets while a sole support parent with one dependent child can have only \$5,000.¹⁰

3. All recipients can earn income up to a certain amount, which can be directed to work related expenses. Once the ceiling is reached there will be a dollar for dollar dejection from benefits. However, disabled, PUE and aged recipients can earn \$50 per month for these purposes; sole support parents only \$40. Further, a recipient may average his or her earnings over a certain period where it is advantageous. For the disabled, PUE or aged the period is six months for sole support parents the period is only four months. In addition, sole support parents are disqualified if they work in excess of 120 hours per month for more than four consecutive months.¹¹

4. Aged, disabled and PUE recipients receive a higher level of benefits than single parents.

There is no apparent rationale for the distinctive treatment of single parents which, in all three areas, functions to their economic disadvantage. This is a clear case of legislated disparate impact against women. Although gender neutral on their face, these regulations operate to the disadvantage of one class of welfare recipients, as compared to other recipients. The disadvantaged class (single parents) is composed predominantly of women. The fact that not all members of a particular group (i.e. not all women)

10. O.Reg. 1104/80, s. 3(2)(6), 1104/80 s. 3(1)(b).

11. O.Reg. 1104/80, s. 13(2)1.i, 13(2)1.ii.

are subject to unequal treatment does not nullify the disparate impact upon those members of that group who are being treated unequally. Where there is no apparent justification for the difference in treatment, it may be considered discrimination and a breach of section 15 of the Charter.

b) Security of the Person: Section 7

Benefits levels are in all cases below the poverty line, as measured by both the Statistics Canada Poverty Line and the Adequate Budget Approach developed by the Social Planning Council of Metropolitan Toronto. For example, a mother on GWA with three children aged 3, 6 and 8 receives an income which is 50.5% of the Statistics Canada Poverty Line and 58.5% of the Adequate Budget. The same woman on FBA receives an income which is 56.7% of the Statistics Canada Poverty Line and 65.4% of the Adequate Budget. Moreover, between 1975 and 1983, there has been a marked decline in the adequacy of benefits. The benefits to a woman with three children on GWA declined from 57.7% of the Poverty Line in 1975 to 50.5% in 1983. The comparable benefits on FBA declined from 62.4% of the Poverty Line in 1975 to 56.7% in 1983.¹²

Because of the far larger number of female welfare recipients, the inadequacy of the benefit levels inevitably have a harsher effect upon women. However, all welfare recipients are subject to the same inadequacies and the issue here is more basic than that of discrimination or unequal treatment, although these are certainly elements of the problem. In terms of the Charter, the question would be framed with reference to Section 7 - does the right to security of the person impose a positive duty upon the government to provide a certain minimum level of welfare benefits, arguably one which at least meets the current poverty line? Although we do argue that section 7 contains substantive as well as procedural rights and that in certain circumstances recognition of those rights may impose a positive duty upon government, we recognize that the requirement of a minimum level of welfare benefits may be beyond the intended purview of section 7.

However, the fact that specific action may not be legally required under the Charter should not foreclose discussion of the issue. For those who, for whatever legitimate reason, are unable to work in the paid labour force, society must provide basic financial support. The majority of the victims of poverty are

12. Supra, note 1 at 20-27.

women. This is a function in part of past discrimination and inequalities. One way, if not to redress, at least to compensate for those inequalities would be to ensure for those women, along with all other welfare recipients, a decent basic standard of living.

Theoretical Problems and Ideas

We pose the following questions in the hope that they will assist in formulating a consistent theoretical perspective about women and social assistance programmes.

1. Do we wish to encourage women to stay at home and raise children or to become financially independent, or do we wish to be as neutral as possible?
2. Do we wish to perpetuate and support the distinct role of women as child rearers or do we wish to attempt to spread responsibility equally among men and women?
3. Whatever our ultimate aims, how do we reconcile the present situation of women with future goals?
4. Do we take the position that there is a right to social assistance and more particularly, that women should have a right to choose to stay home and raise their children? If so, how does this tie into our perspective on women raising children who are not on social assistance?