SUBMISSIONS TO - The Honourable John Sweeney
Minister of Community
and
Social Services of Ontario

RE - Social Assistance
and
The "Man in the House" Rule

FROM - Canadian Civil Liberties Association

DELEGATION -

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Introduction

The Canadian Civil Liberties Association is a national organization with more than 6000 individual members, eight affiliated chapters across the country, and some 20 associated group members (churches, synagogues, trade unions, etc.) which themselves represent several thousands of additional people. A wide variety of persons and occupations is represented in the ranks of our membership - lawyers, professors, homemakers, trade unionists, journalists, media performers, minority group leaders, etc.

Among the objectives which inspire the activities of our organization is the quest for legal safeguards against the unreasonable invasion by public authority of the freedom and dignity of the individual. It is not difficult to appreciate the relationship between this objective and the subject matter of this brief - the substance and procedures of the "man in the house" rule. Because of their impoverished state, the recipients of public welfare assistance are probably the most vulnerable people in our society to encroachments on their freedom and dignity. And, as a consequence of this rule, such encroachments too often actually occur.

Toward a Revision of the "Man-in-the-House" Rule

In the course of overturning a recent decision of the Social Assistance Review Board, Mr. Justice Robert Sutherland of the Ontario Supreme Court made the following observation.

> "....there is a need for the Board to review both its practices and its interpretations of the Act, to bring them into line with the repeated declarations of the courts in this area. It is difficult to avoid the sense that, through error, too many similar cases involving a decision by the Director to cancel benefits upon inadequate evidence are upheld by the Board and find their way to the Court."[1]

This case followed very shortly on the heels of another in which the Ontario Supreme Court reversed the Social Assistance Review Board and the Director of Family Benefits. And, in the earlier case as well, the Court expressed disapproval of the Board. Mr. Justice Robert Reid talked about "the disturbing frequency with which claims appear to be rejected on nothing more than 'mere suspicion'....".[2]

While the government has launched appeals against these two court decisions, the disapproval of the Social Assistance Review Board was nothing new. Indeed, these cases are simply the most recent examples of what appears to be a chronic problem. The Court has criticized the Board a number of times in cases which the government did not appeal further.

In the course of reversing the Board and the Director on the cancellation of a woman's welfare benefits, Mr. Justice Edward Saunders made the following statement.

> "We are dealing with the necessities of life for a mother and her small child.....the Board must act on more than mere suspicion to take away an allowance."[3]

In another case where the courts reversed the Board and the Director, Mr. Justice David Henry enunciated a similar theme.

> "In my opinion, although the Board had the right to reject the affidavit evidence, the manner in which it rejected this important and relevant evidence was arbitrary."[4]

The issue in all these cases was the controversial "man-in-the-house" rule. For the past decade or so, more than a half dozen cases involving this rule have worked their way into the courts. In most of them, the courts have effectively restored welfare benefits which the Director (sustained by the Board) had cut off.

The rule deals essentially with the welfare claims of women and their dependent children. While men in such situations are also potentially susceptible to the rule, the numbers affected are relatively miniscule. In order to be eligible for assistance, the applicants must be living as "single persons". If they are separated, divorced, deserted, or simply unmarried, they may be entitled to assistance so long as they are not living with anyone "as though they were husband and wife". The ostensible idea is to limit the drain on the public purse in situations where needy people might already be receiving support or might have recourse to it.

But, as the foregoing cases attest, the rule has created disquieting problems. There are issues of statutory interpretation. Just what does it mean to be living as "a single person"? In the event that a man is living on the premises, how much involvement must he have with the woman and her children before he will be treated as a de facto husband? The effort to determine these matters has led welfare officials to conduct rather intrusive investigations into the privacy of these women's relationships. Do she and her cohabitant sleep together, and, if so, how often? Does the man nurture and/or discipline the children and, if so, how often and in what ways?

There are also issues of evidentiary interpretation. In a number of cases, the men and women have flatly denied they were living together. According to their version, the man would stay overnight from time to time but he was not permanently resident there. This has led to inspections of his employment and tax records. In a number of these cases, the Social Assistance Review Board preferred the circumstantial and hearsay evidence contained in the written reports of the Director as against the direct testimony of the parties. Often those reports contained the observations of people who were not available to be cross-examined at the hearing. And, as indicated earlier, the judges have expressed particular annoyance at the way the Board has impugned the credibility of the testifying parties and witnesses without explaining why it did so.

This situation is simply unacceptable. For the affected women, their families, and friends, the "man-in-the-house" rule produces unwelcome intrusions on their personal privacy. For the welfare officials, the rule requires costly and, to many of them, unpleasant investigations which disclose uncertain results. For the administration of justice, the attempt to apply the rule is producing a tarnished reputation.

The rule should be substantially revised. Unless a man living on the same premises as the woman has a legal obligation to support her and her children (because they are legally married or involved in certain lengthy or child-bearing unions), the welfare law should treat the situation no differently than one where she is cohabiting with another woman. In such situations, there might be some question about the amount of the applicant's entitlement (if it could be established that the cohabitant was paying something for the right to live there), but there would be no question of the applicant's eligibility. Unless the welfare administration could demonstrate that she, in fact, was receiving the level and continuity of support that husbands are legally obliged to provide for wives, there would be no question of denying or cancelling her assistance. Why should it make any difference if the woman is living with a man friend rather than a woman friend?

Indeed,the differential treatment which Ontario law accords these situations might well be considered sexual discrimination within the meaning of section 15 of the Charter of Rights and Freedoms. In order to satisfy the requirements of the Charter, the welfare law should consider, not the gender of the cohabitant, but the economic realities and legal obligations of the relationship. Conceivably, the current law might also be considered to constitute discrimination on the basis of sexual orientation. In this situation, a homosexual relationship would attract more protection than a heterosexual one.

Moreover, in the absence of evidence explicitly on point, it is not reasonable to assume that a man living on the premises would be providing the kind of support which spouses must provide for each other. Both parties would often be in the economic underclass of society. Frequently, both of them would be survivors of broken marriages. It is likely, therefore, that many of the men involved would already be liable to make support payments to their first families. In so many situations, their poor paying jobs would simply not enable them to pay for a second family.

Nor can the rule be justified on the basis of sexual morality. At this stage of history, there is no reason why the bedrooms of the nation should be any more open to welfare officials than to police officials. In any event, such an intrusion would be highly selective - it would apply only to poor people.

Similarly, the rule cannot be justified in order to promote the proposition that men who reap the benefits of marriage should be compelled to bear the costs. This rationale would inflict punishment upon the woman and her children because of the delinquency of her cohabitant. On any rationale, the "man-in-the-house" rule has served to deny needy women and their families the warmth and joys of normal human relationships. It is an unwarrantedly cruel encroachment on the needs of helpless people.

We believe that the recommended approach here would strike a more reasonable balance among the competing interests. Women on welfare would experience a reduced temptation to conceal the existence of male cohabitants. The welfare authorities would experience a reduced need to conduct intrusive investigations. The parties would be spared many encroachments on their personal privacy; the public would be spared many challenges to its justice system. And, in the greatest number of cases, the welfare allotment would likely reflect the realities of the domestic circumstances.

Accordingly, the Canadian Civil Liberties Association calls upon the Government of Ontario to change the welfare law so that cohabitation will not affect eligibility unless there is either a legal obligation to provide the kind of support required of spouses or a factual demonstration that such support is actually being provided.

In addition, there must be certain procedural improvements in the way the welfare law is administered. As a number of judges have noted, "mere suspicion", "inadequate evidence", and "arbitrary" rejection of evidence are unacceptable features of some of these decisions which have denied people the necessities of life. In this connection, the Director of Family Benefits should be required to ensure that, before such assistance is cut off, the written notice to recipients must contain at least an outline of the evidence against them. The notice should also include information about the right to legal aid and the location of available clinics where it might be obtained. In that way, there would be at least some substance to the right which these recipients now have to make representations against their impending loss of eligibility.

The Director should also be required to convey to such affected people written reasons for any adverse decision he makes on the basis of this material. It is more difficult for adjudication to be arbitrary and inadequate when written reasons must accompany the exercise. Moreover, the Regulations should be amended to provide explicitly that the Social Assistance Review Board must furnish written reasons for rejecting the evidence or impugning the credibility of the witnesses who testify at its hearings. Adjudicative tribunals must not even appear to behave in an arbitrary fashion.

This is not to say that the foregoing procedures would be even adequate. It is to say that, in view of the enormity of the hardships involved, nothing less could suffice.

Notes

1. Re Burton and Director of Family Benefits Branch of the Ministry of Community and Social Services, an unreported decision of the Ont. Div. Ct. released August 30, 1985 at p.27 (Sutherland, J.)
2. Re Pitts and Director of Family Benefits Branch of the Ministry of Community and Social Services (1985), 51 O.R. (2d) 302 (Ont. Div. Ct.) at p.314,(Reid,J.).
3. Willis v. Ministry of Community and Social Services (1983), 40 O.R. (2d) 287 (Ont. Div. Ct.) at 293 (Saunders, J.)
4. Re Dowlut and Director of Family Benefits Branch of the Ministry of Community and Social Services, an unreported decision of the Ont. Div. Ct. released March 29, 1985 at p.10 (Henry, J.)

Summary of Recommendations

The Canadian Civil Liberties Association calls upon the Government of Ontario to implement the following measures:

1. Ensure that cohabitation will not affect eligibility for welfare unless there is either a legal obligation to provide the kind of support required of spouses or a factual demonstration that such support is actually being provided.
2. Ensure that, before such assistance is cut-off, the written notice to recipients contain at least an outline of the evidence against them along with information about the right to legal aid and the location of clinics where it might be obtained.
3. Ensure that such affected people receive written reasons for any adverse decision which the Director makes on the basis of this material.
4. Ensure that the Social Assistance Review Board furnish written reasons for rejecting the evidence or impugning the credibility of the witnesses who testify at its hearings.