

REGIONAL MUNICIPALITY OF OTTAWA-CARLETON
MUNICIPALITÉ RÉGIONALE D'OTTAWA-CARLETON

REPORT
RAPPORT

Our File/N/Réf.
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DATE 27 July 1998

TO/DEST. Coordinator
Community Services Committee

FROM/EXP. Social Services Commissioner

SUBJECT/OBJET **INQUIRY CSC NO. 13(98): SARA REGULATIONS AND THE
ONTARIO HUMAN RIGHTS CODE**

DEPARTMENTAL RECOMMENDATION

That the Community Services Committee receive this report for information.

PURPOSE

The purpose of this report is to provide a response to Inquiry CSC No. 13(98) made by Councillor Diane Holmes at the 21 May 1998 meeting of Community Services Committee.

BACKGROUND

At the Community Services Committee meeting of 21 May 1998, the following inquiry was made by Councillor Diane Holmes:

Councillor Holmes observed that the Ontario Human Rights Code appears to be violated by the provincial government's decision to cut welfare for young people living with their parents. She referred to an article Welfare cuts under attack: may violate rights code, Toronto Commissioner says, which appeared in the 15 May 1998 edition of The Toronto Star. She noted that Toronto may consider an appeal under the Ontario Human Rights Code regarding this legislation.

Councillor Holmes asked the Social Services Department to investigate the possible violation of the Ontario Human Rights Code and the federal Charter of Rights and Freedoms and to comment on whether there was an opportunity for the RMOC to join forces with Toronto in regards to this matter.

DISCUSSION

The Ontario Works policy directive #21: Living with Parents denies income assistance to single persons who are living with their parents. Previously, young adults aged 18-21 living at home were not eligible for social assistance in their own right while those age 21 or over living at home were eligible. The new directive moves away from a definition of eligibility that discriminates on the basis of age to one that considers circumstances only.

The Department referred Councillor Holmes' enquiry to the Region's Legal Department for a legal opinion. In summary, the Legal Department examined the Ontario Human Rights Code as it relates to the Ontario Works policy directive #21 and advises that any constitutional challenge to this section of the legislation is likely to fail. The full legal opinion follows:

Legal Department's Response

Section 1 of the Code states that:

“Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap.”

Section 47 of the Human Rights Code explicitly states that the Code binds the Crown and every agency of the Crown. The section also states that where an Act contravenes the Code, the Code will prevail unless the offending Act or regulation exempts itself from the Code.

The new legislation draws a distinction between similarly placed recipients on the basis of their family status in that a married recipient is deemed to be financially independent while a non-married recipient is not. The question that would have to be answered in determining if the legislation is in breach of the Code or the Canadian Charter of Rights and Freedom is whether the drawing of this distinction amounts to discrimination. The answer to this question will vary based on a factual determination of matters such as the legislature justification for bringing about this legislative modification.

In the case of *Raymond v. Quebec*, [1988] R.J. Q. 1045 (C.S.) the court held that Quebec legislation which paid social assistance only to persons over 30 years of age did not violate the Canadian Charter of Rights and Freedoms or the Quebec Human Rights Code as the program was the result of detailed study and consultation and therefore was found to be justifiable and reasonable.

A further impediment to a Charter challenge is the fact that the courts have consistently refused to recognize the denial of welfare payments as a threat to life, liberty and security of the person as protected by Section 7 of the Charter and, in addition have held that welfare recipients do not form an enumerated or analogous group in need of protection under Section 15 of the Charter.

In [the Legal Department's] opinion, any constitutional challenge to this section of the legislation is likely to fail. With respect to the Human Rights Code, the government may simply exempt the Ontario Works legislation in its entirety or this section specifically from the application of the Code as authorized by Section 47 of the Code.

Approved by
D. Stewart

/cp