

# Legal Centre News

## Heat, Eat AND Pay the Rent: Green Solutions to Energy Poverty in Ontario

Rising energy costs affect every household, business and non-profit agency in the Peterborough area.

For some families, the monthly utility bill is an untamed monster that threatens to gobble up money that would otherwise go to the rent, the mortgage or groceries. Each year, thousands of Peterborough City and County families face the threat of disconnection, homelessness or hunger because their household income makes it impossible to cope with ever rising energy costs. In addition, many local businesses and non-profit agencies will also face increased energy costs which will have a negative impact on their operations.

This is why Peterborough's Affordable Housing Action Committee, the Low-Income Energy Network, the Peterborough Community Legal Centre and the Community Counselling and Resource Centre are jointly sponsoring a community conference to help develop an energy af-

fordability plan for low-income households (tenants and homeowners).

The "*Heat, Eat AND Pay the Rent: Green Solutions to Energy Poverty in Ontario*" conference takes place on **Friday, May 26<sup>th</sup> from 9:00 a.m. to 4:00 p.m. at Westdale United Church located at 1509 Sherbrooke Street, Peterborough.** Admission is **free**, open to the public and includes lunch. Register now. Space is limited.

Who should come to this conference? You should come if you are interested in:

- Rising energy prices and housing affordability;
- Energy affordability and conservation programs for tenants and homeowners;
- A "made-in-Peterborough" plan for energy assistance for low-income households;
- What other communities in Ontario are doing to improve energy affordability;
- How local utilities can be involved;

- Where should our energy come from?
- Creating a province-wide low-income energy affordability strategy.

Our guest speaker is Bruce Pearce, Vice Chair of Green Communities Canada. Green Communities Canada is a national network of community-based non-profit organizations that deliver innovative environmental programs and services, with a focus on household and community  
**See Energy p. 2**

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# Bill Carruthers

## Community loses founding Legal Centre Board Member

The Peterborough Community Legal Centre has lost a true friend with the recent death of Bill Carruthers. After a career as a health inspector, Bill became a lawyer and practiced in Peterborough for forty years, winning great respect from the legal community for his ability and absolute integrity. Bill was the Area Director of Legal Aid Ontario for Peterborough County at the time of his

passing, as he had been for 23 years. It is very hard to imagine anyone who could have brought more kindness, compassion and practical intelligence to this role.

In addition to his law practice, Bill found the time to be very active in the community. Bill always had time for people in need and has supported the work of the Peterborough Community Legal Centre in words and action from its inception. As one of the Centre's founding board members, he worked hard to establish a community legal

clinic in Peterborough and continued to support the work of the Legal Centre for the next 17 years. As Area Director, he met with the Executive Director of the

Legal Centre on a regular basis to ensure the broadest possible access to justice for residents of Peterborough City and County.

I know there are a large number of community groups mourning the loss of such a

wonderful advocate for the disadvantaged. Bill had an unflinching sense of social justice and an ability to listen, to reflect and to lead others on the wisest path with a few, carefully chosen words. His warmth, gentle sense of humour and smiling face added impact to his message. Bill will be sorely missed.

**Paul Atkinson  
President  
Board of Directors  
Peterborough Community  
Legal Centre**

**It is very hard to imagine anyone who could have brought more kindness, compassion and practical intelligence to this role.**

### Energy from p. 1

action. Bruce is an exciting speaker who combines a passion for social justice with environmentalism. Prior to moving to Newfoundland and Labrador in 1998, Bruce was policy advisor to Ontario Premier Bob Rae and executive assistant to Metro Toronto Councillor Jack Layton. He has 20 years of experience in developing practical and innovative solutions for healthy, sustainable communities and in 2005, spearheaded Green Communities Canada's drive to establish a national low-income energy efficiency program.

We hope to see you on May 26<sup>th</sup>. For more information and to pre-register, please see the Energy Day insert to this newsletter.

**Do you share a kitchen or bathroom with your landlord?**

**You may not be protected by landlord and tenant law.**

**If you need more information, call the Legal Centre at 749-9355.**

# Garnishment: the basics

Garnishment is a way for a creditor to collect a debt that you have been ordered to pay.

Here are some typical garnishment situations:

- \* The Ontario Rental Housing Tribunal has ordered you to pay rent or damages to your landlord.
- \* The Small Claims Court has ordered you to pay an outstanding debt for a purchase that you made or a service you received.

The parties to a garnishment are:

- \* the debtor: the person who owes the money;
- \* the creditor: the person

the debtor has been ordered to pay the money to;

- \* the garnishee: a person or organization that owes money to the debtor.

If you owe a debt to someone, they may send you a demand letter. This letter might set out the name of the debtor and the amount that you owe. It should also give you a deadline for paying. If you do not pay this debt, the creditor may take you to court to get an order saying that you owe the debt and giving you a deadline for payment.

If the court or tribunal orders you to pay a sum of money and you do not pay, then the

creditor can force you to pay the debt. One of the methods a creditor can use to make you pay the amount you have been ordered to pay is “garnishment”. The creditor may garnish the money in your bank accounts, or, if you work, your wages. In either case, your creditor must serve a Notice of Garnishment and a Garnishee’s Statement on your bank or your employer. The creditor must also serve you with a Notice of Garnishment. It is very important to note that your debt is now growing. You may be responsible for the interest, the court costs of the

**See Garnishment p. 14**

# The Rental Market in Peterborough

The Canadian Mortgage and Housing Corporation (CMHC) reports that the average vacancy rate for residential rental units in the City of Peterborough has risen to 2.5% in October 2005 from 1.7% in October 2004. In October 2005, there were a total of 153 vacant units in Peterborough. In contrast, the average vacancy rate in Ontario was 3.8% in October 2005. CMHC reports that the 3.8% vacancy rate for Ontario dropped lower for the first time since 2000.

The average cost of a one-bedroom apartment in Peterborough rose from \$675.00 per month in 2004 to \$693.00 in October 2005, an increase of 2.7%. The average 2-bedroom unit rose from \$775.00 per month to \$797.00 for the same time period, an increase of 2.8%. During this period the regulated guideline increase amount on occupied units was 1.5%.

This means that it is still difficult for tenants to find housing in Peterborough. If

tenants can find housing, the cost is often beyond their reach.

What makes the situation even more desperate is that while the cost of housing continues to steadily climb, the incomes of many tenants do not. The minimum wage has increased by .90 cents per hour since 1995 while benefits derived from social services increased by only 3% in 2005 and 2% in 2006 after being cut by 21.6% in 1995.

# ODSP ALERT: Major Changes to Employment Rules

People with disabilities who received Ontario Disability Support Program (ODSP) benefits should be aware of some major changes to employment rules.

## *1. Requirements for non-disabled spouses:*

As of April 1, 2006, if you are married to someone who receives ODSP and you are not disabled yourself, you may have to meet Ontario Works (OW) employment assistance requirements. You will have to do upgrading, retraining, volunteer hours, job searches and/or job placements. The goal will be to place you in paid employment.

**How will this work?** ODSP offices will review their files to see who should be referred to OW. Referrals will start shortly after June 2006. You may be *exempted* from the OW employment requirements if you:

- \* are already working or looking for work;
- \* you meet the OW criteria for temporary deferral;
- \* you have to be a caregiver for a young child or for an ill or elderly adult and this makes it impossible for you to look for employment;
- \* there are “special circumstances” so you do not have to meet the OW

requirements.

**\*\*\*Important\*\*\*** The ODSP benefits that your spouse receives will be cut back if OW says that you did not work hard enough to find a job, if you quit a job without a good reason or if you are fired from your job.

## *2. A new approach to employment supports:*

If you have a disability, are on ODSP and you want to find a job, you may be able to get Employment Support services.

To get these supports, you have to show that you have the potential to be employable. Examples of Employment Support services are retraining and upgrading, job coaching, specialized equipment and sign language interpreters. Often private individuals or companies are paid by ODSP to provide the Employment Support services.

As of April 1, 2006, the Employment Supports program has new policies to make it easier and faster to get ODSP Employment Supports. The individuals and compa-

nies that are hired to provide the services will be paid based on whether you find and keep a job.

## **What does this mean?**

As an applicant, you will have to go to an Employment Information Session, you will have to choose a service provider and you will have to sign an Employment Supports Funding Agreement with ODSP. The service provider’s funding will be directly tied to whether you find a job, keep the job and your earnings in the job.

## *3. Changes to Earnings Exemptions:*

If you are on ODSP and you or your spouse work, earnings from the job will not be deducted dollar for dollar from your ODSP cheque. ODSP lets you keep a certain amount of earnings each month, depending on your family size, and then allows you to keep 25% of your earnings above that amount. As of November 1, 2006, the earnings exemption rules will change. Under the new formula, your family will keep 50% of all “net” wages (“net” means the amount of the wages after income tax,

CPP, EI etc.). On top of this, you will be able to keep \$100 for each adult in your family who is earning money from a job or a training program, or who is running a profitable business.

**\*\*\*Important\*\*\*** Many ODSP recipients will benefit from the new rules, but if your family has only one earner netting between \$201 and \$305 then you may be worse off under the new rules.

#### 4. *Increased employment start-up benefits:*

You may be eligible for the Employment Start-Up Benefit (ESUB) if you are: getting ODSP income support and accepting a new full or part-time job; starting a training program that leads to a job; starting your own business; or changing to a new job that is a different type of work from your previous job. As of November 1, 2006, the ESUB will be increased from \$253 to \$500 in any 12-month period. The ESUB will also be available to cover costs related to job searches, job preparation, and volunteer positions that will help you find paid employment. The ESUB will not be issued to cover the costs that

you have if you are leaving ODSP for employment, rather these expenses will be covered by the new Employment Transition Benefit.

#### 5. *New benefits:*

These new benefits apply to ODSP recipients who leave ODSP for a job, to do a training program or to run a business. As of November 1, 2006, you will be entitled to new benefits.

The first new benefit, the **Employment Transition Benefit (ETB)**, is \$500 which must be paid to you, in these circumstances, once a year regardless of what costs you have in leaving ODSP.

The second new benefit, the **Transitional Health Benefit (THB)**, may be available to your family if you are leaving ODSP but you have no drug, dental and vision care coverage with an employer. Special rules apply as to who may qualify for the THB.

#### 6. *Changes to reinstatement on ODSP after periods of employment:*

As of November 1, 2006 all former ODSP recipients who left ODSP because they got jobs may

be “rapidly reinstated” onto ODSP if their employment situation changes.

If you are in this situation you will still have to reapply for ODSP but you will not have to prove again that you are *medically* eligible. Benefits should be quickly reinstated if you are found to be *financially* eligible and if you meet all other, non-medical requirements. This reinstatement will happen regardless of how long you have been off ODSP.

*With files from the LAO's Clinic Resource Office and the Income Security Advocacy Centre.*

***Note: If you are receiving ODSP, these changes may affect you.***

***If you have any questions or you receive any negative decision letters, you should contact the Legal Centre immediately.***

# Backgrounder: The Need for Reform to the *Tenant Protection Act*

On May 3, 2006, the government tabled a new residential tenancies law.

What promises did the government make to Ontario tenants? Has the government delivered on those promises? Does the proposed law balance the interests of tenants and landlords? Does it create a fair process for resolving disputes and regulating rent increases?

Tenants across the province have been waiting since October 2003 for the provincial government to deliver. The government promised changes to the law that deals with landlord and tenant disputes and rent regulation and changes to the administrative tribunal that decides disputes between landlords and tenants.

## ***Government Promises***

The Liberal party promised that, if elected, within the first year of their mandate they would:

- “repeal the “misnamed” *Tenant Protection Act* and replace it with an effective tenant protection law”;
- “restore real rent controls”, “protect tenants with real rent control” and replace the existing law with an

“effective rent regulatory law”

- “restructure the regulations guiding the Ontario Rental Housing Tribunal so that the process to file grievances and respond to eviction notices is more fair and equitable to tenants”.<sup>1</sup>

At a meeting with Eastern Region legal clinic staff on January 28, 2005 John Gerretson (Minister of Municipal Affairs and Housing) made the following commitments to tenants:

1. A new system of rent controls will be developed in the context of affordable rents because increasing vacancy rates do not mean that renters at the low end have more choice or that rents will become affordable.
2. Tenants will not face rent increases where there is an outstanding maintenance order against the property. The government will reinstate the Orders Prohibiting Rent Increases (OPRI) where there is an outstanding maintenance order against properties.
3. The selection process for the Chair and the adjudicators of the Ontario Rental Housing Tribunal will

change because the government is committed to a transparent and fair selection process for members.

4. There will be a fairer test for motions to set aside default judgments. The new law will require an adjudicator to always consider the merit of the case when deciding whether to grant a motion to set aside a default judgment.

5. There will be new, user-friendly forms. The current forms are not fair. They are often confusing and misleading. Tenants who receive eviction notices are often misled into thinking that they have already been evicted. The issue for the government is: What does the individual who receives them think? With this in mind, new forms will be developed.

## ***The Ontario Rental Housing Tribunal (ORHT)***

92% of all applications heard at the Tribunal are from landlords. In 2005, the Tribunal processed 64,864 applications to evict tenants from their homes. 53% of the orders to evict were issued by “default order”, i.e. without the tenant having a

hearing. In contrast, only 1,370 tenant applications for maintenance were received. The Tribunal has been the subject of much criticism. The Ontario Ombudsman wrote "eviction should not be allowed to become a mechanical exercise devoid of human consideration." One of the Tribunal's own adjudicators wrote in a decision in January 2006 "default eviction orders are mass produced in such a way as to permit the description of the Tribunal as an eviction factory."

#### ***Vacancy Rates/Rents***

The theory is that with an increased supply of units, 'the market' will drive rents down. The reality is that rents have been increasing across Ontario whether the vacancy rate is high or low. According to the 2005 Canada Mortgage and Housing Corporation (CMHC) rental market survey, two-bedroom rents increased in 9 out of the 11 Ontario metropolitan areas. CMHC's Rental Market Outlook for 2006 predicted "tightening market conditions".

#### ***The Housing Situation***

According to CMHC's last rental market survey, there were a total of 23,337 vacant units across the province of Ontario. At the same time, there were 124,785 low-

income households across Ontario on the active waiting lists for social housing at year-end 2004.

CMHC's housing market forecast data predicted a need for 16,000 housing starts annually between 1996 - 2001 and over 20,000 after 2001. Here in Ontario, we are facing an affordable housing deficit of over 80,000 units.

According to Statistics Canada's 2001 Census, the median income of Ontario's renter households was less than half that of homeowner households (\$66,382 versus \$32,194). This means that 50% of renter households in Ontario have an income of less than \$32,194 per year.

*<sup>1</sup>Growing Strong Communities: the Ontario Liberal Plan for Clean, Safe Communities that Work November 25, 2002*

*Ontario Liberal media release September 30, 2003*

*November 20, 2003 Throne Speech*

*April 16, 2004 letter from Premier Dalton McGuinty to ACTO*

*With files from the Advocacy Centre for Tenants Ontario (ACTO)*

The Legal Centre would like to congratulate the *Community Counselling and Resource Centre* and the *Peterborough and District Labour Council*.

Both are vital community organizations which are celebrating 50 years in Peterborough

Have your special diet benefits been reduced or cut off?

Contact the Legal Centre for information about how to start an appeal.

# ***What tenants need to know about Bill 109: The proposed changes to residential tenancy law***

## **Here are some things that tenants should know about Bill 109:**

### ***Procedural Fairness***

- Bill 109 does not give priority to resolving disputes prior to hearing. This is unfortunate as often landlords and tenants are able and willing to settle their disputes. Tenants were looking for an application process where the 1<sup>st</sup> step would give Legal Aid Ontario funded Tenant Duty Counsel and the Board Mediator time to work on a settlement.
- Bill 109 would permit a tenant, at a hearing of a landlord's application for eviction due to arrears of rent, to raise maintenance and repair issues, claims about the landlord's conduct, and any other claims that the tenant could otherwise make in a separate application, in order to defend against eviction. *Note: If tenants are required to pay the arrears in to the Board before making their claims, then this will be of limited value to tenants.*
- Tenants would still have only one year in which to make most of their claims, as compared to most landlord applications which have a two-year limitation period. ***This does not protect tenants.***

- Bill 109 specifically states that the Board would have no power to review the cancellation/variation of a rent-geared-to-income subsidy by a social housing provider. *In other words, the Board would be unable to make determinations regarding the "lawful rent" for some of the most vulnerable tenants in the province.*

### ***This does not protect tenants.***

- Like the *Tenant Protection Act*, Bill 109 would impose a one-year limitation period on tenants who seek to challenge the legality of the rent. After one year the rent is deemed to be legal. ***This does not protect tenants.***

### ***Tenancy Agreements***

- Bill 109 gives the landlord the right to unilaterally transfer utility costs to the tenant even though the tenant rented on the understanding that the rent would include hydro. *This is of significant concern as it would permit landlords to ignore the tenancy contract. Tenants may be required to pay more than the actual cost of the hydro service. This does not protect tenants.*

### ***Evictions***

- Bill 109 fails to recognize that eviction should be the remedy of last resort.

- Default evictions - under Bill 109 tenants would no longer have to file a written dispute and all applications would be scheduled for either a hearing or mediation. *However, there is no mechanism for a tenant to ask for a quick rehearing of an application where the tenant was unable to attend the hearing date (for example, due to bad weather, illness, an accident on the way to the hearing, an important prior appointment). This is a problem because tenants have no say as to when the hearing will take place. We understand that the government is proposing that in these situations tenants would file a request to review the order, but this would be a more complicated, and likely more expensive, proceeding than an automatic right within a short time frame to file a motion to set aside the order. This does not protect tenants.*

- Bill 109 states that where a tenant vacates pursuant to a landlord's notice to vacate, the tenancy is considered terminated on the date the tenant moves out. ***This is improved tenant protection.***

- Bill 109 allows quick evictions with no opportunity for the tenant to rectify in certain situations where the land-

lord is alleging damage, substantial interference with the landlord's enjoyment of the unit and illegal act. ***This does not protect tenants.***

### ***Privacy***

- A landlord's right to enter would be expanded by permitting entry on 24-hours written notice for maintenance and repair inspections. *This right could be abused. We propose an annual right of entry for this purpose. This does not protect tenants.*

### ***Rent Control***

- Under the *Tenant Protection Act*, annual rent increases are regulated on occupied units and there is no regulation of rent increases on vacant units. This would not change under Bill 109. ***Broken promise – not real or effective rent control.***

- Annual guideline increases on occupied units would be limited to the increase in the consumer price index, and agreed-upon increases (for example, where the landlord is providing an additional service or facility) would be limited to 3% per year (down from 4% under the *Tenant Protection Act*). ***This is improved tenant protection.***

- Landlords can apply for rent increases above the guideline amount for extraordinary increases in utility costs, capital costs and prop-

erty taxes. This does not change under Bill 109. However, Bill 109 includes provisions for a reduction in rent once the capital expenditure has been paid for. *The impact of this otherwise positive change is muted by the fact that rent increases on vacant units remain unregulated.*

### ***Maintenance***

- Bill 109 appears to permit tenants to raise maintenance issues in defence to an application by a landlord for an above-guideline rent increase. It would prohibit an above-guideline increase where the Board has found that the landlord is in serious breach of its obligation to repair and maintain the unit. ***This is improved tenant protection.***

- Tenants will be able to ask the Board to prohibit further rent increases where there are outstanding work orders on the property. *Bill 109 would not make this mandatory.*

- Bill 109 does not contain a provincial minimum standard for heat, water and repair and maintenance of rental units. Bill 109 would increase a tenant's liability for damage by making him/her liable for "undue" damage rather than damage caused by "willful or negligent conduct". ***This does not protect tenants.***

### ***Window Dressing***

*Bill 109 would repeal the Tenant Protection Act, replace*

*it with the Residential Tenancies Act and create the Landlord and Tenant Board. Tenant protection is not significantly improved.*

### ***Conclusions/Next Steps***

Bill 109 is not what tenants were hoping for from the Liberal government. This is most apparent in the two key areas of vacancy decontrol and default evictions.

With regard to vacancy decontrol, the government failed to deliver on its promise of real rent controls developed in the context of vacancy rates and affordable rents. On average, units become vacant every five years at which point the rent charged will be whatever the landlord wants. In this context, a reduction in rent for "costs no longer borne" is almost meaningless.

With regard to default evictions, Bill 109 would eliminate the requirement for a written dispute but gives no opportunity for tenants who are unable to attend the hearing for legitimate reasons to request a quick rehearing.

There will be an opportunity for submissions to a legislative committee in early June 2006. In the meantime, tenants should email, write or phone Jeff Leal, Peterborough MPP, to tell him what they think of Bill 109.

# Reforming Ontario's Human Rights System

On April 28, 2006, the Attorney General of Ontario (the AG) introduced in the legislature Bill 107, *An Act to Amend the Human Rights Code*. If passed, this legislation will completely change Ontario's 44 year-old human rights system.

The Human Rights Commission has been widely criticized for its huge backlog of unresolved cases and the frequent use of its investigative powers to dismiss complaints. On average, three out of four cases are dismissed without a hearing. The decision to dismiss is made behind closed doors. In 1992, the human rights system was reviewed by noted human rights lawyer Mary Cornish who recommended that complainants be allowed to file claims directly with the Human Rights Tribunal.

According to the AG, the proposed reforms in Bill 107 will:

- Focus the work of the Ontario Human Rights Commission on proactive meas-

ures, such as education, public advocacy, research, analysis and promotion to prevent discrimination. The Commission will be able to address systemic issues that

have a broad impact on communities and groups and attempt to resolve them. In addition, the Commission will be able to initiate its own human rights complaints and intervene in complaints to support claimants;

- Establish an anti-racism secretariat and a disability rights secretariat within the Commission;

- Implement a more open, accessible and faster complaint resolution

process, with applications being made directly to the Human Rights Tribunal of Ontario.

- Enhance the statutory powers of the Tribunal to enable it to determine its own practices and procedures to manage its

caseload "efficiently and effectively", and to provide alternative dispute resolution mechanisms;

- Create a new Human Rights Legal Support Centre to provide legal assistance to complainants.

Will the new legislation truly protect and advance human rights in Ontario? We have some questions:

- Will the new system be adequately funded? The AG is currently unwilling to adequately fund the Ontario civil legal aid program yet the new legislation contemplates an expanded Commission including two new secretariats, an expanded Tribunal and a new "Legal Support Centre". Without adequate funding, the new system will not achieve the stated goals.

- How will the Tribunal "efficiently and effectively" manage its caseload? Low income people have seen "efficient and effective" case management at the Ontario Rental Housing Tribunal and the Social

**Will the new legislation truly protect and advance human rights in Ontario? We have some questions...**

**... every effort must be made to ensure that marginalized communities have an opportunity to make their voices heard.**

Benefits Tribunal and have had good reason to conclude that justice has been sacrificed to expediency.

- Will the Commission have the capacity and resources to initiate and investigate complaints?
- What is the governance model, mandate and funding mechanism for the new Legal Support Centre?

We hope that the government will permit a fully accessible consultation as Bill 107 goes through the process

of becoming law. Accessible consultation in this context means ensuring that sufficient time is permitted to allow people from across the province who have disabilities, or who have faced discrimination, to participate in committee hearings on the bill. It would also require access to plain language background materials developed to be useful to people without extensive knowledge of the human rights system.

Once the bill has passed, the

AG has committed to “an implementation advisory committee to provide advice on new processes for the commission, tribunal and legal support services”. Membership on the advisory committee would include representatives from “the commission, the tribunal, community groups and legal, labour and business associations”. Again, every effort must be made to ensure that marginalized communities have an opportunity to make their voices heard.

**To understand the changes to the human rights system, it is important to understand how the current system works. Here is a brief description:**

- \* The Commission receives and processes complaints about violations of the Ontario Human Rights Code.
- \* The Commission has the power to determine whether or not to proceed with a complaint.
- \* If the Commission goes ahead with a complaint, it will (in most cases) ask the parties to agree to talk to a mediator.
- \* If mediation is unsuccessful, the Commission will conduct an investigation into the complaint.
- \* The investigation report will be shared with both parties to encourage a settlement.
- \* If the complaint does not settle, the Commission will decide whether or not to refer the complaint to the Human Rights Tribunal for a hearing.
- \* The complainant can request a reconsideration of the Commission’s decision. The Commission will make a final decision which is not appealable.
- \* The Human Rights Tribunal (the “Tribunal”) is an independent, quasi-judicial body which hears and decides complaints under the Code referred to it by the Commission. It can only hear complaints referred by the Commission.
- \* The Commission is responsible for presenting evidence about the complaint to the Tribunal but does not represent the complainant. The complainant has the right to make separate submissions.
- \* Decisions of the Tribunal may be appealed to a court.
- \* Both sides to the complaint may consult with a lawyer at any stage of the complaint process at their own expense.

# Supreme Court Ruling:

## Social Benefits Tribunal Must Apply Human Rights Code

Human rights legislation has been described as the “final refuge of the disadvantaged and the disenfranchised” and the “last protection of the most vulnerable members of society”.<sup>1</sup> However, all too often individuals who have tried to make human rights complaints in Ontario have found the process to be either impossible or frustratingly slow. This should now change, given the Supreme Court of Canada’s ruling in the *Werbeski* case.

The *Werbeski* case was heard by the Supreme Court in December 2005 and the decision was released on April 21, 2006. The case involves two men, both alcoholics, who in 1998 and 1999 applied for and were denied income support from the Ontario Disability Support Program. The men, Werbeski and Tranchemontagne, appealed to the Social Benefits Tribunal claiming to be eligible for disability benefits due to their alcoholism. The Tribunal, like the Ministry, relied on section 5(2) of the Ontario Disability Support Program Act and denied their appeals. Section 5(2) provides that where substance abuse is the only

disability, a person is not eligible for ODSP. For example, a person who suffers from alcoholism but who does not have brain damage or cirrhosis of the liver may not be eligible for ODSP even though alcoholism is widely recognized as a disabling condition.

Werbeski and Tranchemontagne asked the Tribunal to find that section 5(2) contravened the *Human Rights Code*. However, the Tribunal found that it lacked jurisdiction to consider the Code and declined to hear the case.

The Tribunal decisions were appealed first to the Divisional Court, then to the Court of Appeal, and finally to the Supreme Court after it agreed to hear the case. The Court rejected the government’s position because if accepted it would require a tribunal to ignore a human rights complaint, enforce a law that may be discriminatory, tell the complainant to take the complaint to the Human Rights Commission, and leave the complainant/appellant without benefits in the meantime. The Court goes on to note that, “[i]n

general, encouraging administrative tribunals to exercise their jurisdiction to decide human rights issues fulfills the laudable goal of bringing justice closer to the people”.

The case has been referred back to the Social Benefits Tribunal for a decision as to whether or not section 5(2) of the *Ontario Disability Support Program Act* was inapplicable because it results in discrimination contrary to the *Human Rights Code*.

<sup>1</sup> *Zurich Insurance Co. v. Ontario (Human Rights Commission)*, [1992] 2 S.C.R. 321, at p. 339, Sopinka J.

In its recent budget, the Ontario Government raised social assistance rates by 2%. This is inadequate when you consider that an estimated 40% increase was needed to give recipients back the buying power that they had before the cuts in 1995.

# It's time to think about the municipal elections

If you are like most people, you depend on many services that are funded and/or delivered by your local municipal government. These services include child care, local roads, fire prevention, land ambulance, public transit, water and sewers, public health, police services, parks and recreation, Ontario Works (welfare) and subsidized housing. Municipalities also fund community-based agencies to provide important social programs.

Currently, elections for municipal government are held every three years. The next municipal election is on Monday, November 13, 2006. Because municipal services and municipally funded community agencies are so much a part of our daily lives, it's not too early to start thinking about the issues that are important for Peterborough.

To get the discussion going, the Legal Centre has a few questions for anyone thinking of standing for election:

- **What would you do to reduce the number of hungry people in Peterborough?** Note: the number of hungry people, many of them children, has increased steadily in Peterborough over the last 10 years. **Suggestion:** Lobby the province to increase social assistance rates, raise the minimum wage to \$10.00 per hour and end the claw-back of the National Child

Benefits Supplement.

- **What would you do about homelessness and housing insecurity?** Note: A higher percentage of tenants in Peterborough are at risk of losing their housing than anywhere else in the province. **Suggestion:** Peterborough needs more affordable housing. Raising social assistance rates, raising the minimum wage, stopping the claw-back and bringing back effective rent controls will help with affordability but we also need more affordable housing stock. Why not make the first principle for consideration in all planning decisions: how will this proposal bring more affordable housing to Peterborough?

- **What would you do to help low-income households cope with rising energy costs?** Note: Studies show that low-income families are more likely to live in inefficient housing and spend more of their household income on energy than higher income families. This leads to more pollution and greater poverty. **Suggestion:** Work with the local utilities to develop rate assistance plans for low income households. Lobby for national, provincial and municipal retrofit programs that will improve the energy efficiency of low-income housing, create jobs, reduce pollution and reduce poverty. Simi-

lar programs have been in place for years in the U.S and the U.K. with proven results.

- **What would you do to make municipal government more transparent and accountable to the community?**

Note: Many people feel that their elected representatives don't listen to them. This is especially true for voters who face barriers such as poverty or disability and explains why voter turnout is low. **Suggestion:** Re-establish a citizen advisory committee, similar to the Affordable Housing Action Committee, to advise the City and County councils on social policy issues. Ensure that inclusive and meaningful community consultation takes place before decisions are made. Show enlightened leadership in the face of "nimbyism". Ensure that municipally delivered social services complement and cooperate with existing community-based and community-supported social programs. Add a plain-language guide to the City and County websites to help local citizens make presentations to City and County committees and councils. Respect the spirit as well as the letter of freedom of information laws to give citizens access to the materials they need to evaluate municipal decisions. Avoid "closed-door" decision-making wherever possible.

### **Garnishment from p. 3**

garnishment as well as the legal fees of the creditor.

Once your bank or your employer receives a Notice of Garnishment, they become the “garnishees”. The garnishee is legally bound to garnish you. This means your bank or your employer has been ordered to deduct money from your bank account or your wages and must give this money to your creditor.

If there is a reason that the garnishee cannot garnish you then the garnishee must complete the Garnishee’s Statement and return this document to the court within 10 days of receiving the Notice of Garnishment. For example, if the creditor gives your former employer a Notice of Garnishment directing them to start deducting from your wages, your former employer must explain that you are no longer employed with them and must return the Garnishee’s Statement to the court or be held responsible for the debt.

The maximum amount that can be garnished from your wages is (in most cases) 20%. There are special rules for child support debts. Where the debt that is owed is child support, the rate of collection from wages is 50%. The only limit to the amount that can be garnished from your bank account is the amount of the judgement debt.

If you receive a Notice of Garnishment and wish to go before the court to give evidence that you cannot pay the debt or to offer to pay a lower monthly amount, you must file a motion to request a garnishment hearing. The motion has to be heard in the court that issues the Notice. If the debt is \$10,000 or less, the motion will be heard by the Small Claims Court. The Peterborough Small Claims Court is located at 70 Simcoe Street, Peterborough, Ontario.

There is no fee for a motion requesting a garnishment hearing. You must file this motion within 30 days after the Notice of Garnishment is sent. All of the Small Claims Court forms are free and can be obtained either through 70 Simcoe Street or on line at the Ministry of Attorney General website at [www.attorneygeneral.jus.gov.on.ca](http://www.attorneygeneral.jus.gov.on.ca).

It is important that you take all of your documents with you on the day of your garnishment hearing. You should take proof of your income and expenses, any other debts that you are paying including other garnishments and any documents that relate to the debt that is the subject of the garnishment.

It may help to bring a statement from a credit counselling agency stating what your fi-

nancial picture is. Free non-profit credit counselling is offered by the Community Counselling and Resource Centre Credit Counselling Service located at 351 Charlotte Street in Peterborough.

You must have your witnesses and evidence with you on the day of your hearing. You may not get a second chance to present your evidence.

At your Motion on the Garnishment hearing the court may decide that you can make lower payments on the debts or suspend your payments for a period of time. The court may also determine any matters relating to the Notice of Garnishment or order parties to appear to provide evidence.

Fortunately, some income is protected from garnishment. Some examples of protected income are Ontario Works assistance, Ontario Disability Support Program benefits and Canada Pension Plan disability benefits. This is not a complete list of protected sources of income. If you are not sure if your income is protected please call the Legal Centre for more information.

If your income is protected you should notify your bank in writing that your income is protected and cannot be garnished. The Legal Centre has form letters for this purpose that we can give to you to take to your bank.

# Ombudsman to Investigate Complaints by Ontario Disability Support Program Recipients

More than 70 recipients of Ontario Disability Support Program benefits from across the province (some represented by the Legal Centre) have complained to the Ontario Ombudsman. They say that they did not receive ODSP benefits because of unacceptable delay by the Ministry in deciding their claims. The Ombudsman, Andre Marin, has promised to complete his investigation by the end of May 2006.

In one Legal Centre case, the client is at risk of becoming homeless, because of the Ministry's delay in granting him ODSP. He is severely disabled and requires 24-hour supervision and services in a care home. The income that he had before he went on ODSP was insufficient to cover the monthly cost of his care home. He moved into the care home after he applied for ODSP on the understanding that his retroactive benefits would be used to pay the amounts owing to the care home. Now

he has no way to repay the debt as all of his income from ODSP is used to cover his day-to-day expenses.

Recipients say that they lost benefits when the Ministry's delay in deciding their cases

**Ministry policy could be changed to require that a decision be made respecting eligibility within four months of an application being received.**

was combined with the ODSP legislation. (In some instances the Ministry took over 12 months.) The legislation only permits retroactive benefits to be paid for the four-month period before

the Ministry's decision. There is no time requirement on the Ministry's decision. This means that recipients lose a month of benefits for every month beyond four that the Ministry takes to decide an application for benefits.

*The Legal Centre says that there is a simple solution to the problem, and that this solution would not require a change in the law. Ministry policy could be changed to require that a decision be made respecting eligibility within four months of an application being received.*

The policy could stipulate that the applicant should be granted benefits if the Ministry has not fully reviewed the application within the four-month period. A review could be automatically scheduled to take place one year later. This is a simple solution that would protect disabled applicants seeking income supports from the government. All that would be required is a change in Ministry policy and funding for additional Ministry decision-makers to process applications.

Legal Centre staff are available to speak to classes, tenants' organizations, agencies and community groups about our areas of practice.

Call us at 749-9355 to arrange a presentation at your next meeting.

## The Objects of the Legal Centre

The objects of the Legal Centre are:

1. To provide legal services or paralegal services or both including activities reasonably designed to encourage access to such services or to further such services and services designed to promote the legal welfare of the low income residents of the County of Peterborough, on a basis other than fee-for-service;
2. To provide legal information and education and to encourage access to knowledge of legal rights;
3. To provide legal representation to low-income residents of the County of Peterborough;
4. To identify areas of law affecting low-income members of our society and to advocate reform.

## Membership

The Centre is directed by its members. If you live in the City or County, and are 16 years of age or older, you can become a member. If you are a member, you can:

- Vote at the Annual General Meeting
- Stand for election to the Board of Directors if you are over 18.
- Get the Legal Centre's newsletter twice a year.

If you want to become a member of the Legal Centre for the 2005/2006 year (December 1, 2005 to February 28, 2007) you need to complete the following form and send or bring it to the Legal Centre at 150 King Street, 4<sup>th</sup> Floor, Peterborough, Ontario, K9J 2R9. If you are already a member, please pass along the membership application to a friend who supports our objects.

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## Membership Application 2005-2006

I support the work of the Peterborough Community Legal Centre. I am 16 or older.

Please print:

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please mail or bring this form to our office. Membership takes effect 30 days after approval by the Board. Membership is for one year, and a renewal notice will be sent with the newsletters. There is no fee to become a member. You do not need to be a member to get help from us.