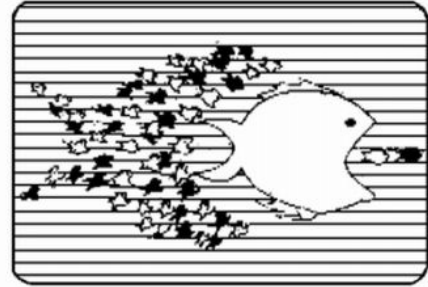


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BC Welfare Ministry changes spouse in the house law and fraud investigation procedures following lawsuit by BCPIAC

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In response to a court case filed by BCPIAC, the welfare Ministry has amended the Employment and Assistance Act to try to improve the way it treats people on income assistance who the Ministry believes are in dependency relationships, sometimes referred to as the "spouse in the house" rule.

We filed the case in BC Supreme Court in 2003 on behalf of two women who receive provincial disability benefits and who signed repayment agreements under duress after being accused of overpayments based on alleged dependency relationships. Our claims were based on sections 7 (life liberty and security of the person) and 15 (equality) of the Charter of Rights and Freedoms, and some of Canada's most basic principles of procedural fairness.

The repayment agreement that one of our clients, Karen Bostock, was forced to sign was for \$9000. Ms. Bostock was told she could go to jail for the fraud she committed. She was going to be cut off assistance for three months and was denied appeal rights.

Ms. Bostock tried to get legal aid in Kamloops where she lives, but the government had cut poverty law legal aid services in 2002. She had lived in Victoria several years earlier, and remembered about an advocacy group there, so called them. She was fortunate to speak to an experienced advocate who recognized the severity of the situation and referred her to BCPIAC.

The Ministry reinstated our clients' benefits the day after we filed. Within a month, the BC Coalition of People with Disabilities intervened, represented without fees by prominent Vancouver lawyer Jennifer Conkie.

By the end of the year the Ministry acknowledged that our clients were not in dependency relationships and canceled both repayment agreements because they were signed under duress. The Ministry also admitted that the way they were calculating overpayments was incorrect, and that our clients should have been granted reconsideration and appeal rights. Finally, the Ministry canceled the three month sanctions for each of them.

Our clients were pleased that their situations had been resolved, but felt strongly that people would still be treated unfairly if they did not push for a systemic remedy. In response, the Ministry amended their policies, as follows:

- Ministry clients will now receive a letter explaining overpayment allegations against them and be provided with an opportunity to respond
- Clients can no longer have their benefits withheld if they refuse to sign a repayment agreement
- Frontline Ministry workers can only take repayment agreements of overpayments involving amounts equal to or less than three months' assistance
- Repayment agreements must not be taken if Ministry staff believe that a client has any doubts or uncertainties as to the contents, purpose or effect of the document. These files must be referred to the investigation unit of the Ministry and may result in civil litigation
- Overpayments involving amounts greater than the rate of three months' assistance must be referred by frontline workers to the investigation unit
- No more repayment agreements will be taken by the Ministry based on spousal/dependency relationships - these cases will be referred to the investigation unit to decide whether to pursue civil court action
- Debts owed to the Ministry remain with the original file and cannot be transferred from one file to another in cases where clients have changed family units or files, or are no longer in dependency or spousal relationships
- No more sanctions will be imposed based on repayment agreements - sanctions can only be imposed if the Ministry is successful in a court action against recipients and the Ministry must consider mitigating circumstances when deciding whether to impose a sanction
- Sanctions and Ministry determinations about dependency relationships can be reconsidered and appealed.

Our clients felt that the legislative definitions of spouse and dependant were still far too broad and therefore unconstitutional, as they could still capture people who are not truly in spousal or dependency relationships. The portions of recently passed legislation that deal with spouse and dependency are the government's attempt to respond to our clients' concerns.

The Ministry has repealed the current definition of "dependant" which states that a person can be found to be in a dependency relationship if they are sharing income or assets or other necessities of life (a definition that we said could, and often did, capture virtually any two people residing together).

The Ministry now says that people are "spouses" if:

Meaning of "spouse"

1.1 (1) Two persons, including persons of the same gender, are spouses of each other for the purposes of this Act if:

- (a) they are married to each other, or
- (b) they acknowledge to the minister that they are residing together in a marriage-like relationship.

(2) Two persons who reside together, including persons of the same gender, are spouses of each other for the purposes of this Act if

- (a) they have resided together for at least
 - (i) the previous 3 consecutive months, or
 - (ii) 9 of the previous 12 months, and
- (b) the minister is satisfied that the relationship demonstrates
 - (i) financial dependence or interdependence, and
 - (ii) social and familial interdependence,consistent with a marriage-like relationship.

As is currently the case, the Minister can still reduce the amount of income assistance a person receives if they believe there is a spousal or dependency relationship. But as a result of our case, this finding can now be appealed.

Our initial opinion is that the changes make things clearer for people on assistance. Of course we would have preferred one year for the spousal relationship period rather than three months or nine out of the previous twelve, which are too short a time for most modern relationships, and in our opinion could still be problematic for some welfare recipients.

We still have a couple of other changes that we will press for in response to this case. For example, the Ministry needs to make it clear that the *amount* of an overpayment, and not just the overpayment itself, can be reconsidered and appealed.

We would like to acknowledge the Ministry's efforts to try to make things a little better for people who rely on income assistance. If the government administers the new spouse/dependency definition unfairly, at some point in the future we may have to challenge the revised definition. But we are optimistic that this change will lead to fewer dependency investigations as it makes things clearer for both Ministry clients and workers.